



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on November 12, 2019, at 10:00 a.m. in room 149 Capitol Annex.

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The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2018 Edition of the
KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 45, Kentucky Register, page 318 (short form: 45 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, 700 Capitol Avenue, Room 300, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$120 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Periodical postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

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Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Tuesday, November 12, 10:00 AM
Annex Room 149



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2. REGULATIONS FOR COMMITTEE REVIEW

COUNCIL ON POST SECONDARY EDUCATION

Nonpublic Colleges

013 KAR 001:020. Private College licensing. (Amended After Comments)

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

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045 KAR 001:050. Audits of fiscal courts.

FINANCE AND ADMINISTRATION CABINET

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200 KAR 006:015. Real property inventories.

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201 KAR 001:100. Continuing professional education requirements.

201 KAR 001:190. Examination sections, applications, and procedures.

Real Estate Authority

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. (Amended After Comments)

201 KAR 011:170. Education provider requirements. (Amended After Comments)

201 KAR 011:190. Consumer and administrative complaints; discipline; administrative hearings. (Amended After Comments)

201 KAR 011:210. Licensing, education, and testing requirements. (Amended After Comments)

201 KAR 011:220. Errors and omissions insurance requirements. (Amended After Comments)

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

Board of Respiratory Care

201 KAR 029:015. Fees.

Real Estate Appraisers

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

Board of Licensed Professional Counselors

201 KAR 036:060. Qualifying experience under supervision.

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Game

301 KAR 002:049. Small game and furbearer hunting and trapping on public areas.

301 KAR 002:090. Means by which migratory game birds may be taken.

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

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Office of the Secretary

Administration

400 KAR 001:110. Administrative hearings relating to matters brought under KRS Chapter 350 or KRS 351.310 through 351.357.

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Division of Water

Water Wells

401 KAR 006:001 & E. Definitions for 401 KAR Chapter 006. ("E" expires 02-08-2020) (Amended After Comments)

401 KAR 006:211. Repeal of 401 KAR 006:200. (Not Amended After Comments)

401 KAR 006:310 & E. Water supply well construction practices and standards. ("E" expires 02-08-2020) (Amended After

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Comments)

401 KAR 006:320 & E. Certification of water well drillers and water well driller assistants. ("E" expires 02-08-2020) (Amended After

Comments)

401 KAR 006:350 & E. Monitoring well construction practices and standards. ("E" expires 02-08-2020) (Amended After Comments)

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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)

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)

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

601 KAR 013:100. Medical standards for operators of motor vehicles. (Amended After Comments) (Deferred from October) (Found Deficient by ARRS, October 8, 2019)

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Agents, Consultants, Solicitors, and Adjusters

806 KAR 009:020. False or deceptive names, titles, prohibited. (Deferred from June)

806 KAR 009:025. Agent licensing process.

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) (Deferred from September)

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 009:221. Repeal of 806 KAR 009:001, 806 KAR 009:070, and 806 KAR 009:220.

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)

Surplus Lines

806 KAR 010:061. Repeal of 806 KAR 010:060.

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806 KAR 014:061. Repeal of 806 KAR 014:060.

CABINET FOR HEALTH AND FAMILY SERVICES

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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. (Amended After Comments)

902 KAR 020:430 & E. Facilities specifications, operation and services; behavioral health services organizations for mental health treatment. ("E" expires 01-23-2020) (Amended After Comments)

Department for Medicaid Services

Division of Policy and Operations

Behavioral Health

907 KAR 015:005 & E. Definitions for 907 KAR Chapter 015. ("E" expires 01-26-2020) (Not Amended After Comments)

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 01-26-2020) (Amended After Comments)

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 01-26-2020) (Not Amended After Comments)

907 KAR 015:020 & E. Coverage provisions and requirement regarding services provided by behavioral health services organizations for mental health treatment. ("E" expires 01-26-2020) (Amended After Comments)

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 01-26-2020) (Amended After Comments)

907 KAR 015:025 & E. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations. ("E" expires 01-26-2020) (Not Amended After Comments)

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**Department for Community Based Services
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Child Welfare**

922 KAR 1:320 & E. Service appeals. ("E" expires 01-23-2020) (Amended After Comments)

3. REGULATIONS REMOVED FROM NOVEMBER'S AGENDA

BOARDS AND COMMISSIONS

Board of Pharmacy

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

JUSTICE AND PUBLIC SAFETY CABINET

Asset Forfeiture

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

Motorcycle Safety Education Commission

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

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Oil and Gas

805 KAR 001:001. Definitions for 805 KAR Chapter 001. (Amended After Comments) (Deferred from November)

805 KAR 001:020. Protection of fresh water zones. (Amended After Comments) (Deferred from November)

805 KAR 001:030. Well location and as-drilled location plat, preparation, form and contents. (Not Amended After Comments) (Deferred from November)

805 KAR 001:050. Bonds, requirements, cancellation. (Amended After Comments) (Deferred from November)

805 KAR 001:060. Plugging wells. (Amended After Comments) (Deferred from November)

805 KAR 001:080. Gas storage reservoirs; drilling, plugging in vicinity. (Amended After Comments) (Deferred from November)

805 KAR 001:110. Underground injection control. (Amended After Comments) (Deferred from November)

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. (Amended After Comments) (Deferred from November)

805 KAR 001:170. Content of the operations and reclamation plan. (Amended After Comments) (Deferred from November)

805 KAR 001:180. Production reporting. (Amended After Comments) (Deferred from November)

805 KAR 001:190. Gathering lines. (Amended After Comments) (Deferred from November)

805 KAR 001:200. General information associated with oil and gas permits. (Amended After Comments) (Deferred from November)

Sanctions and Penalties

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

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

Child Welfare

922 KAR 001:330 & E. Child protective services. ("E" expires 04-10-2020)

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.

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EMERGENCY ADMINISTRATIVE REGULATIONS

NONE

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(As Amended at ARRS, October 8, 2019)

102 KAR 1:032. Bona fide retirement.

RELATES TO: KRS 161.420(5), 161.540(2), ~~[KRS]~~ 161.605, 161.677, 161.700(4), ~~[F:]~~ 26 U.S.C. 401(a), 414(h), ~~[F:]~~ 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 161.310, ~~[KRS]~~ 161.716
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of Teachers' Retirement System (TRS) to promulgate administrative regulations for the administration of funds of the retirement system. KRS 161.716 requires the board to promulgate administrative regulations as are necessary to remove any conflicts with federal law. TRS is a qualified plan under Section 401(a) et seq. of the Internal Revenue Code. As a qualified plan, member contributions are "picked-up" contributions under IRC Section 414(h) and made to TRS on a tax-deferred basis. This administrative regulation establishes guidelines to help ensure that a bona fide retirement has occurred under federal law before a member returns to employment with a TRS-participating employer. This administrative regulation is necessary to help maintain compliance with federal tax law and the qualified status of TRS under IRC Section 401(a) et seq.

Section 1. Definitions. (1) "Bona fide retirement" means a complete cessation of all employment relationships between the member and any participating employer, regardless of whether the position is one that participates in TRS, ~~and that~~. ~~Furthermore,~~ there shall be no prearranged agreement prior to retirement between the member and any participating employer that the member will be reemployed or otherwise return to work for the employer in any capacity.

(2) "Break in service" means the period of time required under KRS 161.605(7)(a)-(b) during which the member ~~shall~~ **must** have a complete separation from service before becoming reemployed with any participating employer. ~~[The period of time established for the break in service shall be measured from the member's retirement date to the member's reemployment date.]~~

(3) "Participating employer" means an employer that participates in TRS pursuant to KRS 161.220(4).

(4) "Reemployed" and "Reemployment," unless indicated otherwise in this administrative regulation, shall mean employment as defined by KRS 161.220(12) following retirement with a participating employer ~~and shall include both paid and unpaid employment and full-time, part-time, temporary, seasonal, voluntary, and hourly employment]. For purposes of this administrative regulation, reemployed and reemployment shall include both paid and unpaid employment. Reemployed and Reemployment include full-time, part-time, temporary, seasonal, voluntary, and hourly employment].~~

(5) "Reemployment date" means the first date that the member is reemployed after their retirement date.

(6) "Retirement date" means the member's most recent effective retirement date with TRS.

Section 2. (1) A retired member may not be reemployed unless he or she has first experienced a bona fide retirement with the appropriate break in service, ~~as provided in KRS 161.605(7)(a) or (b)~~, prior to reemployment. Failure to do so shall void the member's retirement and require the return of all benefits with interest as provided under KRS 161.605(7)(c). This requirement applies to all members and participating employers.

(2) The period of time established for the break in service shall be measured from the member's retirement date to the member's reemployment date.

Section 3. **(1) There shall be no prearranged agreement prior to retirement, between the member and any participating employer that the member shall be reemployed or otherwise return to work in any capacity after retirement.**

(2) A retired member shall not be reemployed by a participating employer, unless prior to reemployment both the member and the participating employer have certified that there was no prearranged agreement prior to retirement between the member and the employer that the member would be reemployed. This requirement applies to both reemployment in positions that participate in TRS and those that do not.

Section 4. **(1) The member and participating employer [from which the member has retired] shall complete and file with TRS Form 10-C prior to reemployment of that retired member. If the member has been retired twelve (12) months or longer following his or her retirement date, the member and participating employer shall not be required to file Form 10-C.**

(2) A participating employer shall complete and file Form 30-E with TRS prior to reemployment of any retired member who is returning to work in a position that the employer deems to be a position that is not required to contribute to TRS.

Section 5. Incorporation by Reference. (1) Form 10-C, "Reemployment Certification", 06/17/2019; and

(2) Form 30-E, "Employment Limitations Exemption Request", 06/17/2019.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

RON SANDERS, Chairperson

APPROVED BY AGENCY: June 17, 2019

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

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, email Beau.Barnes@trs.ky.gov.

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended at ARRS, October 8, 2019)

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)[(c)] 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;or[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.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Department Of Corrections
(As Amended at ARRS, October 8, 2019)**

501 KAR 6:060. Northpoint Training Center.

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 cabinet or any division therein. 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 Northpoint Training Center.

Section 1. Incorporation by Reference. (1) "Northpoint Training Center Policies and Procedures", October 8[July 15], 2019[April 14, 2015], are incorporated by reference. Northpoint Training Center policies and procedures include:

- NTC 01-17-01 Relationships with Public, Media and Other Agencies (Amended 7/14/14)
- NTC 02-07-02 Institutional Religious Center Fund (Amended 4/11/17)
- NTC 02-08-01 Inmate Canteen (Amended 10/8/19[7/15/19][2/14/17])
- NTC 02-12-01 Inmate Accounts (Amended 7/15/19[2/14/17])
- NTC 03-03-01 Tobacco Products and Nicotine Procedures (Amended 2/14/17)
- NTC 03-25-01 Firewood Cutting and Firewood Sales (Added

- 7/15/19[2/14/17])
- NTC 06-01-01 Offender Information Services (Amended 10/8/19[7/15/19][9/28/15])
- NTC 06-01-02 Offender Information Services - Release of Information (Amended 9/13/11)
- NTC 09-06-01 Searches and Contraband Procedures; Disposition of Contraband (Amended 4/11/17)
- NTC 09-14-01 Inmate Death (Amended 7/15/19[7/13/11])
- NTC 09-16-01 Restricted Areas (Amended 2/14/17)
- NTC 10-01-01 Restrictive Housing Unit (Amended 10/8/19[7/15/19][4/11/17])
- NTC 11-04-02 Menu, Nutrition, Special, and Individual Diets (Amended 9/28/15)
- NTC 11-05-02 Food Service Staff Health Standards (Amended 9/28/15)
- NTC 12-02-01 Personal Hygiene for Inmates: Clothing and Linens (Amended 10/8/19[7/15/19][2/14/17])
- NTC 12-02-02 Issuance of Personal Hygiene Products (Amended 2/14/17)
- NTC 12-06-01 Housekeeping Procedures (Amended 10/8/19[7/15/19][7/13/11])
- NTC 12-07-01 Grooming and Hair Care Standards (Amended 2/14/17)
- NTC 13-01-01 Emergency Medical Care Plan (Amended 4/11/17)
- NTC 13-02-01 Provisions and Authority for Health Services (Amended 10/8/19[7/15/19][12/9/15])
- NTC 13-03-01 Sick Call and Pill Call (Amended 2/14/17)
- NTC 13-04-01 Use of Pharmaceutical Products (Amended 2/14/17)
- NTC 13-05-01 Dental Services (Amended 9/28/15)
- NTC 13-08-01 Medical and Dental Records (Amended 9/28/15)
- NTC 13-10-01 Notification of Inmate's Family or Designation Individual of Serious Illness or Injury, Surgery, or Inmate Death (Added 11/15/07)
- NTC 13-11-01 Inmate Health Screening and Evaluation (Amended 10/8/19[7/15/19][2/14/17])
- NTC 13-12-01 Special Health Care Programs (Amended 12/9/15)
- NTC 13-13-01 Inmate Self Administration of Medication (Amended 2/14/17)
- NTC 13-19-01 Mental Health Care Program (Amended 7/15/19[2/14/17])
- NTC 13-19-03 Suicide Prevention and Intervention Program (Amended 2/14/17)
- NTC 13-20-02 Infectious Disease Control (Amended 2/14/17)
- NTC 13-22-01 Informed Consent (Amended 9/28/15)
- NTC 13-26-01 Public Advocacy Access to Psychological and Psychiatric Reports (Amended 12/13/05)
- NTC 14-01-01 Legal Services Program (Amended 10/8/19[7/15/19][2/14/17])
- NTC 14-02-01 Inmate Grievance Procedure (Amended 9/28/15)
- NTC 14-03-02 Board of Claims (Amended 9/13/11)
- NTC 15-02-01 Due Process and Disciplinary Procedures (Amended 9/28/15)
- NTC 15-02-02 Extra Duty Assignments (Amended 10/8/19[7/15/19][9/28/15])
- NTC 15-03-01 Rules for Inmates Assigned to Outside Detail (Amended 10/8/19[7/15/19][9/28/15])
- NTC 15-03-02 Rules for General Population Dormitories (Amended 10/8/19[7/15/19][4/11/17])
- NTC 15-04-01 Inmate Identification (Amended 2/14/17)
- NTC 15-05-01 Drug Abuse and Intoxicants Testing (Amended 2/14/17)
- NTC 16-01-01 Inmate Mail (Amended 7/15/19[4/11/17])
- NTC 16-02-01 Visiting (Amended 10/8/19[7/15/19][2/14/17])
- NTC 16-03-01 Inmate Furloughs (Amended 9/28/15)
- NTC 16-05-01 Telephone Use and Control (Amended 2/14/17)
- NTC 17-01-01 Personal Property Control (Amended 10/8/19[7/15/19][4/11/17])
- NTC 17-01-04 Disposition of Unauthorized Property (Amended 10/8/19[7/15/19][2/14/17])
- NTC 17-02-03 Mattress and Pillow Issue (Amended 4/11/17)
- NTC 17-03-01 Assessment and Orientation (Amended 7/15/19[12/9/15])
- NTC 18-01-01 Parole

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Progress Report (Amended 9/28/15)]
 NTC 18-02-01 Classification (Amended 7/15/19[4/14/17])
 NTC 18-02-02 Classification - 48 Hour Notification (Amended 5/12/06)
 NTC 18-02-03 Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 12/9/15)
 NTC 18-03-01 Conflict Notification (Amended 7/15/19[2/14/17])
 NTC 18-05-01 Transfer of Inmates (Amended 7/14/14)
 NTC 19-01-01 Inmate Work Programs (Amended 4/11/17)
 NTC 20-01-01 Educational Programs (Amended 7/15/19[2/14/17])
 NTC 20-02-02 Live Work Projects in Technical School Classes (Amended 10/8/19[7/15/19][4/11/17])
 NTC 20-02-03 Correspondence Courses (Added 9/28/15)
 NTC 21-01-01 Library Services (Amended 2/14/17)
 NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs (Amended 7/15/19[9/28/15])
 NTC 23-01-01 Religious Services (Amended 2/14/17)
 NTC 23-03-01 Marriage of Inmates (Amended 4/11/17)
 NTC 24-04-01 Honor Housing (Amended 7/15/19[2/14/17])
 NTC 24-06-01 Veterans Honor Dormitory (Amended 10/8/19[7/15/19][12/9/15])
 NTC 25-01-01 Release Preparation Program (Amended 9/28/15)
 NTC 25-01-02 Temporary and Community Center Release
 NTC 25-02-01 Funeral Trips and Bedside Visits (Amended 7/14/14)
 NTC 25-03-01 Inmate Release Procedure (Amended 7/15/19[12/9/15])
 NTC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 2/14/17)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

KATHLEEN M. KENNEY, Commissioner

APPROVED BY AGENCY: July 11, 2019

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

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET Department Of Corrections (As Amended at ARRS, October 8, 2019)

501 KAR 6:140. Bell County Forestry Camp.

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 any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Bell County Forestry Camp.

Section 1. Incorporation by Reference. (1) "Bell County Forestry Camp Policies and Procedures," October 8[July 12], 2019[11, 2017], are incorporated by reference. Bell County Forestry Camp Policies and Procedures include:

BCFC 01-08-01 Public Information and News Media Access (Amended 5/15/08)
 BCFC 02-01-01 Inmate Canteen (Amended 5/15/08)
 BCFC 03-01-01 General Rules for Staff (Added 7/12/19)
 BCFC 06-01-01 Offender Records (Amended 8/14/12)

BCFC 06-02-01 Storage of Expunged Records (Amended 10/15/01)
 BCFC 07-02-01 Preventative Maintenance Plan (Amended 6/15/12)
 BCFC 07-05-01 Permit Required Confined Space (Amended 8/14/12)
 BCFC 08-03-01 Fire Procedures (Amended 5/15/08)
 BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances (Amended 10/15/01)
 BCFC 09-05-01 Entry and Exit onto Institutional Grounds (Amended 5/12/17)
 BCFC 09-06-01 Search Policy and Disposition of Contraband (Amended 5/12/17)
 BCFC 09-08-02 Breathalyzer Testing (Amended 5/12/17)
 BCFC 09-09-01 Operation of Licensed Vehicles by Inmates (Amended 5/15/08)
 BCFC 09-14-01 Bell County Forestry Camp Restricted Areas (Amended 8/14/12)
 BCFC 09-27-01 Procedures for Prohibiting Inmate Authority Over Other Inmates (Amended 5/15/08)
 BCFC 09-28-01 Canine Unit (Amended 5/12/17)
 BCFC 10-01-01 Temporary Holding Area (Amended 7/11/17)
 BCFC 11-01-01 Food Services: General Guidelines (Amended 6/15/12)
 BCFC 11-02-01 Food Service Security (Amended 6/15/12)
 BCFC 11-03-01 Dining Room Guidelines (Amended 8/14/12)
 BCFC 11-04-01 Food Service: Meals (Amended 6/15/12)
 BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets (Amended 6/15/12)
 BCFC 11-05-01 Food Service: Kitchen and Dining Room Inmate Work Responsibilities (Amended 6/15/12)
 BCFC 11-05-02 Health Requirements of Food Handlers (Amended 8/14/12)
 BCFC 11-06-01 Food Service: Inspection and Sanitation (Amended 6/15/12)
 BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products (Amended 8/14/12)
 BCFC 12-01-01 Sanitation, Living Condition Standards, and Clothing Issues (Amended 5/15/08)
 BCFC 12-01-02 Bed Areas and Bed Assignments (Amended 5/15/08)
 BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry (Amended 5/15/08)
 BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule (Amended 5/15/08)
 BCFC 12-03-02 Barber Shop Services and Equipment Control (Amended 5/15/08)
 BCFC 12-07-01 BCFC Recycling Project (Amended 10/15/01)
 BCFC 13-01-01 Medical Services (Amended 5/12/17)
 BCFC 13-02-01 Sick Call and Physician's Weekly Clinic (Amended 5/12/17)
 BCFC 13-03-01 Dental Services (Amended 5/12/17)
 BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations (Amended 5/12/17)
 BCFC 13-05-01 Emergency Medical Care (Amended 5/12/17)
 BCFC 13-06-01 Consultations (Amended 5/12/17)
 BCFC 13-07-01 Health Records (Amended 6/15/12)
 BCFC 13-08-01 Vision and Optometry Services (Amended 5/12/17)
 BCFC 13-09-01 Family Notification: Serious Illness, Serious Physical Injury, or Death (Amended 5/15/08)
 BCFC 13-10-01 Health Education: Special Health Care Needs (Amended 5/15/08)
 BCFC 13-11-01 Informed Consent (Amended 5/15/08)
 BCFC 13-12-01 Mental Health Care (Amended 5/12/17)
 BCFC 13-13-01 Special Health Care Programs (Amended 6/15/12)
 BCFC 13-14-01 Use of Pharmaceutical Products (Amended 8/14/12)
 BCFC 13-15-01 Parenteral Administration of Medications and Use of Psychotropic Drugs (Amended 8/14/12)
 BCFC 13-16-01 Elective Services (Amended 6/15/12)

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BCFC 13-18-01	Serious and Infectious Diseases (Amended 5/12/17)
BCFC 13-19-01	Continuity of Health Care (Amended 5/15/08)
BCFC 13-20-01	Inmates Assigned to Health Services (Amended 5/15/08)
BCFC 13-21-01	Suicide Prevention and Intervention Program (Amended 5/15/08)
BCFC 13-24-01	Inmate Self-Administration of Medication (Amended 5/15/08)
BCFC 13-25-01	Syringes, Needles, and Sharps Control (Amended 5/15/08)
BCFC 13-26-01	Sexual Assault (Amended 5/15/08)
BCFC 14-01-01	Inmate Rights and Responsibilities (Amended 5/15/08)
BCFC 16-01-01	Inmate Visiting (Amended 10/8/19/7/12/19/7/11/17)
BCFC 17-01-01	BCFC Inmate Receiving and Orientation Process (Amended 5/15/08)
BCFC 17-04-01	BCFC Inmate Property Control (Amended 7/8/08)
BCFC 17-05-01	Inmate Canteen (Amended 5/15/08)
BCFC 18-02-01	Identification of Special Needs Inmates (Amended 6/15/12)
BCFC 19-01-01	Work Assignment (Amended 5/15/08)
BCFC 19-02-01	Governmental Services Program (Amended 5/15/08)
BCFC 20-01-01	Academic School (Amended 5/15/08)
BCFC 21-01-01	Library Services (Amended 5/15/08)
BCFC 22-01-01	Recreation and Inmate Activities (Amended 6/15/12)
BCFC 22-02-01	Inmate Clubs and Organizations (Amended 5/15/08)
BCFC 23-01-01	Religious Services (Amended 5/15/08)
BCFC 24-01-01	Social Services and Counseling Program (Amended 10/8/19/7/11/19/5/15/08)
BCFC 24-01-02	Casework Services (Amended 5/15/08)
BCFC 25-01-01	BCFC Prerelease Program (Amended 5/15/08)
BCFC 25-02-01	Community Center Program (Amended 7/8/08)
BCFC 25-04-01	Inmate Discharge Procedure (Amended 5/15/08)
BCFC 26-01-01	Citizen Involvement and Volunteer Services Program (Amended 5/15/08)

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

KATHLEEN M. KENNEY, Commissioner

APPROVED BY AGENCY: July 11, 2019

FILED WITH LRC: July 12, 2019 at 1 p.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

TRANSPORTATION CABINET Department of Vehicle Licensing Division of Motor Licensing (As Amended at IJC, September 30, 2019)

601 KAR 9:130. Motor vehicle registration.

RELATES TO: KRS 43.010(2), 45.149, 186.010, 186.050, 186.053, 186.162, 186.172, 186.174, 186A.060, 186A.070, 186A.120, 369.102(8), 369.107[186, 186A]

STATUTORY AUTHORITY: KRS 186.020, 186.041, 186.042, 186.164[186.053, 186.162, 186.172]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.020 requires the owner of a motor vehicle[owners of motor vehicles] to apply for vehicle registration in accordance with administrative regulations promulgated[issued] by the Transportation Cabinet before operating the motor vehicle or permitting its operation. KRS 186.041 requires the cabinet to promulgate administrative

regulations to establish the proof necessary for demonstrating current attendance, or graduation from a service academy. KRS 186.164 requires the cabinet to promulgate administrative regulations to establish rules related to the issuance of special license plates. This administrative regulation establishes the requirements for a member of a service academy to obtain a special license plate, establishes the rules and requirements for the public to obtain a special license plate for a motor vehicle or a motorcycle, and promulgates the auditing requirements and procedures related to special license plates[Other sections of KRS Chapter 186 either permit or require the Transportation Cabinet to adopt administrative regulations regarding the issuance of special license plates for motor vehicles and motorcycles during registration. KRS Chapter 186.164(15) requires the cabinet to promulgate administrative regulations to implement auditing requirements. This administrative regulation establishes auditing procedures].

Section 1. Definitions.

(1) "Electronic signature" is defined by KRS 369.102(8) and acceptable as stated in KRS 369.107.

(2) "Resident" is defined by KRS 186.010(12).

(3) "Signature" means a person's name, a unique mark, or an inscription representing a person's name, either written by hand or in an electronic format.

Section 2[4]. (1) An application for Kentucky Certificate of Title and Registration Form, TC 96-182,[(1) The certificate of Title and Registration Form required by KRS 186A.060 shall serve as the application] shall be completed if a vehicle changes ownership for the first time[for first-time vehicle registration]. A copy of the vehicle owner's Kentucky driver license and bill of sale shall be attached to TC 96-182. Transfer of ownership shall be executed by owner's signature which can be in an electronic format.

(2) A Kentucky certificate of registration shall serve as the application for renewal of registration.

Section 3[2]. Certificate of Title in Motor Vehicle. During the fifteen (15) day period established in KRS 186.020(1) and KRS 186A.070, in order[allows a person] to register a newly acquired motor vehicle, or for a new Kentucky resident to register his or her motor vehicle:

(1) An assigned title or bill of sale pursuant to KRS 186.020(1) shall be carried in the motor vehicle if the vehicle was last licensed in a[title-issuing] jurisdiction other than Kentucky; or

(2) If the jurisdiction in which the motor vehicle was last licensed does not issue titles, the standard document for perfecting the sale of the motor vehicle in the licensing jurisdiction shall be carried in the vehicle.[Section 3. Found License Plate. A person finding a lost, unexpired registration plate shall deliver it to the Department of Vehicle Regulation or any Kentucky county clerk.]

Section 4. Residency[Temporary Kentucky Residents].

(1)[A full-time college student or member of the armed forces who is temporarily maintaining a place of residence in Kentucky while attending a Kentucky college or university or while stationed at a military facility shall not be required to register his or her vehicle in Kentucky if he or she maintains residency in another state.

(2)] To establish that a vehicle owner is a resident of Kentucky and[therefore] required to register the vehicle in Kentucky, the vehicle owner shall[have]:

(a) Have a[Purchased] primary residence address[real-estate property] in Kentucky;

(b) Be registered to vote in Kentucky; or

(c) Possess a valid[Applied for or possess a] Kentucky motor vehicle operator's license.

(2) A full-time college student or member of the armed forces who is temporarily maintaining a place of residence in Kentucky while attending a Kentucky college or university, or while stationed at a military facility shall not be required to register his or her vehicle in Kentucky if he or she maintains residency in the applicable home state.

(3) Except for titles issued in compliance with KRS 186.020 and 186A.120 to owners of vehicles principally operated in Kentucky, a Kentucky certificate of title shall not be issued to a non-Kentucky resident.

Section 5. Placement of License Plate and Renewal Decal.

(1) A license plate shall not be placed on a motor vehicle other than the vehicle for which it was issued.

(2) A renewal decal shall not be placed on a license plate except the plate for which the renewal decal was issued.

(3) A renewal decal shall only be placed on its associated license plate in the indentation provided for a decal.

Section 6. Lost or Stolen License[Special] Plates. If a[special] license plate is lost or stolen, the individual responsible for the registration of the vehicle may secure a replacement[special] license plate by following the provisions established in KRS 186.162(2) through (4) and in KRS 186.180(2).

Section 7. Found License Plate. A person finding a lost, unexpired registration plate shall deliver it to the Department of Vehicle Regulation, or to the office of any Kentucky county clerk.

Section 8[7]. Renewal Decals on Special Plates.

(1) Registration for a vehicle[Registrations for vehicles] with a special license plate[plates] issued pursuant to[as established in] KRS 186.162(2) through (4) shall be renewed each year[to remain valid].

~~(2)[The Transportation Cabinet shall issue a new license plate or, if the renewal is validated, place a renewal decal on the existing license plate.~~

~~(3)[If the special license plate deteriorates to the point that the inscriptions are not discernible, the owner may obtain a replacement plate free of charge.~~

Section 9[8]. National Guard License Plates.

(1) Taxicabs, airport shuttle vehicles, and limousines, registered as established in KRS 186.050(1) shall not be issued a national guard license plate as established in KRS 186.041(1).

(2) If the applicant for a national guard license plate is a Kentucky national guard retiree, the application shall be signed by the custodian of military records, Department of Military Affairs. The custodian's signature shall certify that the applicant is a retiree of the Kentucky National Guard with at least twenty (20)[~~twenty-five (25)~~] years of service.

Section 10[9]. Disabled Veterans and Disabled Persons License Plate.

(1) A license plate shall[only] be issued to a disabled veteran as established in KRS 186.041(2) for use on a vehicle that would normally be registered as established in KRS 186.050(1) or (3)(a).

(2)(a) A license plate shall be issued to a disabled person who meets the requirements established in KRS 186.042 and provides the proof of disability established in KRS 186.042 (3)(a)(b).

(b) A person applying for a disabled license plate shall complete an Application for Special Registration Plate for Disabled Persons, Transportation Cabinet Form-96-347[~~96-205~~].

Section 11[40]. Armed Forces License Plate. The special armed forces license plate as established in KRS 186.041(1) shall be made available to any eligible current member of any branch of the United States military reserves. It shall also be made available to any eligible retired reservist with twenty (20)[~~twenty-five (25)~~] years of service.

Section 12. Military Academy Plates.

(1) An applicant for a military academy license plate shall provide proof that he or she is currently enrolled, or is a graduate of the United States Airforce Academy, Military Academy, Naval Academy, Coast Guard Academy, or Merchant Marine Academy.

(2) An applicant shall provide:

(a) A formal, original letter on academy letterhead proving current enrollment; or

(b) A copy of the graduate's diploma.

Section 13. Gold Star License Plates[~~41. Gold Star Mother or Gold Star Spouse License Plate~~].

(1)(a) A Gold Star Mother license plate shall be authorized for a mother whose son or daughter died while serving the country in the United States Armed Forces.

(b) A Gold Star Father license plate shall be authorized for a father whose son or daughter died while serving in the United States Armed Forces.

(c) A Gold Star Spouse license plate shall be authorized for the spouse of a person who died while serving the country in the United States Armed Forces.

(2) To be eligible, the mother, father, or spouse shall submit a completed Report of Casualty DD Form 1300, accessible on the National Personnel Records Center Web site at <http://www.archives.gov/veterans/research/> to the Kentucky Department of Veterans Affairs.

Section 14[42]. Application for Special License Plate. (1) An applicant for a special license plate shall provide proof of eligibility as established in 186.162(2) through (4).

(2) Proof of eligibility shall be submitted to the county clerk in the applicable county of residence.

Section 15[43]. An applicant for one (1) of the special license plates listed in this section shall provide the following required information:

(1) Firefighter license plate: provide written evidence of the applicant's current status as a firefighter, signed by the fire chief, mayor, or county judge executive;

(2) Purple Heart recipient license plate: provide written proof from the United States Department of Defense or the Veterans Administration that the applicant received a Purple Heart medal;

(3) Street rod license plate: provide sufficient manufacturer's information, title documents, or photographs to prove that the vehicle either was manufactured prior to 1949 or was manufactured to look like it was built prior to 1949;

(4) Fraternal Order of Police license plate: provide a copy of the applicant's current membership card from the Fraternal Order of Police. The reverse side of the membership card shall be signed by the National Secretary of the Grand Lodge, Fraternal Order of Police;

(5) Emergency Management license plate: provide written evidence of the applicant's current status as a member of either a disaster and emergency services organization or a volunteer rescue squad signed by the appropriate mayor, county judge executive, or DES coordinator; or

(6) Masonic license plate: provide a current calendar year membership card in the Masonic Orders. A member of the Eastern Star affiliation shall not be eligible for the Masonic Order license plate.~~[Section 14. A special license plate motor vehicle registration that does not have an expiration date established by KRS Chapter 186 shall expire annually.]~~

Section 16[45]. An applicant for a special license plate issued pursuant to KRS 186.041, 186.042, 186.053, 186.172, or 186.174 shall make an individual application for the special license plate to be issued for[~~to~~] each separate motor vehicle.

Section 17[46]. (1) Special License Plate Committee. The Special License Plate Committee established in the Transportation Cabinet pursuant to KRS 186.164(15)(c) shall~~[and]~~:

(a) Review and consider the eligibility of each group or organization that applies for a special plate;

(b) Review and consider whether the proposed special plate meets required criteria;~~and~~~~[and];~~

(c) Convene as necessary at the call of the chair in order to address issues related to the design and issuance of special license plates.

(2) The Special License Plate Committee shall be comprised of the following members:

(a) Commissioner of the Department of Vehicle Regulation or a

designee, as a nonvoting member;

(b) Deputy Commissioner of the Department of Vehicle Regulation or a designee as chair;

(c) Director of the Division of Motor Vehicle Licensing or a designee;

(d) Assistant Director of the Division of Motor Vehicle Licensing or a designee;

(e) Executive Director, Office of Legal Services or a designee, as a nonvoting member~~[and];~~

(f) A designee selected by the Commissioner of the Department of Vehicle Regulation from within the office of the Commissioner;~~and[and];~~

(g) Registration Branch Manager of the Division of Motor Vehicle Licensing or a designee.

(3)(a) Three (3) of the voting members of the committee shall constitute a quorum.

(b) A simple majority of the voting members present at a meeting with a quorum shall be required to recommend approval or denial of an application for a special plate.

(4) The chairman shall designate a person to provide a summary of each meeting and present the minutes for review and approval at the next meeting of the committee that has a quorum present.

(5)(a) Upon recommendation of the committee, the commissioner shall issue a written notice of approval or denial within thirty (30) days of the receipt of application.

(b) If the committee requires additional time in which to deliberate and make a recommendation, the thirty (30) day time period may be extended for an additional thirty (30) days, not to exceed an extended time of ninety (90) days from the date of the initial meeting. If an application is held in abeyance pursuant to Section 18(3)~~[47(3)]~~ of this administrative regulation, the time period shall be tolled until the legislative process is complete.

(6)(a) The committee may request an applicant to appear and make a presentation if questions arise that may include:

- (1) The mission of the applicant;
- (2) The design and logo of the special license plate; and
- (3) Qualifications of the applicant.

(b) An applicant who fails to cooperate with the informational requests made by the committee~~;~~ shall have his or her application dismissed by the commissioner.

(7) An aggrieved party may appeal the final decision of the commissioner pursuant to KRS 186.164(10).

Section 18~~[47]~~. Application Process.

(1) A group or organization shall apply to the Office of the Commissioner, Department of Vehicle Regulation, Transportation Cabinet, for a special license plate pursuant to KRS 186.164.

(2)(a) An applicant shall not submit more than one (1) application per calendar year for the consideration of the committee. An application that is denied by the committee and later modified or altered by the applicant may be resubmitted to the committee not less than twelve (12) months from the original date of denial.

(b)1. An application to redesign a special license plate shall be submitted at a minimum of three (3) years from the date of issuance.

2. The redesign shall be approved or denied by the committee based on the criteria established in Section 17~~[46]~~.

(3) Prior to final approval of an application, if a member of the General Assembly introduces a bill, files an amendment to a bill, or undertakes any other measure to sponsor a plate that is substantially similar to the plate for which the application is pending, the application shall be held in abeyance pending the outcome of the legislative process. If the bill or amendment becomes law, the application in abeyance shall be moot. If the legislation is withdrawn or is acted upon by the legislature, the application shall proceed with the committee from the point at which it was placed in abeyance.~~[(4)(a) A group or organization shall obtain a minimum of 900 applications within two (2) consecutive calendar years from the original date of application to the Office of the Commissioner, Department of Vehicle Regulation.~~

~~(b) Failure to comply with paragraph (a) of this subsection shall~~

~~disqualify the group or organization, and its application shall be withdrawn.~~

~~(5)(a) A group or organization shall electronically submit the name, address, and county of each individual applicant for a special license plate to the Registration Branch Manager of the Division of Motor Vehicle Licensing.~~

~~(b) The group or organization shall submit one (1) payment for its entire group of applicants.]~~

~~(4)~~[(6)]~~ Each group or organization shall be limited to one (1) special plate design.~~

~~(5)~~[(7)]~~ The committee may consult with law enforcement relating to special license plate issues that may include design and visibility.~~

~~(6)~~[(8)]~~ The committee may reconsider and change the design of a previously approved special license plate upon good cause, which may include:~~

~~(a) Questions or issues involving legibility of the license plate; or~~

~~(b) The normal replating cycle during which the design of all license plates may be changed.~~

~~(7)~~[(a)]~~ The committee shall not consider an application that contains any trademarked or copyrighted statements or material or any statements or phrases that are commonly within the public domain, including short phrases, names, titles, or small groups of words that are considered common idioms of the English language.~~

Section 19. (1) A group or organization that has its application approved, shall submit to the Cabinet before the programming and the production of the plate, a check to cover the costs. The Cabinet shall make available a generalized estimate of the costs to the group or the organization.

(2) A group or organization with an approved special license plate shall maintain a minimum number of 500 registrations annually. Two (2) consecutive years of not maintaining a 500 annual registration shall result in cancellation and discontinuation of that plate.

Section 20~~[48]~~. Audit and Attestation Requirements.

(1)(a) Groups or organizations that have the requisite number,~~[900,]~~ of license plates purchased shall submit a Special Plate Donation Affidavit, Form 324~~[325]~~ in accordance with KRS 186.164(13) to the Division of Motor Vehicle Licensing.

(b) Accounts shall be audited annually at the expense of the group or organization.

(2)(a) A group or organization that receives \$15,000 or less during its fiscal year shall submit Attestation form TC 96-324 attesting its compliance with KRS 186.164.

(b) The form shall be submitted to the Division of Motor Vehicle Licensing not later than ninety (90) days following the end of the group or organization's fiscal year.

(3)(a) A group or organization that receives \$15,001 to \$75,000 during its fiscal year shall have an internal or external audit of its account performed.

(b) The results of that audit shall be submitted to the Division of Motor Vehicle Licensing not later than ninety (90) days following the end of the group or organization's fiscal year.

(4)(a) A group or organization that receives \$75,001 or more annually shall have an external audit performed.

(b)1. Groups or organizations that are considered to be budget units in accordance with KRS 43.010(2) shall adhere to KRS 45.149, which gives the Auditor of Public Accounts the first right of refusal to perform audit work.

2. This audit shall be submitted to the Division of Motor Vehicle Licensing not later than ninety (90) days following the end of the group or organization's fiscal year.

Section 21~~[49]~~. Incorporation by Reference. The following material is incorporated by reference: (1)(a) Form TC 96-15~~[96-45E,]~~, "Application for Special License Plate" revised October 2016~~[- March 2009;]~~;

(b) Form TC 96-182, "Application for Kentucky Certificate of Title and Registration" revised March 2019~~[- August 2009]~~;

(c) Form TC 96-324, "Attestation" revised July 2017[~~May 2009~~];

(d) Form **TC 96-332**[325], "[~~Special Plate Donation~~]Affidavit for Special License Plate Donation" May 2014[~~2009~~];

(e) DD Form 1300, "Report of Casualty", United States Department of Defense Instruction Number 1300.18[~~March 2004~~; and

(f) Form TC 96-347, "Application for Disabled License Plate or Parking Placard" September 2018.[96-205, "Application for Special Registration Plate for Disabled Persons" revised August 1998.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Regulation, Division of Motor Vehicle Licensing, Second Floor, Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.]

GREG THOMAS, Secretary
MATTHEW D. HENDERSON, Commissioner
LARISA PLECHA

FOR P. KEVIN MOORE, Executive Director

APPROVED BY AGENCY: June 14, 2019

FILED WITH LRC: June 14, 2019 at 11 a.m.

CONTACT PERSON: P. Kevin Moore, Executive Director, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone: (502) 564-7650, fax (502) 564-5238, email kevin.moore@ky.gov.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(As Amended at ARRS, October 8, 2019)

601 KAR 13:090. Medical Review Board; basis for examination, evaluation, tests.

RELATES TO: KRS 186.411, **186.440(6)**, 186.444, 186.570, **Chapter 311**

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 incorporated[~~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] **designee**[~~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] **designee**[~~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 **designee**[~~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 **notarized** 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 **designee**[~~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 through 11**[~~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 by/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 by/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 or examinations ~~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~~ designee/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~~ designee/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 the commissioner's designee/his representative. Notice of the time and place of the informal hearing shall be mailed to the petitioner/person involved no later than ten (10) days prior to the hearing date.

(3)(a) If the petitioner fails to appear at the informal hearing, the driving privilege of that petitioner shall be automatically suspended.

(b) The petitioner may request one (1) rescheduling of the informal hearing and the request shall be submitted to the Medical Review Office in writing no later than five (5) days prior to the hearing date.

1. The commissioner, following the recommendation of the Medical Review Office, shall grant or deny the request to reschedule or suspend the driving privilege of the petitioner.

2. The Medical Review Office shall notify the petitioner of the decision.

(4)~~[(3)]~~ The commissioner or the commissioner's ~~his~~ designee/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

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.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(As Amended at ARRS, October 8, 2019)**

601 KAR 13:100. Medical standards for operators of motor vehicles.

RELATES TO: KRS 186.411, 186.440, 186.444, 186.570, **186.577, Chapter 218A, Chapter 311, Chapter 320**

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 **established in**[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 a[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)[(10)] "Functional ability" means the degree of cognitive, mental or emotional, sensorimotor, and sensory capability in performing activities of daily living, including safely performing the tasks of driving.

(12) "Licensed medical specialist" means anyone who is licensed in the Commonwealth of Kentucky to make a medical report, make medical recommendations, or identify risk factors or other conditions **within the specialist's scope of medical practice regarding**[impacting] an individual's physical or mental condition.

(13)[(11)] "Licensing action" means any action by the Transportation Cabinet involving the denial, cancellation, restriction, or issuance of a motor vehicle operator's license **pursuant to**[under] KRS Chapter 186.

(14)[(12)] "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)[(13)] "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)[(14)] "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)[(15)] "Review board" means the Medical Review Board established pursuant to [under] KRS 186.444 and 186.570(1)(c).

(20)[(16)] "Sensory function" means vision, hearing, touch, smell, or vibration sense.

(21)[(17)] "Vision specialist" means a person licensed to practice optometry as **established in**[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. **A person shall be ineligible to apply for, renew, or hold a**

motor vehicle operator's license if that person does not comply with the standards established in Sections 4 through 11 of this administrative regulation. 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 by/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, pursuant to this administrative regulation and 601 KAR 13:090, 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 established in paragraphs (a) through (g) of this subsection. [(f)]
- (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. [(f)]
 - (b) There shall not be a cause of cardiac syncope present, including ventricular tachycardia or fibrillation, which is not successfully controlled. [(f)]
 - (c) There shall not be congestive heart failure that limits functional ability. [(f)]
 - (d) There shall not be cardiac rhythm disturbances if [which are] not successfully controlled. [(f)]
 - (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)]

(f) There shall not be medications interfering with safe driving. [(f)] 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, pursuant to this administrative regulation and 601 KAR 13:090, 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 established in paragraphs (a) through (c) of this subsection. [(f)]
- (a) There shall not be a sensori-motor deficit preventing safe driving. [(f)]
 - (b) There shall not be impairment of reasoning or judgement preventing safe operation of a vehicle. [(f)] 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, pursuant to this administrative regulation and 601 KAR 13:090, 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 established in paragraphs (a) through (c) of this subsection. [(f)]
- (a) There shall not be diabetic neuropathy, retinopathy, or other complication that [which] interferes with safe driving. [(f)]
 - (b) There shall not be frequent and functionally impaired hypoglycemic reactions. [(f)] 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, pursuant to this administrative regulation and 601 KAR 13:090, 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 established in paragraphs (a) through (c) of this subsection.[:]

(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, pursuant to this administrative regulation and 601 KAR 13:090, 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 established in paragraphs (a) through (e) of this subsection.[:]

(a) There shall not have been a seizure episode as established [set forth] in KRS 186.411.[:]

(b) The person adequately compensates for any paralysis or sensory deficit while [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, pursuant to this administrative regulation and 601 KAR 13:090, 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 established in paragraphs (a) through (g) of this subsection.[:]

(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, pursuant to this administrative regulation and 601 KAR 13:090, 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 established in paragraphs (a) and (b) of this subsection.[:]

(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 compliance with [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 or worse, 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 or worse, 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[binoocular] 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 established in subsection (3) of this section 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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CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(As Amended at ARRS, October 8, 2019)

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

RELATES TO: KRS 194A.060, 194A.125, 205.510(15), 205.559, **205.5591**, 205.560, 422.317, 434.840-434.860, 42 C.F.R. 415.174, 415.184, 431.300-431.307, 440.50, **45 C.F.R. 164.530**

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)[(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)(9) "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>[<https://chfs.ky.gov/dms/provEnr>]; or

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

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

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

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

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

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

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

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

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

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

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

1. Medical necessity;

2. Compliance with this administrative regulation; and

3. Compliance with applicable state and federal law.

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

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

2. Compliant with this administrative regulation;

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

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

(c) The department shall recoup the reimbursement for a previously reimbursed telehealth service if the department determines that a telehealth service[consultation] that it has already

reimbursed for] was not:

1. Medically necessary[;—was not]
2. Compliant with this administrative regulation;
3. Applicable to this administrative regulation[;] or [was not]
4. Compliant with applicable state or federal law[;—the

department shall recoup the reimbursement for the telehealth consultation from the provider].

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

(5) Within forty-eight (48) hours of the **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;

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

and

(iii) 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 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, 216.2927, and any other federal law or regulation or state law establishing individual health care data confidentiality policies;

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

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

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

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

Section 4. 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 and optometry, 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 clarify that certain asynchronous telehealth services meet the requirements of this section to be included as permissible asynchronous telehealth[expand], as appropriate and as funds are available, if those asynchronous telehealth services[that] have an evidence base establishing the service's:

- 1. Safety; and**
 - 2. Efficacy.**
- (b) Any asynchronous service that is determined by the department to meet the criteria established[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][10]. Appeal Rights. (1) An appeal of a department determination regarding a Medicaid beneficiary shall be in

accordance with 907 KAR 1:563.

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

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

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

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 10 a.m.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

COUNCIL ON POSTSECONDARY EDUCATION
(Amended After Comments)

13 KAR 1:020. Private college licensing.

RELATES TO: KRS 13B.005-13B.170, 164.020(23), 164.945, 164.946, 164.947, 164.992, 165A.320, 20 U.S.C. 1001 et. seq.
STATUTORY AUTHORITY: KRS 164.947(1), (2), 164.020(38)
[164.020(37)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947(1) requires the Council on Postsecondary Education to promulgate an administrative regulation to establish the procedures for the licensing of colleges as defined in KRS 164.945. KRS 164.947 provides that religious instruction or training shall not be restricted. This administrative regulation establishes the private college licensing requirements and the requirements for religious in-state colleges to apply for an exemption to those licensing requirements.

Section 1. Definitions. (1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Higher Education Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as a solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) "College" is defined by KRS 164.945(1).

(5) "Degree" is defined by KRS 164.945(2).

(6) "Diploma" is defined by KRS 164.946(3).

(7) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

(8) "Net tuition and fees" means the total of tuition and mandatory fee revenue less institutional scholarships and fellowships.

(9) "Operating or soliciting" means having a physical presence within Kentucky and includes:

(a) An instructional or administrative site within Kentucky whether owned, leased, rented, or provided without charge;

(b) Instruction, whether theory or clinical, originating from or delivered within Kentucky utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

(c) An agent, recruiter, in-state liaison personnel, institution, or business located in Kentucky that advises, promotes, or solicits for enrollment, credit, or award of an educational or occupational credential;

(d) An articulation agreement with a Kentucky licensed college or state-supported institution; or

(e) Advertising, promotional material, or public solicitation in any form that targets Kentucky residents through distribution or advertising in the state.

(10) "Out-of-state college" means a college that is chartered, organized, or has its principal location outside of Kentucky.

(11) "President" means the president of the Council on Postsecondary Education.

(12) "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other institutional charges prior to the first date of refund in accordance with the college's refund policy.

(13) "Unrestricted cash" means any cash or cash equivalents held by a college which are available to cover payments to students for any unearned tuition.

Section 2. General Requirements. (1)(a) Except as provided in paragraph (b) of this subsection or subsection (7) of this section, an in-state or out-of-state college that is operating or soliciting in Kentucky shall be licensed.

(b) If a college is operating or soliciting in Kentucky solely for on-ground instruction at a location outside of Kentucky in which students leave Kentucky to attend, licensure shall not be required.

(2)(a) An out-of-state college shall be licensed separately for each instructional site in Kentucky.

(b) Except as provided in paragraph (c) of this subsection, an out-of-state college that is operating or soliciting using on-line instruction to Kentucky residents shall be considered to have an online campus which shall be licensed separately as an instructional site.

(c) Licensure shall not be required for an out-of-state college if the college:

1. Is only operating and soliciting under Section 1(9)(b) of this administrative regulation solely due to a faculty member residing in Kentucky and providing online instruction to Kentucky students; and

2. Has less than one (1) percent of its faculty members residing in Kentucky.

(3) A college awarding a certificate, diploma, associate degree, baccalaureate degree, master's degree, doctoral degree, or other degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Postsecondary Education, the president shall attempt to coordinate the licensing function with that agency.

(4) A college shall offer only those programs, courses, and degrees, including honorary degrees, specifically authorized in the license.

(5) If a college ceases offering a licensed program, course, or degree, the college shall notify the president in writing and request that the program, course, or degree be removed from the college's license.

(6) Providing false or misleading information shall be grounds for denial of a license, or suspension or revocation of an existing license.

(7) A religious in-state college may operate or solicit in Kentucky if the college submits to the council an Application for Religious In-State College Letter of Exemption per KRS 164.947(2). The institution shall submit an application each year by the anniversary of its initial submission date. As part of the application, the institution shall verify compliance with the requirements established in this subsection.

(a) The institution shall be nonprofit, owned, maintained, and controlled by a church or religious organization which is exempt from property taxation under the laws of Kentucky.

(b) The name of the institution shall include a religious modifier or the name of a religious patriarch, saint, person, or symbol of the church.

(c) The institution shall offer only educational programs that prepare students for religious vocations as ministers or laypersons in the categories of ministry, counseling, theology, religious education, administration, religious music, religious fine arts, media communications, or social work.

(d) The titles of degrees issued by the institution shall be distinguished from secular degree titles by including a religious modifier that:

1. Immediately precedes, or is included within, any degree title, including an Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, Master of Arts, Master of Science, Advanced Practice Doctorate, Doctor of Philosophy, or Doctor of Education degree; and

2. Is placed on the title line of the degree, on the transcript, and wherever[whenever] the title of the degree appears in official school documents or publications.

(e) The duration of all degree programs offered by the institution shall be consistent with Section 8(8)(b) of this administrative regulation.

(f) The institution shall comply with the truth in advertising requirements established in Section 8(11) of this administrative regulation.

(g) 1. The institution shall disclose to each prospective student:
a. A statement of the purpose of the institution, its educational programs, and curricula;
b. A description of its physical facilities;
c. Its status regarding licensure;
d. Its fee schedule and policies regarding retaining student fees if a student withdraws;
e. Its refund policy on tuition and other instructional charges; and
f. A statement regarding the transferability of credits to and from other institutions.

2. The institution shall make the disclosures required by subparagraph 1. of this paragraph in writing at least one (1) week prior to enrollment or collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog.

(h) The institution shall not seek to be eligible for state or federal financial aid.

Section 3. Licensure Application Procedures. (1) An application for a license shall be submitted on the form entitled:

(a) Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an in-state college; or

(b) Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020, if the applicant is an out-of-state college.

(2) An application shall be accompanied by a copy of the following:

- (a) College charter;
- (b) College catalog;
- (c) College constitution and bylaws;
- (d) Student enrollment application;
- (e) Student contract or agreement;

(f) 1. Documentation of accreditation, licensure, or approval by appropriate state, federal, and accrediting agencies; and

2. Disclosure of any prior loss or denial of:

a. Accreditation with the dates and reason for the loss or denial; or

b. Licensure or approval by an agency in this state or another state with the dates and reason for the loss or denial; ~~and~~

(g) Disclosure of any former names of the college with the dates each former name was used.

Section 4. Site Visits. (1) Within ninety (90) working days of the receipt of a full and complete application for a license, a supplementary application, or Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020, the president may conduct, or may have conducted, a site visit. Personnel conducting the site visit shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of a college using the standards for licensure as set forth in Section 8 of this administrative regulation.

(2) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's compliance with this administrative regulation and KRS 164.945, 164.946, and 164.947.

(3) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for denial of a license, or suspension or revocation of an existing license.

(4) Cost of site visits.

(a) Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and consultant honoraria, shall be paid by the college.

(b) The estimated cost of the site visit shall be paid by the college prior to the site visit.

(c) The final settlement regarding actual expenses incurred shall be paid by the college no later than thirty (30) days after receipt of the invoice.

(d) Failure to pay these costs shall be grounds for denial of a license, or suspension or revocation of an existing license.

Section 5. Action on Licensure Application. (1) Within ninety (90) working days of the completion of the site visit, or within sixty (60) working days of the submission of a complete licensure application if a site visit is not conducted, the president shall do one (1) of the following:

(a) Issue a license for a period of no less than one (1) year, nor more than two (2) years;

(b) Deny the application for a license;

(c) Notify the applicant college of deficiencies which shall be corrected before a license is issued; or

(d) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure ~~when~~at the time the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall submit a new application and fee, as required by Section 15 of this administrative regulation, to apply for licensure.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or

2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall issue a license in accordance with subsection (1)(a) of this section.

Section 6. Supplementary Application Procedures. (1)(a) A Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the name of a college.

(b) A Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in the principal location of a college or the location of a licensed instructional site in Kentucky.

(c) A Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020 shall be submitted to the council at least ninety (90) days prior to the effective date of a change in ownership or governance of a college.

(d) An out-of-state college shall submit a Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 at least ninety (90) days prior to implementation of a change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at an instructional site.

(e) A Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020 shall be submitted by an in-state college at least ninety (90) days prior to the effective date of:

1. A change to offer an additional certificate, diploma, or degree program, major, or other concentration or specialty at the main campus; or

2. The establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least fifty (50) percent~~twenty-five (25) percent~~ of the course requirements for a

degree program.

(f) A college shall submit a Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020 at least ninety (90) days prior to the establishment of an administrative site, recruitment office, or advising center in Kentucky, or the change of location of a licensed administrative site, recruitment office, or advising center in Kentucky, if the site, office, or center is not part of a licensed instructional site or proposed instructional site for which the college is seeking licensure.

(g) A college shall submit a Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020 within thirty (30) days following action by an accrediting agency or another state licensing agency which results in:

1. A college being placed in a probationary status;
2. A college losing accreditation or licensure; or
3. A college being denied accreditation or licensure.

(2) A site visit may be conducted as part of the supplementary application process in accordance with Section 4 of this administrative regulation.

(3) Failure to submit a complete and accurate supplementary application, if required, shall be sufficient cause for denial of a license, or suspension or revocation of an existing license. The president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 7. Action on Supplementary Applications. (1) Within sixty (60) working days of the submission of a complete supplementary application if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall do one (1) of the following:

(a) Approve the supplementary application and amend the current license without changing the renewal date;

(b) Deny the supplementary application without amendment to the college's license;

(c) Suspend or revoke the college's license;

(d) Notify the applicant college of deficiencies which shall be corrected before the supplementary application is approved and the license is amended; or

(e) Issue a conditional license in accordance with subsection (3) of this section if the college has:

1. Not met all of the standards for licensure ~~when~~at the time the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed two (2) years.

(2) If an institution fails to respond in writing to an official notification of deficiency within sixty (60) working days, it shall submit a new application to apply for licensure.

(3) A conditional license shall not exceed a period of two (2) years and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or
2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall amend the current license in accordance with subsection (1)(a) of this section.

Section 8. Standards for Licensure. A college shall meet the requirements and standards established in this section in order to be licensed. (1) Financial requirements. The college shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) Financial statements including:

1. A statement of financial position of unrestricted net assets and liabilities, including foundation and trust agreements;

2. An audit report prepared by an independent certified public accountant for each corporation of the college; and

3. If available, audit reports for the past three (3) years;

(b) The name of a bank or other financial institution used by the college as a reference;

(c) A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department that the college is in good standing; and

(d) An annual operating budget for the college.

(2) Agents. A college shall be responsible for the actions of its agents ~~if~~when acting on behalf of the college.

(3) Guarantee of refund of unearned tuition. A college shall guarantee the refund of any unearned tuition held by the college as established in this subsection.

(a) Except as provided in paragraph (d) of this subsection, an in-state college shall:

1. Secure and maintain a surety bond equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year, executed by a surety company qualified and authorized to do business in Kentucky, and made payable to the Council on Postsecondary Education;

2. Maintain an unrestricted cash reserve equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. Provide a letter of credit equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(b) An out-of-state college shall secure and maintain a surety bond:

1. That is:

a. Equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; and

b. At least \$10,000;

2. Executed by a surety company qualified and authorized to do business in Kentucky; and

3. Made payable to the Council on Postsecondary Education.

(c) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(d) An in-state college licensed continuously by the council for:

1. Five (5) to ten (10) years shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for ten (10) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year; or

2. Ten (10) years or more shall maintain coverage by surety bond, letter of credit, or unrestricted cash reserve for five (5) percent of its annual total net tuition and fees collected by the college in its most recently completed fiscal year.

(e) A college shall provide a letter from an independent certified public accountant confirming that the college is in compliance with this subsection.

(4) Notice required.

(a) If a surety bond is terminated, a college shall notify the president and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(b) An in-state college using an unrestricted cash reserve or letter of credit to satisfy the provisions of subsection (3) of this section shall notify the president if the unrestricted cash reserve or letter of credit falls below the required amount, and the college shall obtain a surety bond for the required amount.

(c) A college shall notify the president within ten (10) days of the college receiving written notice from the U.S. Department of Education of placement on heightened cash monitoring status or calculation of college's financial responsibility composite score at below 1.0. If an in-state college is using unrestricted cash reserve to satisfy subsection (3) of this section, it shall within thirty (30) days of either event:

1. Obtain a surety bond or letter of credit in the required amount until the college is satisfactorily removed from heightened cash monitoring status by the U.S. Department of Education or the college's financial responsibility composite score is 1.0 or higher; or

2. Transfer the unrestricted cash reserve to the Council in the required amount to be held on behalf of the college, which the Council shall return once the college is satisfactorily removed from heightened cash monitoring status by the U.S. Department of Education, the college's financial responsibility composite score is 1.0 or higher, or once all unearned tuition claims have been paid.

(d) Upon notice to the college, the Council may call in a letter of credit upon any valid claim of unearned tuition in the amount of the claim, or for the full amount of the letter if necessary to protect access to those funds. If the full amount of the letter is called, the Council shall return any funds remaining after claims have been paid, either to the bank or the college, as appropriate, after one (1) year from the date of closure of the college.

(e) A college shall notify the president within ten (10) days of the college receiving notice from an accrediting agency or any state or federal agency that the college is the subject of any investigative action [~~complaint~~] or disciplinary matter with the accrediting agency or state or federal agency.

(5) Personnel requirements.

(a) The college shall furnish information regarding the administrative officers, the directors, the owners, and the faculty, as required by the [appropriate] application form.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members.

1. For a course or program licensed by the council prior to January 1, 2014:

a. Effective until December 31, 2015, faculty members shall possess academic, scholarly, and teaching qualifications similar to those required for faculty in accredited colleges that offer degrees at comparable levels.

b. Effective beginning on January 1, 2016, faculty members shall meet the requirements established in paragraph (d) of this subsection.

2. For a course or program not licensed by the council prior to January 1, 2014, faculty members shall meet the requirements established in paragraph (d) of this subsection ~~when~~[at the time] the course or program is licensed.

(d) Faculty member qualifications.

1. Each degree possessed by a faculty member shall be from an institution accredited by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.

2. To teach a certificate or diploma course, a faculty member shall have:

a. A bachelor's degree; or

b. A high school diploma or GED along with one (1) or more of the following:

(i) Completed a training or degree program in the applicable occupational area;

(ii) Demonstrated outstanding professional experience;

(iii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iv) Professional licensure or certification in the field.

3. To teach an associate degree course not designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A bachelor's degree in the discipline being taught; or

b. An associate's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

4. To teach a general education course, a faculty member shall hold:

a. A master's degree in the discipline being taught; or

b. A master's degree with a minimum of eighteen (18) graduate

semester hours in the discipline being taught.

5. To teach a baccalaureate course or an associate course designed for transfer to a baccalaureate degree, a faculty member shall hold:

a. A master's degree in the discipline being taught;

b. A master's degree with a minimum of eighteen (18) graduate semester hours in the discipline being taught; or

c. A baccalaureate degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

6. To teach a graduate course, a faculty member shall hold:

a. An earned doctorate or terminal degree in the discipline being taught or in a related discipline; or

b. A master's degree in the discipline being taught along with one (1) or more of the following:

(i) Demonstrated outstanding professional experience;

(ii) Demonstrated outstanding professional contributions to the discipline being taught; or

(iii) Professional licensure or certification in the field.

(e) There shall be a sufficient number of full-time faculty to ensure continuity and stability of the educational program.

(f) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(6) Facilities and equipment.

(a) An instructional program shall be conducted in a facility in accordance with the requirements specified on the [appropriate] application form.

(b) Enrollment shall not exceed the design characteristics of the facilities.

(c) A college shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories consistent with accrediting and licensing requirements.

(7) Library resources. The library shall ~~be appropriate~~ to support the programs offered by the college in accordance with this subsection.

(a) A college, through ownership or formal agreements, shall provide and support student and faculty access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the degree level offered by the college, and shall be sufficient to support all educational, research, and public service programs.

(b) A college that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the president ~~with the~~[at the time of] license application, and prior to the offering of any courses.

(c) A college that is dependent on another college or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the president and to students and faculty.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(e) Library staff shall be qualified as required for accredited colleges of similar types.

(f) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided as observed in accredited colleges of similar types.

(g) The library shall provide a safe and secure physical and virtual environment conducive to study and research~~The physical environment of the library shall be conducive to reflective~~

intellectual pursuits common to institutions of higher learning].

(8) Curriculum. Earned degrees awarded by a college shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the president using the criteria established in this section.

(a)1. Except as provided in subparagraph 2. of this paragraph, a course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited colleges where the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level.

2. A course may be offered that is not transferable based on the uniqueness of a program.

(b) A college shall require a minimum of:

1. Sixty (60) student credit hours for an associate degree;

2. 120 student credit hours for a baccalaureate degree; or

3. Thirty (30) student credit hours for a post-baccalaureate, graduate, or first professional degree.

(c) A minimum of twenty-five (25) percent of the student credit hours required for a degree shall be earned through instruction offered by:

1. The college awarding the degree; or

2. A college that is:

a. A party to a joint, cooperative, or consortia agreement; and

b. Either:

(i) Licensed by the Council on Postsecondary Education; or

(ii) A Kentucky state-supported postsecondary education institution.

(d) A majority of the student credit hours required for a graduate degree may be met through a joint, cooperative, or consortia agreement in which the instruction is offered by a college that is:

1. A party to the agreement; and

2. Either:

a. Licensed by the Council on Postsecondary Education; or

b. A Kentucky state-supported postsecondary education institution.

(e) A college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.

(f) A college shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(9) General education.

(a) A minimum of fifteen (15) student credit hours for associate degree programs and thirty (30) student credit hours for baccalaureate degree programs shall be earned in general education, including science, mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the president determines that the program content and distribution are [appropriately] related to the degree and institutional purposes.

(b) A new college, or any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after March 5, 2010, shall comply fully from the outset with the general education requirements.

(10) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include:

(a) Adequate supervision by the college; and

(b) ~~Instructional~~[Other—instructional] support necessary to maintain the program.

(11) Truth in advertising. A college shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the

college is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Council on Postsecondary Education, or by any other state agency. A statement using the name of the Council on Postsecondary Education, if any, shall be in exactly the following form, based on which statement is applicable to the college:

1. "(Name of College) is licensed by the Kentucky Council on Postsecondary Education."; or

2. "(Name of College) has a religious exemption from the Kentucky Council on Postsecondary Education to operate or solicit in Kentucky."

(12) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

(a) The college's policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits; and

(e) The student enrollment application, contract, or agreement.

(13) Student affairs.

(a) Students admitted to the college shall have completed a state-approved secondary school program or its equivalent unless dually enrolled in high school.

(b) The college shall provide academic counseling by faculty or staff to each student when admitted[at the time of admission] and throughout the program.

(c) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(d) The college shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes. By January 1, 2022, the college shall maintain all student records in an electronic format that is searchable and readily transferable consistent with industry standards. For a college not licensed by the Council prior to January 1, 2020, the college shall meet this requirement when the college is licensed.

(e) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(f) A college shall make provision for the maintenance of student records if the college ceases operations in accordance with KRS 164.020(23). The location of student records shall be approved in advance by the president.

(14) College policies.

(a) The college shall maintain records in an orderly manner and make them available for inspection by the president or his or her designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the college including:

1. General information:

a. Official name and address of the college, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of faculty, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the college;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges, and refund schedules for the tuition and instructional charges;

- d. Statement of financial aid available to students; and
- e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies, including:

- a. Policy on class attendance;
- b. Description of grading system;
- c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and

d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges. The refund policy shall meet the minimum requirements established in this paragraph.

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, the college shall retain not more than \$100, or not more than ten (10) percent of the tuition and other instructional charges for a term or semester, whichever is less.

2.a. Except as provided in clause b. of this subparagraph, tuition and other instructional charges shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew.

b. The president may approve program tuition for a specific program at a college if a student may only enroll at the beginning of the program sequence and shall remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy that considers both the coursework completed prior to withdrawal and the coursework that remains.

3. If a student withdraws from the college, or if a student fails to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the college for subsequent enrollment or registration periods unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2. of this paragraph.

a. After completion of fifty (50) percent of the enrollment period, the college shall not be required to make refunds of tuition or other fees for that period.

b. In all other cases, including illness or accident, the college shall make a refund settlement.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

4. If a college is accredited by an accrediting agency which has a specific refund policy which is more favorable to the student, that policy shall be followed.

5. An out-of-state college shall refund in accordance with this section unless its policy is more favorable to the student, in which case the latter shall be followed.

Section 9. Failure to Apply for a License. (1) If a college which is subject to this administrative regulation fails to apply for a license, the president shall notify the college by registered mail of the requirement to obtain a license.

(2) If a license application is not then received within sixty (60) days of notification by the president, the president shall require the chief administrative officer to appear for a hearing as provided in Section 14 of this administrative regulation.

(3) If the chief administrative officer does not appear for the hearing, the president shall refer the case to the appropriate county attorney for enforcement.

Section 10. Annual Maintenance of a College's License and Renewal of a College's License. (1) A college shall submit an Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 to the president by April 1 of each year.

(a) In an odd numbered year, the application shall contain the

following information:

1. Financial Information:

a. A statement from the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing;

b. A letter prepared by an independent certified public accountant confirming that the college is in compliance with Section 8(3) of this administrative regulation;[and]

c. Financial statement including assets and liabilities and an audit report prepared by an independent certified public accountant within the last year.

2. Institutional information:

a. Name and address of college;

b. Chief executive officer's name, title, address, phone number, fax number, and email address;

c. Institutional liaison's name, title, address, phone number, fax number, and email address;

d. A current list of the college's agents;

e. Copies of articles of incorporation, charter, constitution, and by-laws if there have been any changes to the documents within the last two (2) years; and

f. A copy of each articulation agreement the college has with a Kentucky licensed college or state-supported institution entered into or changed within the last two (2) years;

3. Accreditation status:

a. If the college is accredited by an accrediting agency, verification of the college's accreditation status and documentation of any notice of disciplinary action, warning, or probation from any state, federal, or accrediting agency within the past two (2) years; or

b. If an in-state[the] college is not accredited by an accrediting agency, a statement indicating its intention to receive accreditation and its timeline for attainment[if, when, and from whom the college will seek accreditation].

4. Tuition for the current enrollment period per credit hour, specifying semester hour, quarter hour, or other basis, and per full-time student;

5. A copy of the college's current catalog;

6. For an in-state college, a list of all licensed instructional sites away from the main campus of the in-state college for the purpose of offering courses for college credit which comprise at least fifty (50) percent[twenty-five (25) percent] of the course requirements for a degree program, including the name and title of the primary contact of the off-campus site, address, phone number, and program or programs by CIP code offered at the site, or course or courses if not offering an entire degree program at the site;

7. Program information:

a. Changes, if any, in program requirements for each program within the last two (2) years including admission requirements, courses required, and the number of credit hours required for the program or major;

b. Results of the most recent program evaluation;

c. Methods used to assess student achievement;

d. Results of the most recent assessment of student achievement; and

e. A list of programs withdrawn within the last two (2) years in which there are no longer students enrolled including program title, degree level, CIP code, and address where the program is no longer being offered;

8. Faculty information: Faculty credentials[Vitae] for each program faculty member employed within the last two (2) years;

9. Facilities information: Verification of compliance with all applicable local, state, and federal safety and fire codes; and

10. Library information regarding the library collection and budget, and lease, contract, or letter of agreement authorizing use of another library collection, if any.

(b) In an even numbered year, the application shall only contain the information required by paragraphs (a)1.b. and d., and (a)2.a., b., and c., of this subsection. An institution shall provide any other information listed in paragraph (a) of this subsection upon request of the council.

(2) The president may conduct, or may have conducted, a site visit as part of the annual maintenance of a license or renewal of a license process in accordance with Section 4 of this administrative regulation.

(3) Within ninety (90) working days of the submission of a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit, the president shall:

- (a) Notify the college of any deficiencies which shall be corrected before the college's license is maintained or renewed;
- (b) Deny maintenance or renewal of the college's license;
- (c) Maintain the college's license without changing the college's license renewal date;
- (d) Renew the college's license to June 30 of the next year; or
- (e) Issue a conditional license in accordance with subsection (4) of this section if the college has:

1. Not met all of the standards for licensure when [at the time] the application is filed; and

2. Provided a written business plan to the president demonstrating it will meet the standards for licensure within a period not to exceed one (1) year.

(4) A conditional license shall not exceed a period of one (1) year and shall include the conditions the college shall meet in order for the college to progress toward and eventually meet the standards for licensure, including when the college shall report progress to the president and when the college shall be required to have satisfied all the conditions.

(a) The college's failure to satisfy the conditions within the specified timeframe shall:

1. Result in automatic revocation of the conditional license; or
2. Result in an extension of the conditional license based on a determination by the president that the college is making progress in satisfying the conditions in response to the college's written request for an extension with supporting justification.

(b) If the college satisfies all the conditions with the timeframe specified, the president shall renew the license in accordance with subsection (3)(d) of this section.

(5) A college's failure to submit a complete and accurate Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020 shall be grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 11. Required Data Submission. (1) A licensed college shall submit student attendance and performance data in an electronic format. The required data fields, the format and method of submission, and the dates for submission shall be in accordance with the Licensure Compliance Reporting Manual.

(2) The president may conduct, or may have conducted, a site visit as part of the data submission process in accordance with Section 4 of this administrative regulation.

(3) A college's failure to submit complete, timely, and accurate data shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license, and the president shall notify the college by registered mail, return receipt, of the denial, suspension, or revocation of the college's license.

Section 12. License Expiration. (1) A license shall automatically expire if the college ceases operating or soliciting.

(2) A college that ceases operating or soliciting shall comply with Section 8(13)(f) of this administrative regulation and KRS 164.020(23).

Section 13. Consumer Complaint Procedure. A person with a complaint or grievance involving misrepresentation against a college licensed under this administrative regulation shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the procedures established in this section shall be followed. (1) A person shall submit a written complaint to the president which contains evidence relevant to the complaint and documentation

that a reasonable effort was made to resolve the complaint directly with the college.

(2) The president shall require an institution to file a written response setting forth the relevant facts concerning the consumer complaint, including a statement on the current status of the complaint, and any resolution of the complaint.

(3) The president shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but the facilitation shall not include legal action on behalf of any party.

Section 14. Hearings and Appeals. (1) The president shall, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing within thirty (30) working days of notice in order to determine the facts if the president has determined that:

(a) There is sufficient cause for a suspension, a revocation of a license, or placement of a college's license in a probationary status, based upon the college's failure to comply with this administrative regulation; or

(b) A college which is subject to this administrative regulation fails to apply for a license. ~~[there is sufficient cause for a suspension, a revocation of a license, or placement of a college's license in a probationary status or if a college which is subject to this administrative regulation fails to apply for a license].~~

(2) The officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held or if the college fails to appear for the hearing, the president shall reach a determination and shall issue findings, in writing, to the council and to the chief executive officer of the college.

(4) If it is determined that the public interest requires that sanctions be imposed, the president shall:

- (a) Impose one (1) of the following sanctions:
 1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;
 2. Suspend the college's license for a period not to exceed one (1) year; or
 3. Revoke the college's license; or

(b) Refer the case to other officials for appropriate legal action.

(5) A college which is sanctioned, whether the sanction is probation, suspension of license, or revocation of license, shall comply with the terms of the sanction.

(6) A college may appeal the actions of the president regarding the denial of issuance of a license or license renewal or the imposition of sanctions according to the procedures established in this subsection.

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken.

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005-13B.170.

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone.

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(e) Upon completion, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall take one (1) of the following actions:

1. Issue a license;
2. Renew the license;
3. Impose one (1) of the sanctions authorized in this section; or
4. Refer the case to other officials for appropriate action.

Section 15. License Fees. (1) The president shall assess a fee in accordance with the Kentucky Licensure Fee Schedule.

(2) Failure to pay a fee shall be sufficient grounds for denial of a license, or suspension or revocation of an existing license.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as an In-State, Non-Public Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013;

(b) "Application for Licensure as an Out-of-State Institution to Operate in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013;

(c) "Supplementary Application for Change of Name of Institution Pursuant to 13 KAR 1:020", June 2013;

(d) "Supplementary Application for Change of Location of Principal Location of a College or Location of a Licensed Instructional Site in Kentucky Pursuant to 13 KAR 1:020", June 2013;

(e) "Supplementary Application for Change of Ownership or Governance Pursuant to 13 KAR 1:020", June 2013;

(f) "Supplementary Application to Operate as an Out-of-State Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", June 2013;

(g) "Supplementary Application to Operate as an In-State Nonpublic Institution in the Commonwealth of Kentucky Pursuant to 13 KAR 1:020", July 2019 [June 2013];

(h) "Supplementary Application for Administrative Site, Recruitment Office, or Advising Center Pursuant to 13 KAR 1:020", June 2013;

(i) "Supplementary Application for Notification of Change in Accreditation or Licensure Status Pursuant to 13 KAR 1:020", June 2013;

(j) "Application for Annual Maintenance of License or for Renewal of License Pursuant to 13 KAR 1:020", June 2013;

(k) "Licensure Compliance Reporting Manual", September 8, 2009;

(l) "Kentucky Licensure Fee Schedule", June 2013; and

(m) "Application for Religious In-State College Letter of Exemption per KRS 164.947(2)", September 2012.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHERRILL ZIMMERMAN, Chair

TRAVIS POWELL, VP & General Counsel

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

Council on Postsecondary Education

CONTACT PERSON: Sarah Levy, Executive Director of Postsecondary Licensing, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 320, Frankfort, Kentucky 40601, phone 502.573.1555, fax 502.573.1535, email sarah.levy@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sarah Levy

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the standards and rules related to the licensing of private postsecondary education institutions, both for profit and nonprofit, offering a bachelor's degree and above.

(b) The necessity of this administrative regulation: KRS 164.945 through 164.947 requires the Council on Postsecondary Education to license these institutions as a protection for Kentucky citizens and to protect bona fide institutions from those who engage in fraudulent practices, unfair competition, or substandard educational programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164.947 states that the Council on Postsecondary Education, by regulation, shall adopt standards and

procedures for the licensing of colleges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets out the standards institutions must meet in order to be licensed to operate in Kentucky. It also defines the process for new license applications, for amendments to licenses, and for license renewals.

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

(a) How the amendment will change this existing administrative regulation: First, in-state colleges will be required to receive approval for an instructional site where 50% of an academic program is offered, rather than 25%. Second, colleges will be required to provide notice to the Council when certain measures of federal financial aid distress are triggered. Third, when those measures are triggered, in-state colleges using unrestricted cash to meet their unearned tuition coverage obligations will be required to obtain a surety bond or letter of credit or transfer the cash to the Council until those measures are no longer triggered. Fourth, the process for the Council to call in a letter of credit to protect student claims for unearned tuition is outlined. Fifth, institutions will be required to provide notice that they are the subject of any investigation, complaint, or disciplinary matter with any accreditors or state or federal agencies within 10 days of their receipt of notice. Sixth, by January 1, 2022 all licensed colleges shall maintain all student records in an electronic format that is searchable and readily transferable consistent with industry standards. New colleges seeking licensure shall meet this requirement as a part of initial licensure. Seventh, as part of the annual application for licensure, colleges must provide documentation of any notice of disciplinary action, warning or probation from any state, federal, or accrediting agency within in the past two years. And finally, technical revisions are being made.

(b) The necessity of the amendment to this administrative regulation: Moving the threshold of site approval for in-state institutions from 25% to 50% of a program being offered at a location aligns with institutional accreditor requirements. Requiring notice, and in some instances action, when certain measures of federal financial aid distress are triggered allows the Council to better secure repayment of unearned tuition for students and to allow the Council to intervene, if necessary, to better protect students in the event of potential institutional closure. Providing information related to action by an institution's accreditors or other governmental agencies will allow the Council to know if those agencies have identified any issues with the institution that might also be in violation of the Council's licensure requirements. Requiring that institutions maintain electronic student records, particularly transcripts, helps protect against the loss of records due to physical damage, helps ensure the orderly maintenance of such records, and makes them more easily transferrable in the event of closure.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the requirements of KRS 164.947 by helping to ensure that licensed institutions provide a quality educational experience for Kentucky students.

(d) How the amendment will assist in the effective administration of the statutes: The amendment helps to better protect institutions in the event of school closure and to better track issues arising with other authorizing entities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Council currently licenses 87 institutions with multiple licensed instructional sites and three (3) new initial licensure applications are currently under review.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, 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: Colleges will be required to provide notice to the Council when certain measures of federal financial aid

distress are triggered. When those measures are triggered, in-state colleges using unrestricted cash to meet their unearned tuition coverage obligations will be required to obtain a surety bond or letter of credit or transfer the cash to the Council until those measures are no longer triggered. As part of the annual application for licensure, colleges must provide documentation of any notice of disciplinary action, warning or probation from any state, federal, or accrediting agency within in the past two years. A college shall notify the president within ten (10) days of the college receiving notice from an accrediting agency or any state or federal agency that the college is the subject of any investigative action, complaint, or disciplinary matter with the accrediting agency or state or federal agency. Existing licensed colleges will be required to digitize student records by January 1, 2022.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs will be incurred to digitize records if not already in digital format. From surveys conducted, licensed institutions have at least some records digitized. Costs will vary depending on how many paper records need to be scanned. If an institution hits one of those financial distress markers and are using unrestricted cash to cover unearned tuition, they will be required to pay a fee to obtain a surety bond. Most institutions already use these and it is our understanding that the cost is usually \$5,000 or less. Otherwise, costs of compliance should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Digitizing student records will assist institutions in the protection, management, and organization of student records.

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

(a) Initially: We estimate that there will be no additional cost in implementing the proposed changes to the regulation.

(b) On a continuing basis: We estimate that there will be no additional costs on a continuing basis to implement the proposed changes to the regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: License fees and 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: No. Implementation of this amendment does not require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes. This regulation assesses fees but they will not be increased, directly or indirectly, by this amendment.

(9) TIERING: Is tiering applied? No, tiering is not applied to this amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? CPE is responsible for implementation, but this regulation only applies to private colleges and universities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.947 and 164.020(37)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? We estimate revenue from university and college renewals at \$105,000 per year. In most prior years, these renewal fees combined with initial application fees were greater than expenses, creating a reserve to cover costs in case initial applications were lower than expected.

(b) How 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).

(c) How much will it cost to administer this program for the first year? Approximately \$355,500.

(d) How much will it cost to administer this program for subsequent years? Approximately \$355,500.

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: N/A

PUBLIC PROTECTION CABINET Kentucky Real Estate Authority Kentucky Real Estate Commission (Amended After Comments)

201 KAR 11:121. Standards of professional~~improper~~ conduct.

RELATES TO: KRS 324.010(3), 324.111, 324.121, 324.160, 324.310, 324.360, 324.281(5), 24 C.F.R. 3500, 44 C.F.R. 64.3(b)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282, 324.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 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 carry out and enforce the provisions of KRS Chapter 324. KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller or lessor, buyer or lessee, or prospective buyer to the exclusion of all other licensees associated with the principal broker. This administrative regulation establishes requirements for designated agency. KRS 324.360(2) requires the commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form whose content is set forth by KRS 324.360(3). This administrative regulation establishes the required Seller's Disclosure of Property Condition form. KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation establishes a specific process and form for disclosing prior relationships between parties in a residential transaction. Additionally, this administrative regulation establishes standards and requirements, to inform and set certain standards for licensees and to protect the public, regarding delivery of signed documents, broker supervision, broker record retention, sales associate affiliation and termination, and written agreements between licensees and consumers to provide real estate brokerage services, including standards for listing and purchase contracts. This administrative regulation establishes behavior considered improper conduct.

Section 1. Improper Conduct. (1) In addition to the obligations and prohibitions set forth in KRS 324.160, a licensee shall not~~Definition. "Guaranteed sales plan" means an offer or solicitation to guarantee the:~~

~~(1) Sale of an owner's real estate; or~~

~~(2) Purchase of the owner's real estate if the owner's real estate is not sold by the broker.~~

Section 2. ~~(1) It shall constitute improper conduct for a licensed agent to:~~

~~(a) Accept or agree to accept, or offer or agree to offer, anything of value to another person in violation of the federal Real Estate Settlement Procedures Act, 12 U.S.C.S. 2601 through 2617 ("RESPA"). [Accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing client~~

or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between principal brokers[licensed agents] for brokerage services;

(b) Refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the real estate brokerage company with which the licensee is affiliated[agent, or with the agent's company], without the written and signed direction of the listing or leasing client[owner]. This provision shall not be construed to permit otherwise unlawful discrimination;

(c) Offer real estate for sale or lease without written consent from the person or persons or entity or entities authorized to sell or lease the subject real estate;

(d)[(e)] Fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:

1. Loyalty;
2. Obedience to lawful instructions;
3. Disclosure;
4. Confidentiality;
5. Reasonable care and diligence; and
6. Accounting;

(e) Fail to satisfy one (1) or more of the following duties owed to the licensee's prospective client:

1. Good faith;
2. Fair dealing; and
3. The[fiduciary] duty of confidentiality;

(f) Fail to satisfy one (1) or more of the following duties owed to a consumer or to any other party in a transaction:

1. Good faith; and
2. Fair dealing.

(g) Enter an ongoing team or group relationship with any other licensee at the same brokerage company without the written consent of the principal broker;

(h) Induce any party to a contract for sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract for sale or lease with another client;

(i) If advertising real property at an absolute auction, sell the advertised property to anyone other than the highest bona fide bidder on the day of the auction; and

(j) If dually licensed as an auctioneer and real estate licensee, before a real estate licensee commences an auction, the licensee shall disclose his or her status as a real estate licensee to potential purchasers and whether he or she intends to bid during the auction. [(d) Advertise a guaranteed sales plan without:

1. Disclosing 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
2. Including, in:
 - a. Print advertising, letters that shall be at least twenty-five (25) percent the size of the largest letter in the advertisement;
 - b. Radio advertising, communication that shall be clearly understandable; or
 - c. Television advertising:
 - (i) Verbal communication that shall be clearly understandable;
 - (ii) Written communication that 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; or
 - (iii) Any combination of verbal and written communication that shall comply with the requirements of this clause; or

(e) Violate a provision of KRS Chapter 324 or 201 KAR Chapter 11 governing brokers, sales associates, or real estate transactions.]

(2) The fiduciary duty of confidentiality, if owed, shall survive

the termination of the Agency Consent Agreement contemplated in Section 6 of this administrative regulation.

(3) It shall not be considered improper conduct for a licensee [licensed agent] to advertise the fee or other compensation the principal broker[licensed agent] agrees to charge for his or her services.

(4) It shall not be considered improper conduct for a licensee to offer rebates, discounts, or other inducements to consumers, prospective clients, or clients to use the licensee's services or truthfully advertise the same.

(5) It shall not be considered improper conduct for a licensee to use his or her registered nickname in place of the licensee's first name anytime the licensee is required to identify himself or herself on an official document or to the commission.

Section 2. Submission of Written Offers. (1) If a principal broker has entered into a written listing agreement, or any other written agreement, under the terms of which the principal broker agrees to provide real estate brokerage services for a fee, compensation, or other valuable consideration for the client, the principal broker shall provide, unless **specifically waived or modified by the client in writing**[otherwise agreed in writing with the client], for real estate that is the subject of the written agreement, the following services:

(a) Accept delivery and submit to the client, without delay, all written offers to lease or purchase;

(b) Accept all earnest money deposits that are presented to the principal broker or an affiliated licensee of the principal broker;

(c) Until the completion of the transaction, assist the client in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to offers and counteroffers; and

(d) Answer the client's questions relating to offers, counteroffers, notices, and contingencies involved in the lease or purchase.

(2)(a) Each principal broker, or an affiliated licensee of the principal broker, who represents a client shall, without delay, submit all written offers to lease or purchase real estate from the principal broker's client to the person or legal entity authorized to sell or lease the property or to the principal broker, or an affiliated licensee of the principal broker, who has entered into a written agreement according to subsection (1) of this Section. **A licensee representing a seller shall submit a notice in writing to the licensee representing a buyer of the date and time when the offer was presented to the seller.**

(b) If the principal broker is acting as a transactional broker, the principal broker shall follow the lawful instructions of the parties and provide the brokerage services as outlined in the transactional brokerage agreement.

(3) Failure to comply with Section 2 of this administrative regulation shall constitute gross negligence in violation of KRS 324.160(4)(v).

Section 3. Listing and Purchase Contracts. (1) A listing contract completed by or at the direction of a licensee shall include the:

(a) Listing price of the property, unless the sale is to be by auction;

(b) Date and time of the signing of the listing contract for all parties who sign;

(c) First and last name of the principal broker and the full name of the real estate brokerage company;

(d) Effective date and time of listing and advertising, if different;

(e) Date of expiration of the listing contract;

(f) The method and terms of cancellation of the listing contract;

(g) Fee, compensation, or other valuable consideration agreed upon between the principal broker and the client;

(g)(h) Address or a general description of the real estate sufficient to identify the parcel(s);

(h)(i) Signatures and printed names of all parties necessary to affect a sale of the property, including any dower or courtesy considerations or the official representative of a legal [corporate]

entity, that is the subject of the listing agreement:

~~(1)(h)~~ Special directions of the client concerning limitations or restrictions on showings; and

~~(1)(k)~~ Date, time and, initials for all changes on the contract prior to acceptance.

(2) An offer to purchase completed by, or at the direction of, a licensee shall include the:

(a) Purchase price or a valid escalation clause with the maximum purchase price;

(b) Amount of contract deposit, if given, who is to hold the deposit, and the time period to deliver the deposit;

(c) Date and time of signing of the offer for all parties who sign;

(d) Date and time when the offer expires;

(e) Address or a general description of the real estate sufficient to identify the parcel(s);

(f) Signatures of all parties making the offer and the printed first and last name of the licensee who completed or directed the completion of the offer;

(g) Date, time, and initials for all changes on the contract prior to acceptance;

(h) Provision setting forth the date by which, or the date range within, the closing shall occur and when possession shall be given to the buyer; and

(i) Proposed payment terms.

(3) A counteroffer completed by, or at the direction of, a licensee shall include any amendments to any term required by subsection (1) and (2) of this section and:

(a) Date and time of signing of the counteroffer for all parties who sign;

(b) Date and time when the counteroffer expires;

(c) Signatures of all parties making the counteroffer;

(d) The first and last name of the licensee who completed or directed the completion of the offer, if not found on the original offer or a previous counteroffer; and

(e) Date, time, and initials for all changes on the contract prior to acceptance.

(4)(a) If a licensee presents an offer to purchase real estate for which an executory contract to sell the property is already in existence, the offer shall include language that indicates in writing that the offer is contingent upon the nonperformance of the existing executory contract.

(b) The contingency language required by the previous subsection shall indicate the disposition of any contract deposit and be:

1. Inserted by the licensee who completes or prepares the offer to purchase, if licensee is aware of the existing contract; or

2. Made by the listing licensee as a counteroffer.

(5) If financing is involved, a contract providing for the purchase of property shall specifically state:

(a) The manner in which the purchase shall be financed; and

(b) The amount of any encumbrance and whether it is to be underwritten by the seller or a commercial institution or otherwise.

(6) Any agreement for compensation, including rebates and inducements, from a licensee to his or her client shall be in writing.

(7)(a) Prior to the expiration of a current listing agreement, another licensee shall not contact the seller to obtain a subsequent listing agreement.

(b) Notwithstanding subsection (7)(a) of this Section, a licensee may discuss newly listing the seller's property that is currently listed if:

1. The seller initiates contact with the new licensee to obtain a new listing contract;

2. The proposed listing contract states that it shall not take effect until the expiration of the seller's current listing contract with the original licensee; and

3. The licensee and seller properly complete and sign the Seller-Initiated Listing Form.

Nothing in this subsection shall prohibit a licensee from approaching a seller to list the seller's property following the seller's cancellation of their current listing contract or expiration of the current listing contract(a) The seller may contact another licensee to obtain a subsequent listing agreement.

~~(b) A different principal broker may enter into a subsequent listing agreement with the seller if the new listing agreement will take effect upon the expiration or proper cancellation of the current listing agreement; and~~

~~(c) The licensee and seller properly complete and sign the Seller-Initiated Re-Listing Form].~~

(8) If a licensee fails to comply with the requirements in Section 3, the licensee's conduct and dealings shall be considered improper in violation of KRS 324.160(4)(u).

Section 4. Required Disclosures. (1) A licensee shall direct the seller-client of a single family residential real estate dwelling, **duplex, triplex, fourplex, condominium, or townhouse** to accurately complete and sign the Seller's Disclosure of Property Condition form required by KRS 324.360, including all necessary initials and signatures, unless the seller-client refuses and documents his or her refusal, or the licensee documents the seller-client refusal, on the Seller's Disclosure of Property Condition form.

(2) A licensee who is involved in the brokerage of a condominium transaction shall advise the client in writing of the client's right to receive the certificate required by KRS 381.9203(1) and the purchasing client's right to void the sales contract consistent with KRS 381.9203(3).

Section 5. Prospective Client Disclosures. (1) A licensee shall complete, time and date, and deliver to the appropriate prospective client~~[or party]~~ the **commission's "Guide To Agency Relationships"** at the earliest of the following times:

(a) Prior to entering into a **contemplated** written agreement to provide real estate brokerage services for compensation with a prospective client~~[or party]~~;

(b) Prior to entering into a **contemplated[an]** oral agreement to provide real estate brokerage services with a prospective client~~[or party]~~; or

(c) Prior to signing an agency consent agreement.

(2) The licensee shall solicit the signature of the prospective client~~[or party]~~ on the Guide to Agency Relationships as acknowledgement by the prospective client~~[or party]~~ of his or her receipt. The licensee shall maintain a record that the prospective client~~[or party]~~ signed the Guide to Agency Relationships. If the prospective client~~[or party]~~ refuses to, or does not, sign the Guide to Agency Relationships upon receipt, the licensee shall document the delivery, or attempted delivery, including a date and time, to the appropriate prospective client~~[or party]~~.

(3) The completed Guide to Agency Relationships shall provide or include:

(a) The agency relationships available between the licensee and client or party in Kentucky;

(b) The first and last name of the licensee completing the form, the first and last name of the principal broker of the licensee, and the full name of the licensee's real estate company;

(c) The name of the prospective client~~[or party]~~; and

(d) The signature, time, and date of signing by the prospective client~~[or party]~~.

(4)[The commission's Guide to Agency Relationships may be personalized by a principal broker to include the principal broker's company-specific information, including logos.

(5)] The provisions of this section of this administrative regulation shall not apply to:

(a) The sale of real estate at auction; or

(b) A commercial transaction.

Section 6. Agency Consent Agreement. (1) Prior to entering into a written agreement to provide real estate brokerage services or completing, or directing the completion of, a contract, offer, or lease for a real estate transaction:

(a) The licensee shall complete and deliver the Agency Consent Agreement to the prospective client~~[or party]~~; and

(b) Seek and obtain written consent to the Agency Consent Agreement from the prospective client~~[or party]~~.

(2) The commission's Agency Consent Agreement shall provide:

(a) The first and last name of the client~~[or party]~~, the first and

last name of the licensee(s) and principal broker, and the full name of the real estate brokerage company;

(b) The specific agency relationship proposed between the principal broker of the real estate brokerage company, and any affiliated licensee of the real estate brokerage company, and the prospective client~~for party~~;

(c) If applicable, any known business, family, or personal relationship the licensee has with another party to the contemplated transaction who is not a party to the Agency Consent Agreement and an explanation of the nature of the relationship or relationships;

(d) Whether the transaction involves an unrepresented party; and

(e) Disclosure of prior contact with a former prospective client who is involved in the presently contemplated real estate transaction.

(3) The Agency Consent Agreement shall be updated, and written consent obtained, if the agency relationship initially established later changes.

(4) The provisions of this section of this administrative regulation shall not apply to a:

(a) Sale of real estate at auction; or

(b) Commercial transaction.

(5) The form of agency identified in the most recent Agency Consent Agreement shall terminate upon either:

(a) The provision of the agreed upon services; or

(b) At the closing of the contemplated real estate transaction.

Section 7. Affiliation. (1) The principal broker shall be the owner of all written contracts for provision of real estate brokerage services, including but not limited to listing contracts, purchase contracts, and exclusive agency agreements.

(2) When a principal broker, or a licensee acting on behalf of the principal broker, enters into a written agreement with a client, an agency relationship is formed, and the client is the principal.

(3) Absent operating as a designated agency company, each licensee affiliated with the real estate brokerage company shall have the same agency relationship with respect to a client, prospective client, or party as the principal broker in an in-house transaction.

(4) If only one (1) broker is affiliated with a company, he or she shall be the principal broker.

(5) If one (1) or more additional licensees is affiliated with the company, one (1) broker shall be the principal broker registered with the commission.

(6)(a) Unless there is a written contract stipulating otherwise, a licensee shall, upon termination of his or her affiliation with his or her principal broker, immediately turn over to the principal broker any and all records described in Section 9(1)(a)-(h) of this administrative regulation obtained during his or her affiliation regardless of whether the information was originally received from his or her principal broker, copied from the records of the principal broker, or acquired by the licensee during his or her affiliation.

(b) Nothing in the previous subsection shall require an affiliated licensee to deliver to the principal broker records which the principal broker is not under an obligation to retain consistent with this administrative regulation or records which are already in the principal broker's possession.

(7)(a) A principal broker may be principal broker of more than one real estate brokerage company.

(b) A principal broker may not also be an affiliate broker at another real estate brokerage company, except for as provided in KRS 324.112(5).

(8) A sales associate or broker affiliated with a principal broker shall only be affiliated with one principal broker at one office, or branch office, location.

(9) A real estate brokerage company may have more than one (1) physical office location, including branch offices.

Section 8. Facsimile and Digital Transmissions. (1) A licensee may use facsimile (FAX) devices and digital transmissions to transmit and receive documents according to the provisions of KRS Chapter 369[324] and the administrative regulations

promulgated thereunder.

~~(2) [If a licensee uses facsimile devices or digital transmissions to transmit and receive documents, the time of delivery of a document shall be the time of transmission for the facsimile (FAX) device or the time that it is sent from the originator.]~~

(3) A document received by facsimile devices or digital transmissions shall be immediately placed in the licensee's file and retained as required by this administrative regulation.

Section 9. Principal Broker Duties and Prohibitions. (1) A principal broker shall confidentially preserve, either in hard copy or digital format, for five (5) years following its consummation or failure, records in one (1) file relating to any real estate transaction, which shall include:

(a) Any written offers to lease or purchase the real estate;

(b) The acquisition and disbursement of any monies;

(c) Listing and sales contracts or leases;

(d) Closing sheets;

(e) Seller's and condominium certificate disclosure forms;

(f) Agency Consent Agreement forms;

(g) Guide to Agency Relationships forms; and

(h) Timeshare records.

(2) A principal broker who engages in property management shall also confidentially preserve, either in hard copy or digital format, for five (5) years:

(a) Property management agreements;

(b) Leases;

(c) Monthly owner statements and reports;

(d) Owner and unit ledgers; and

(e) Bank statements relating to property management.

(3) In the event of the death or incapacity of the principal broker, records required to be maintained pursuant to this section shall be maintained by:

(a) A new principal broker or a designated manager, so designated previous to the time of the death or incapacity of the principal broker to maintain the records;

(b) The real estate brokerage company of the principal broker at the time of the death or incapacity of the principal broker, if the company continues to be an active company;

(c) A licensee designated by the commission to maintain the records and serve as the principal custodian of the records, without any liability or obligation, other than to confidentially maintain the records and to provide the records to a party as required by law or by demand of the commission; or

(d) Any appointee of the commission who will agree to maintain the records and serve as the principal custodian of the records, without any liability or obligation, other than to confidentially maintain the records and to provide the records to a party as required by law or by demand of the commission.

(4) At the time of signing all documents, the principal broker, or an affiliated licensee of the principal broker, shall ensure that a copy of all documents are delivered to all parties executing the documents where the document has been provided, prepared by, or at the direction of the principal broker or an affiliated licensee of the principal broker.

(5) The principal broker, an affiliated licensee of the principal broker, shall ensure that a debit and credit type closing statement is furnished to a client upon closing a real estate transaction unless the financial institution, title agency, the attorney involved, or other authorized individuals, has prepared the closing statement.

(6) No principal broker shall be a party to an exclusive listing contract which contains an automatic continuation of the period of such listing beyond the fixed termination date set forth therein.

(7) If a principal broker permits teams, a principal broker shall notifying the commission in writing of the alternate or assumed name used by the team and the name of the team leader before permitting team advertising.

(8) If a principal broker authorizes team, group, or other business arrangements between affiliated licensees, the principal broker shall:

(a) Offer, at a minimum, company procedures for advertising, agency relationships and handling confidential information.

management and operations specific to team, group, or other business arrangements between affiliated licensees;

(b) Designate a licensee who shall be responsible, along with the principal broker and designated manager, for the operations of the team, group, or other business arrangement. The designated licensee shall be referred to as the "team leader" regardless of how the team, group or other business arrangement labels itself;

(c) Maintain a current list of all affiliated licensees, employees, office personnel, and clerical staff who are a part of each individual team, group, or other business arrangement; and

(d) Notify the commission in writing of the first and last name and license number of the team leader.

(9) A principal broker shall ensure any employee or unlicensed personal assistant, salaried or independently contracted, employed by, retained by, or under the direction of the principal broker or any affiliated licensee, are in compliance with the applicable provisions of KRS Chapter 324 and 201 KAR Chapter 11.

(10) A principal broker shall implement and maintain an appropriate information security system that shall:

(a) Notify licensees, management, employees, officer personnel, and clerical staff of company policy and procedures related to confidential information, including in-person interactions or discussions in the office environment;

(b) Prohibit the disclosure of confidential information by licensees, management, employees, office personnel and clerical staff; **[and]**

(c) Require notification to each client involved in a transaction, if the principal broker becomes aware of an unauthorized or inadvertent disclosure of confidential information relating to that transaction; **[and]**

(d) Prohibit an employee from assisting more than one (1) designated agent in the same transaction if the designated agents represent different clients in that transaction.

(e) Nothing in this provision shall prohibit a licensee who is party to an Agency Consent Agreement from maintaining a separate individual client file containing confidential information.

(11) A principal broker of a real estate brokerage company that practices designated agency shall require that all documents that contain confidential information relating to a client be kept in an individual file maintained by the principal broker and accessed only by the principal broker, designated manager, or designated agent appointed by the principal broker to represent the individual.

(12) A principal broker who appoints a designated manager of the real estate brokerage company, a registered company branch, team, group, or other business arrangement shall notify the commission in writing of the name of the designated manager within ten (10) days of the appointment.

Section 11. Property Management. (1) A principal broker, or an affiliated licensee, shall not engage in property management without a current written property management agreement.

(2) A property management agreement shall contain, at a minimum:

(a) The full name and address of the principal broker's real estate brokerage company as registered with the commission;

(b) The name and address of the client for whom the property is being managed;

(c) The address of the real estate being managed and the number of units;

(d) The effective dates of the agreement, and a provision stating whether the client agrees to automatic annual renewal;

(e) A provision stating the method for early termination;

(f) The amount of, or the method for computing, the amount of compensation to the principal broker;

(g) The amount of, or the method of determining, the minimum security deposit to be collected from tenants for each unit managed;

(h) The name and address of the bank where the principal broker's escrow or management account is held, and, consistent with KRS 383.580(1), the account number. This information shall also be contained in the lease;

(i) A provision which is in accord with KRS 383.580 setting forth the procedures governing returning or retaining the security

deposit. This provision shall also be contained in the lease;

(j) A provision setting forth the conditions under which the principal broker is authorized to pay expenses related to the real estate being managed;

(k) A statement setting forth the date when the principal broker shall send the client an accounting of the transactions related to the real estate being managed;

(l) A copy of the form of the lease document which the principal broker shall have the tenant sign shall be attached to the agreement;

(m) A provision whereby the client certifies that he has received a duplicate copy of the agreement and the attached lease form; and

(n) The signature and date of signature of the client and the principal broker.

(3) A principal broker shall maintain, in electronic or written form:

(a) An owner ledger for each client of real estate being managed.

(b) A unit ledger for each unit in the real estate being managed.

(c) Upon the written request of the client of the property being managed, the principal broker shall provide a unit ledger by tenant.

(4) Money received shall be deposited into an escrow or management account of the principal broker within three (3) business days of receipt.

(5) The amount of money received shall be entered into the owner and unit ledgers.

(6) A receipt shall be given for money received.

(7) Expenses paid by the principal broker shall be documented by invoice or receipt, by unit, and retained with a principal broker's records.

(8) Adjustments to a security deposit shall be made in accordance with KRS 383.580. Adjustments shall also be entered on the owner and unit ledgers.

(9) On the date determined by the parties, a principal broker shall send a monthly accounting to a client of transactions related to the real estate being managed, by unit.

(10) Within sixty (60) days of the termination of a management agreement, a principal broker shall send the client a final accounting that contains any transaction that occurred after the last monthly accounting.

(11) A principal broker who has an ownership interest in the real estate being managed shall:

(a) Maintain a unit ledger for each unit in the real estate being managed; and

(b) Comply with KRS 383.580 relating to receipt, deposit, and adjustment of tenant security deposits.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Seller-Initiated **Listing[Re-Listing]** Form", **10/2019 [7/2019]**;

(b) "Seller's Disclosure of Property Condition", **10/2019[7/2019]**;

(c) "Condominium Seller's Certificate", **10/2019[7/2019]**;

(d) "Guide to Agency Relationships", **10/2019[7/2019]**; **[and]**

(e) "Agency Consent Agreement - Buyer", **10/2019; [7/2019]**

(f) "Agency Consent Agreement - Seller" 10/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov.

LOIS ANN DISPONETT, Chair
H.E. CORDER II, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

CONTACT PERSON: Marc Manley, Acting General Counsel,
Kentucky Real Estate Authority, phone (502) 564-7760, fax (502)

564-1538, email marc.manley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Manley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards of conduct for all licensed real estate professionals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to discharge the commission's duty set forth in KRS 324.281 to promulgate administrative regulations concerning the proper conduct of licensees. This administrative regulation is also necessary to modernize and consolidate into one administrative regulation the professional standards of conduct expected for all licensees of the Kentucky Real Estate Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller, buyer or prospective buyer to the exclusion of all other licensees associated with the principal broker. This administrative regulation establishes requirements for designated agency. KRS 324.360(2) requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form whose content is set forth by KRS 324.360(3). This administrative regulation establishes the required Seller's Disclosure of Property Condition form. KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation establishes a specific format for disclosing prior relationships between parties in a real estate transaction. Additionally, this administrative regulation establishes requirements, to inform and set certain standards for licensees and to protect the public, regarding delivery of signed documents, broker supervision, broker record retention, sales associate affiliation and termination, and written agreements between licensees and consumers to provide real estate brokerage services, including standards for listing and purchase contracts. This administrative regulation establishes behavior considered improper conduct.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes within the commission's jurisdiction because it puts all licensees on notice of the expected standards of conduct for licensed real estate professionals in Kentucky. With modernized and streamlined standards of professional conduct, the commission will be better equipped to discharge its duty to protect the public and maintain the integrity of the profession.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment consolidates into one regulation all standards of conduct applicable to licensed real estate professionals. The proposed amendments modernize standards relating to record retention and transmittal of documents to clients. Also, the proposed amendments, simultaneous with the proposed administrative regulation repealer, reduce burdens on licensees who engage in the promotion of out-of-state properties and property management.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to establish uniform and modern standards of conduct for licensed real estate professionals.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.281 requires the Kentucky Real Estate Commission to promulgate administrative regulations concerning the proper conduct of licensees. KRS 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller, buyer or prospective buyer to the exclusion of all other licensees associated with the principal broker. This administrative regulation establishes requirements for

designated agency. KRS 324.360(2) requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form whose content is set forth by KRS 324.360(3). This administrative regulation establishes the required Seller's Disclosure of Property Condition form. KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. This administrative regulation establishes a specific format for disclosing prior relationships between parties in a residential transaction. Additionally, this administrative regulation establishes standards and requirements, to inform and set certain standards for licensees and to protect the public, regarding delivery of signed documents, broker supervision, broker record retention, sales associate affiliation and termination, and written agreements between licensees and consumers to provide real estate brokerage services, including standards for listing and purchase contracts. Overall, this administrative regulation establishes behavior considered improper conduct.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation consolidates and clarifies the rules that will govern practice as a licensed real estate professional 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. 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 have to modify some business practices to comply with modernized standards of conduct. Education providers will be required to amend their instruction materials to comply with the new licensing law requirements 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 costs associated with compliance with this administrative regulation for prospective licensees and members of the public. Current licensees may incur minor costs in compliance with modernized professional standards of conduct. Education providers may experience incidental expenses in updating instruction materials.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, licensees will be held to consistent, modern standards of professional conduct. The public will benefit from licensed real estate professionals held to consistent, modern, and high standards of professional conduct.

(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? 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 affected.

(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) and KRS 324.282 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 324.121 authorizes a principal broker to designate an affiliated licensee to act as agent for a seller or lessor, buyer or lessee, or prospective buyer to the exclusion of all other licensees associated with the principal broker. KRS 324.360(2) requires the Kentucky Real Estate Commission to promulgate an administrative regulation authorizing a seller's disclosure of conditions form whose content is set forth by KRS 324.360(3). KRS 324.160(4)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. KRS 324.160 requires the commission to sanction a licensee for improper conduct, and this administrative regulation establishes behavior considered improper.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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.

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amended After Comment)

201 KAR 11:170. Education provider requirements[Real Estate School and pre-license course approval].

RELATES TO: KRS 324.010(7), 324.046(1), (2), (5), 324.085, 324.090, 324.160(1)(c), (4)(u), 324.281(7)

STATUTORY AUTHORITY: KRS 324.010(7), 324.046(1), (2), 324.085, 324.160, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 authorize[authorizes] 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. KRS 324.010(7) and (8) authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. KRS 324.085(4) and (5) require the commission to promulgate administrative regulations necessary to implement the continuing education, post-licensure education, and instructor qualification requirements of KRS 324.085. KRS 324.046(1)(a) requires the commission to promulgate an administrative regulation determining the required course content of a brokerage management skills course for all broker applicants. This administrative regulation establishes the requirements and application procedures for approval as a real estate school, post-licensing education provider, and a continuing education provider. This administrative regulation also establishes the requirements and application procedures for approval of instructors and courses for license credit. This administrative regulation establishes procedures for implementing the requirements for post-license education and the requirements for courses offered through distance education. This administrative regulation establishes the requirements of the brokerage management skills course and incorporates the curriculum by reference. [This administrative regulation establishes the requirements and application procedures for an approved real estate school seeking approval of courses for license credit.]

Section 1. Education Providers. (1)(a) Accredited institutions and approved real estate schools may teach:

1. Pre-licensing education;
2. Post-licensing education; and
3. Continuing education; and
4. Broker curriculum education.

(b) Consistent with KRS 324.010(7)(b), National Association of Realtors (NAR) recognized programs that meet the following criteria shall be deemed an approved real estate school:

1. Has a school administrator;
2. Is an affiliated organization with NAR or the Kentucky Realtors; and
3. Would otherwise be regulated by Kentucky Commission on Proprietary Education but the program is entitled to exemption from certification by Kentucky Commission on Proprietary Education.

(2) National Association of Realtors (NAR) recognized programs that do not meet the criteria established in Section 1(1)(b) shall only teach:

- (a) Post-licensing education;
- (b) Continuing education; and
- (c) Designation courses toward broker curriculum.
- (3) Governmental bodies shall only teach post-licensing education and continuing education.
- (4) Broker-affiliated training programs may teach post-licensing education.

Section 2. Accredited Institutions and Approved Real Estate Schools: Initial Application for Provider Approval. (1) To apply for initial certification, an approved real estate school shall submit:

(a) Completed Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative;

(b) Copy of the license or certification from the Kentucky Commission on Proprietary Education, if applicable;

(c) Sample copy of an official transcript or certificate that will be issued by the school;

(d)1. A copy of a sample contract or agreement, to be signed by the student, that outlines the class schedule, assignments or projects, examination requirements, grading system, and attendance requirements;

2. An approved real estate school offering a prelicensing course shall include a statement in the school application that a criminal conviction may, consistent with KRS Chapter 335B and 201 KAR 11:210, Section 6, prevent an applicant from qualifying for licensure under KRS 324.045;

(e)1. An acceptable explanation of how the provider will verify a student's identity, ensure the student completes the course, and maintain the anonymity of student evaluations;

2. For classroom courses, at a minimum, the provider shall require a student to sign in and sign out of each course; and

(f) Any documentation necessary to explain an answer on the application.

(2) To apply for renewal of an approved real estate school's approval, an approved real estate school shall submit a Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative, outlining any changes in the information submitted pursuant to subsection (1) of this section.

(3) After the initial approval, an approved real estate school shall renew annually consistent with subsection (2) of this section.

(4) An approved real estate school shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application or in an attachment thereto.

Section 3. Education Provider; Initial Application for Provider Approval. (1) To apply for initial certification, an education provider offering continuing education or post-license education shall submit:

(a) Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative;

(b) Sample copy of an official transcript or certificate that will be issued by the provider;

(c)1. An acceptable explanation of how the provider will verify a student's identity, ensure the student completes the course, and maintain the anonymity of student evaluations;

2. For classroom courses, at a minimum, the provider shall require a student to sign in and sign out of each course; and

(d) Any documentation necessary to explain an answer on the application.

(2) To apply for renewal of an education provider's approval, education provider shall submit a Education Provider Application and Renewal Form, KREC Form 101, signed by the education provider's administrator or representative, outlining any changes in the information submitted pursuant to subsection (1) of this section.

(3) After the initial approval, an education provider shall renew annually consistent with subsection (2) of this section.

(4) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application or in an attachment thereto.

Section 4. Education Course Curriculum Requirements. (1) All courses shall consist of topics that:

(a) Are generally applicable to real estate, including the other professions governed by the Kentucky Real Estate Authority; or

(b) Are specific to Kentucky real estate license law and regulation.

(2) To be approved as an education course, a course shall:

(a) Increase the student's knowledge of the real estate brokerage business; and

(b) Protect the public interest.

(3) Education providers approved by another real property board under the Kentucky Real Estate Authority may submit courses approved by the primary real property board to the commission for approval as a post-licensing and continuing education course.

(4) A course that is solely motivational or considered to be personal development in nature shall not be approved.

(5) The curriculum for a sales associate pre-license course at an approved real estate school shall:

(a) Be conducted for a maximum of nine (9) hours during a

calendar day:

(b) Include course content on each of the following topics:

1. Introduction to the real estate business;

2. Real property and the law;

3. Forms of ownership and interests in real estate;

4. Land description;

5. Transfer of title;

6. Title records;

7. Real estate brokerage;

8. Real estate agency;

9. Client representation agreements and required disclosures;

10. Real estate contracts;

11. Real estate financing;

12. Closing a real estate transaction;

13. Real estate taxes and other liens;

14. Real estate appraisal and land valuation analysis;

15. Leases;

16. Fair Housing;

17. Property Management;

18. Land Use controls and property development;

19. Environmental issues in the real estate transaction; and

20. Kentucky real estate licensing law.

(c)1. Instruction on all topics, except Kentucky specific law and regulation, shall be from a text approved by the commission.

2. To have a text approved by the commission, an education provider shall submit to the commission the proposed text and a written explanation of how the text covers the course content on the required topics.

(d) Be a course for academic credit consisting of content focused on real estate, but shall not be a continuing education unit, examination preparation or review, experiential education, or competency testing;

(e) Include a scenario-based practicum or project applicable to the practice of real estate brokerage that:

1. Is to be completed by the individual student, without peer assistance, before sitting for the final examination;

2. Contemplates the use of at least three (3) commission approved transaction related forms;

3. Requires completion of:

a. A real estate purchase contract or a real estate listing contract; and

b. A market analysis of property value.

4. Requires application of topics covered in the sales associate pre-licensing course relating to a transaction based experience; and

5. Is graded on a pass-fail scale.

(f) Be designated specifically as a real estate course by an approved education provider;

(g) Include a closed-book monitored final examination that shall:

1. Consist of 100 multiple choice questions which shall evaluate the student's practical application of real estate principles;

2. Require a passing score of at least seventy-five (75) percent; and

3. Cover all aspects of material covered in the course, including applicable Kentucky licensing laws and administrative regulations; and

(h)1. The pre-licensing provider shall not allow a student to take the final examination more than three (3) times, unless the student retakes the sales associate pre-licensing course;

2. A student shall be permitted to retake the final examination no earlier than the fourth day following the date of a failure;

3. After the second failure, the pre-licensing provider shall provide the student with documentation of the area(s) of deficiency and the opportunity for additional training on the student's area(s) of deficiency consistent with the provider's student enrollment agreement.

(6) Approved pre-license education providers and instructors shall take appropriate steps to maintain the confidentiality of the final examinations. These steps shall include:

(a) Storing examinations and answer keys in a secure place accessible only to the school administrator and the instructor;

(b) Prohibiting students from retaining copies of the final

examination and answer sheets:

- (c) Monitoring students continuously during examinations; and
- (d) Notifying the commission and taking appropriate steps, if an examination is compromised.

(7) The curriculum for a post-license education course shall be in hourly increments from one (1) to nine (9) hours with one (1) hour of course credit allowed for each fifty (50) minutes of actual instruction and consist of thirty-two (32) hours from the courses established in paragraphs (a) and (b) of this subsection and sixteen (16) hours as established in paragraph (c) of this subsection:

(a) The three (3) hour Commission Licensee Compliance course, which shall instruct new licensees on:

1. License statuses and the administrative processes relative to keep a license active and in good standing;
2. A review of controlling definitions;
3. A review of agency principles;
4. Overview of commission duties and functions and relationships with other governmental bodies, regulatory bodies, and professional associations; and
5. A review of disciplinary procedures and administrative case studies.

(b) The requirements in each of the following course topics:

1. Six (6) hours in Agency;
2. Six (6) hours in Contracts;
3. Three (3) hours in Finance;
4. Three (3) hours in Advertising;
5. Three (3) hours in Disclosure;
6. Three (3) hours in Fair Housing;
7. Three (3) hours in Technology and Data Security; and
8. Two (2) hours in Risk Management; and

(c) Sixteen (16) additional hours in approved mandatory courses in excess of the prescribed hours listed in (b)1.-8. or in the following elective topics chosen by the licensee:

1. Real Estate Auctions;
2. Anti-trust;
3. Appraisals;
4. Home inspections;
5. Land Use;
6. Property Rights;
7. Property Management;
8. Real Estate Investments; and
9. Business Planning.

(d) Contain course content, objectives, and assessments that include scenario-based case studies designed to ensure the application of current real estate information and knowledge to practical brokerage scenarios.

(e) If a licensee takes a post-licensing education course with the same course number more than once, the licensee shall only receive credit for one (1) course completion.

(8)(a) The curriculum for a continuing education course shall be in hourly increments from one (1) to nine (9) hours with one (1) hour of continuing education allowed for each fifty (50) minutes of actual instruction.

(b) If a licensee takes a continuing education course with the same course number more than once in an education cycle, the licensee shall only receive credit for one (1) course completion.

(9) "All course content required by this administrative regulation shall be submitted to the commission for review and consideration prior to the approval of the course." (The commission shall review all course content to ensure that the content meets the requirements established in this administrative regulation and shall be submitted to the commission for consideration.)

Section 5. Pre-license Course Approval for Sales Associates.

(1) To obtain approval for a sales associate pre-license course, an approved education provider shall submit a Pre-license Course Application and Renewal Form, KREC Form 102, for each course for which approval is sought, at least ninety (90) days prior to the scheduled offering of a pre-license education course. The approval shall be valid for one (1) year. The completed form shall be accompanied by:

(a) A completed detailed Course Outline broken into four (4) hour increments to include, if applicable, teaching methods, learning objectives for the course, auxiliary aids, quizzes or examinations, and materials for each course.

(b) The course description and objectives;

(c) A description of the course practicum;

(d) When the final examination shall be conducted;

(e) The textbooks being used and how material will be taught in conjunction with completion of the projects and the final exam;

(f) A copy of the final examination question bank and answer key;

(g) A copy of all written material that the instructor will use in the classroom, including a copy of the curriculum that follows the mandated guidelines, if applicable;

(h) Completed Instructor Affiliation Form, KREC Form 104, for each instructor who will teach a course; and

(i) The nonrefundable initial review fee of seventy-five (75) dollars.

(2) To renew approval for a sales associate pre-license course, an approved education provider shall submit:

(a) A separate completed Pre-license Course Application and Renewal Form, KREC Form 102, for each course, at least ninety (90) days prior to the current expiration of the pre-license education course;

(b) The nonrefundable renewal review fee of twenty-five (25) dollars; and

(c) A detailed abstract of changes made to the course, course materials, and other required attachments since the initial application or most recent course renewal.

(3) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application for a sales associate pre-license course or in any attachment thereto.

(4) Every five (5) years an approved education provider shall submit a complete Pre-license Course Application and Renewal Form, KREC Form 102, for each course approval is sought, at least ninety (90) days prior to the scheduled offering of a pre-license education course.

(5) Nothing in this section shall prevent the commission from requesting the current version of a course from an approved education provider during the five (5) year review period.

Section 6. Continuing and Post-license Education Course Approval.

(1) To obtain approval for a continuing education or post-license education course, an approved education provider shall submit a completed Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103. The approval shall be valid for one (1) year.

(2) At least sixty (60) days prior to the scheduling of a continuing or post-license education course, an approved education provider wishing to offer a continuing or post-license education course shall submit:

(a) Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103, and either:

1. The nonrefundable initial review fee of twenty-five (25) dollars for classroom courses or seventy-five (75) dollars for distance education courses; or

2. The nonrefundable renewal review fee of fifteen (15) dollars; and

(b) A completed detailed Course Outline broken into fifty (50) minute increments, to include, if applicable, learning objectives for the course, teaching methods, auxiliary aids, quizzes or examinations, materials, and the policies of the provider;

(c) The textbooks or course materials being used;

(d) A copy of the final examination question bank and answer key, if the course is a distance education course; and

(e) Completed Instructor Affiliation Form, KREC Form 104, for each instructor who will teach a course.

(3) A provider shall:

(a) Award each attendee listed on the roster who completes the course a course completion certificate that contains:

1. The licensee's name;
2. The licensee's license number;

3. The course completed, including the type of education, course title, and course number;

4. The date of completion; and

5. Signature of the school administrator or course provider representative.

(b) Submit to the Commission, within ten (10) days of the student completing an approved continuing or post-license education course, unless the course is completed after December 21 of the calendar year in which case the deadline shall be on or before 11:59 p.m. December 31:

1. An attendance roster through the provider's online portal; and

2. A Course Evaluation, KREC Form E106, completed by each attendee listed on the roster; and

(c) Include a notice or warning that if the **continuing education** course is taken after December 21 of the calendar year, the licensee's license may be cancelled if the course is not timely completed; and

(d) Subject only to space limitations, make the course available to all licensees, unless the course is offered by a broker-affiliated training program.

(4) **A course provider may be disciplined**~~[Be subject to discipline]~~ by the commission[] if a course provider fails to submit all attendance and evaluation forms completed and returned by students to the course provider.

(5) A course that has been previously approved within the same education cycle may be conducted by another provider if:

(a) The same instructor teaches the course;

(b) The same number and type of credits are awarded for the course;

(c) The content of the course is the same; and

(d) The hosting provider submits a completed Provider Host Form, KREC Form 105, to the commission thirty (30) days prior to conducting the course.

(6) To renew approval for a continuing or post-license education course, an approved education provider shall submit:

(a) A completed Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103, for each course approval is sought, at least sixty (60) days prior to the current expiration of the continuing or post-license education course, and

(b) A detailed abstract of changes made to the course, course materials, and other required attachments since the initial application or most recent course renewal.

(7) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application for a continuing or post-license education course or in any attachment thereto.

(8) Every five (5) years an approved education provider shall submit a complete Continuing and Post-license Education Course Application and Renewal Form, KREC Form 103, for each course approval is sought, at least ninety (90) days prior to the scheduled offering of a continuing or post-license education course.

(9) Nothing in this section shall prevent the commission from requesting the current version of a course from an approved education provider during the five (5) year review period.

Section 7. Pre-license Course Approval for Broker Curriculum.

(1) To obtain approval for a broker management or broker curriculum course, an approved education provider shall submit a Pre-license Course Application and Renewal Form, KREC Form 102, for each course approval is sought. The approval shall be valid for one (1) year.

(2) To satisfy the education prerequisites contained in KRS 324.046(1)(a), an applicant for a broker's license shall complete a broker management skills course. The broker management skills course shall:

(a) Satisfy three (3) academic credit hours of the applicant's twelve (12) academic credit hours of real estate courses required to become a broker;

(b)1. Instruction on all topics, except Kentucky specific law and regulation, shall be from a text approved by the commission.

2. To have a text approved by the commission, an education

provider shall submit to the commission the proposed text and a written explanation of how the text covers the course content on each of the required topics.

(c) Be a three (3) academic hour comprehensive review of all the skills necessary to run a brokerage office in accordance with the applicable Kentucky licensing laws and administrative regulations relating to real estate and the standards of practice for a broker pertaining to adequate supervision of all affiliated licensees, including:

1. Leadership and management skills;

2. Communications and decision-making;

3. Analyzing the business environment;

4. Analyzing the market;

5. Developing a business plan, including structuring the organization, business systems, and finances;

6. Business policies and procedures;

7. Marketing and advertising;

8. The practical and legal realities of staffing;

9. Recruiting, selecting, and hiring the staff;

10. Professional development;

11. Critiquing operations; and

12. Managing risk.

(d)1. Include a scenario-based practicum or project that shall require each student to develop a sample business plan, a sample financial plan and an office policy and procedure manual. The practicum shall;

2. Be completed by the individual student, without peer assistance, before sitting for the final examination;

3. Require application of topics covered in the broker pre-licensing curriculum;

4. Be graded on a pass-fail scale; and

5. Be allotted up to one hour of course credit for completion and review of this requirement.

(e)1. Require each student to take a comprehensive, closed-book examination consisting of at least seventy-five (75) multiple choice questions;

2. The examination shall be submitted to the commission for approval prior to use in the course;

3. The passing score for the examination shall be a minimum score of seventy-five (75) percent;

4. The broker pre-licensing provider shall not allow a student to take the final examination more than three (3) times, unless the student retakes the broker management skills course;

5. A student shall be permitted to retake the final examination no earlier than the fourth day following the date of a failure;

6. After the second failure, broker pre-licensing provider shall provide the student with documentation of the area(s) of deficiency and the opportunity for additional training on the student's area(s) of deficiency consistent with the provider's student enrollment agreement.

(e) The education provider shall report a course completion certificate to the commission through the provider's online services portal within ten (10) days of issuing the certificate to the student.

(3) To be approved as a pre-licensing course for broker curriculum, a course shall cover one of the following topics:

(a) Federal Housing and Lending Law;

(b) Kentucky Real Estate Law and Regulation;

(c) Real Estate Finance;

(d) Real Estate Marketing;

(e) Property Management;

(f) Real Estate Investment;

(g) Real Estate Appraisal;

(h) Home Inspection;

(i) Real Estate Auction;

(j) Construction and Blueprints;

(k) Land Use Planning and Zoning;

(l) Commercial Real Estate;

(m) Real Estate Development; and

(n) Urban Planning.

(4) In addition to being specific to the course topics listed in (3)(a) through (n), each pre-licensing course for broker curriculum shall include:

(a) A comprehensive review specific to the course topic of all

the relevant laws necessary to run a brokerage office in accordance with the applicable Kentucky licensing laws, administrative regulations, and federal laws, if applicable, relating to real estate and the standards of practice for a broker;

(b) An extensive review of case studies; and

(c) Instruction on personnel management and leadership models.

(5) In addition to being specific to the course topics listed in (3)(a) through (n), each pre-licensing course for broker curriculum shall be in either three (3) academic credit hour or six (6) academic credit hour intervals and shall not be accredited for continuing education credit.

(6) Within ten (10) days of completion of an approved broker curriculum course, the provider shall submit to the commission:

(a) An attendance roster; and

(b) A Course Evaluation Form, KREC Form 106, completed by each attendee listed on the roster.

(7) If a licensee takes a broker pre-license course with the same course number more than once, the licensee shall only receive credit for one course completion.

(8) To renew approval for a broker management or broker curriculum course, an approved education provider shall submit:

(a) A completed Pre-license Course Application and Renewal Form, KREC Form 102, for each course approval is sought, at least ninety (90) days prior to the current expiration of the broker management or broker curriculum course; and

(b) A detailed abstract of changes made to the course, course materials, and other required attachments since the initial application or most recent course renewal.

(9) An education provider shall notify the commission in writing within ten (10) days of a substantive change in the information submitted on the initial or renewal application for a broker management or broker curriculum course or in any attachment thereto.

(10) Every five (5) years an approved education provider shall submit a complete Pre-license Course Application and Renewal Form, KREC Form 102, for each course for which approval is sought, at least ninety (90) days prior to the scheduled offering of a the broker management or broker curriculum course.

(11) Nothing in this section shall prevent the commission from requesting the current version of a course from an approved education provider during the five (5) year review period.

Section 8. Broker Electives. (1) To obtain approval for a broker elective course, an approved education provider shall submit a Continuing Education and Post-License Education Course Application and Renewal Form, KREC Form 103, for each course for which approval is sought, consistent with Section 6 of this administrative regulation. The approval shall be valid for one (1) year.

(2) The content of a broker elective course shall be:

(a) An NAR designation course; or

(b) A course tailored to the supervisory functions of managing and operating a real estate brokerage company beyond the scope of what is covered in a sales associate pre-licensing course.

Section 9. Distance Education Standards for Approval. (1) Continuing education, post-license education, and pre-license courses conducted for academic credit in an accredited college or university via interactive television shall include:

(a) Two (2) way audio and video connections between the instructor and the student; and

(b) College or university personnel stationed at each remote site to handle technology problems that may arise and to monitor attendance of students.

(c) The program shall be one that has been properly approved by the college accrediting body as fulfilling the requirements for academic credit.

(2) A course initially approved for classroom instruction shall not be offered for distance education unless additional approval consistent with this section is obtained from the commission.

(3)(a) Consistent with this administrative regulation, an approved provider shall submit:

1. a. A completed Pre-license Course Application and Renewal Form, KREC Form 102 or

b. A completed Continuing Education and Post-licensing Education Course Application and Renewal Form, KREC Form 103.

(b) In addition to the attachments required by the appropriate course application form, the course application shall include:

1. A complete copy of the program on the medium that is to be used or a link to the internet site where the course is located;

2. A copy of the final examination question bank and key for each course; and

3. The appropriate non-refundable course review fee.

(4) The course shall:

(a) Be divided into learning units, modules, or chapters to provide mastery of the material. Each unit shall contain learning objectives that are sufficient to ensure that the course will likely be mastered by the student upon completion of the material;

(b) Require quizzes at the end of each learning unit, module, or chapter to assess the student's performance before proceeding to the next learning unit, module, or chapter;

(c) Require a final examination consistent with subsection (6) of this section;

(d) Provide a method for tracking the length of time a student spends on the course; and

(e) Prohibit a student from bypassing the course materials to advance directly to the end-of-module quizzes or exercises that are included to assess the student's performance.

(5)(a) Each course shall have the approved instructor available to answer questions from students.

(b) The provider shall have reasonable oversight to monitor a student's work and electronic access in order to ensure that the student completing the work and receiving credit is the one who is enrolled in the course.

(6) For all distance education courses, the student shall pass a final exam covering the content of the course and real estate laws and administrative regulations that apply to those content areas with a score of at least seventy-five (75) percent.

(a) If the course is a continuing education or post-license education course, the final exam shall:

1. Be included as the last module of the course; and

2. Have a minimum of five questions for each approved hour of education.

(b) If the course is a pre-license education course, the final exam shall:

1. Contain a minimum of fifty (50) items for a three (3) academic credit hour course or contain a minimum of one-hundred (100) items for a six (6) academic credit hour course;

a. Each course shall have an item bank from which the final examination questions shall be pulled.

b. The bank shall contain multiple choice items and have forty (40) percent more questions than required on the final examination, so that retake exams will contain unique new questions.

2. Be monitored by the approved instructor for the course or another individual designated by the instructor who is not a relative or a business associate of the student;

3. If another individual is designated to monitor the exam, the monitor shall be:

a. A certified librarian;

b. A public school administrator;

c. A College professor;

d. Other real estate instructor associated with the school offering the course; or

e. A monitor from a qualified online test monitoring service;

4. The monitor shall:

a. Sign a statement certifying that he or she is not affiliated with the student in any way;

b. Verify that the person taking the examination is the person registered for the course;

c. Observe the student taking the exam;

d. Assure that the student does not use aids of any kind;

e. Assure that a calculator is nonprogrammable;

f. Assure that limitations on the final examination are not

exceeded:

g. Certify to the provider in a notarized statement that all requirements for the final examination have been met; and

h. Assure that any student's mobile device, cell phone, or camera is shut down and put away, while at the test site.

(7) Prior to awarding a student credit for a distance education course, the education provider shall require each student to complete an affidavit that includes the date of completion and the student's signature, which may be provided electronically. The affidavit shall certify that the student has personally completed all components of the course and the final exam with no academic assistance.

(8) Credit shall be denied and disciplinary action taken if it is determined that a student received academic assistance on the final exam.

(9) To obtain credit for a distance education course, a student shall complete the course within the time frame allotted by the school for pre-license courses or within the education cycle for continuing and post-license education, unless the student is completing the course to comply with an order of the commission.

(10)(a) The completion date for all courses shall be the latest of the dates upon which the student completes the final examination with a passing score of at least seventy-five (75) percent and submits the student affidavit.

(b) The student shall submit the course evaluation and student affidavit to the provider from whom the course was taken.

(11)(a) The provider shall ensure that approved instructors are available to assist students who have questions regarding:

1. The technology used in the delivery;

2. The course content; or

3. The completion requirements.

(b) A student shall not be required to call more than one (1) person to obtain answers to questions about the course.

(12) The provider shall include a detailed explanation of how the course measures, documents and records the student completion of the material, and any activities or exercises required to achieve mastery of the material.

(13)(a) The provider shall obtain an evaluation from each student.

(b) An evaluation may be submitted to the provider electronically and a copy of each form shall be returned along with the attendance roster and other documents required by the commission for continuing education courses.

Section 10. Course Instructor Qualifications and Approval. (1) A person not approved pursuant to this administrative regulation shall not teach an education course for credit.

(2) To be approved, an instructor shall have:

(a) Qualifying education or experience:

1. A bachelor's or post-graduate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in a field directly related to the nature of the course, such as real estate, business, law, or finance; [;]

2. An associate degree in real estate from a college or university duly accredited by a nationally recognized rating or accrediting organization;

3. Completed five (5) consecutive years of full-time experience in the real estate related subject area that he or she is teaching; or

4. A combination of teaching, education, and full-time experience in real estate totaling five (5) years; and

(b) Sufficient and thorough knowledge of the subject area of the course he or she is teaching, familiarity of the provisions of Kentucky real estate licensing law and administrative regulations, and the importance of those provisions on the subject area of the course; and

(c)1. **Effective on January 1, 2021, have** completed a mandatory educator training course within the twelve (12) months preceding the approval or renewal as an instructor from the commission, unless one of the following exemptions apply:

a. The instructor is a national level or unique speaker and training poses an impractical burden;

b. The instructor has taken a similar course in another jurisdiction within the preceding twelve (12) months;

c. The instructor teaches two (2) or fewer courses each year; or

d. The instructor has earned a Distinguished Real Estate Instructor designation or a comparable advanced designation.

2. The mandatory educator training course shall include a minimum of three (3) fifty (50) minute blocks of instruction consisting of:

a. Classroom management principles and Generally Accepted Practices of Education;

b. Fundamentals of instruction in adult education; and

c. A review of any pertinent changes to Kentucky or federal real estate brokerage laws and administrative regulations and current real estate brokerage principles.

(3) To apply for approval, an instructor shall submit:

(a) Instructor Application and Renewal Form, KREC Form 100;

(b) A copy of the instructor's current resume;

(c) Any information necessary to explain an answer on the application;

(d) A license certification from each jurisdiction where the instructor holds a professional license; and

(e) A certification of completion for the instructor course.

(4) Instructor approval shall last for one (1) year.

(5) To renew, an instructor shall submit the Instructor Application and Renewal Form, a certification of completion for the instructor course, and note any changes from the materials submitted in subsection (3) of this section.

(6) The commission shall maintain a roster of approved instructors who are eligible to be added to an approved course upon submission of a Completed Instructor Affiliation Form, KREC Form 104.

(7) Approval of an instructor may be withdrawn, probated, or suspended by the commission for:

(a) A violation of a provision of KRS Chapter 324 or the administrative regulations promulgated thereunder;

(b) Falsification of material submitted to the commission;

(c) Failure to provide to the commission requested material;

(d) While acting as an instructor, engaging in brokerage activity with an enrolled student while present in an educational facility;

(e) Soliciting an investment from a student;

(f) Attempting to recruit a student to a real estate company while acting as an instructor;

(g) Receipt of a complaint or poor evaluation related to the conduct of the instructor;

(h) Improper or unprofessional conduct or communication during course instruction, including comments that are clearly derogatory, not germane to the course's subject matter, or are intended to offend a particular student or group of students;

(i) Permitting a student to receive credit for a course if the licensee arrives more than ten (10) minutes after the scheduled start of the course or any break during the course; or

(j) Failure to abide by the Generally Accepted Practices of Education or other documented deficiencies in classroom management.

Section 11. Evaluation of Instructors. (1) The commission shall review each Course Evaluation Form, KREC Form 106, submitted.

(2) Within the commission's discretion, the commission may monitor an instructor's course.

(3) The commission monitor shall submit a recommendation to the commission regarding whether the instructor shall be allowed to continue to teach courses.

(4) Based on the recommendation of the commission monitor, and the comments from the monitored class, the commission shall:

(a) Take no further action; or

(b) Take disciplinary action.

(5) If the commission issues a probationary order, the commission shall establish the length and terms of the probationary period as well as the date of any class to be monitored.

(6) At the conclusion of the probationary period, the commission shall determine if the instructor's approval shall continue.

(7) If the commission determines that instructor approval shall

be suspended, the instructor shall not be allowed to teach any commission-approved education courses unless approval is reinstated.

(8) The commission shall notify the instructor and the school of its decision in writing.

(9)(a) Any instructor who has been suspended from teaching education courses may apply for reinstatement by submitting:

1. An application for approval to the commission; and

2. An explanation detailing how the applicant cured the deficiency which resulted in suspension; and

(b) After submission of the above documents and consideration by the commission, the commission shall approve or deny the instructor's request for reinstatement.

Section 12. Monitoring and Withdrawal of Provider Approval.

(1) An approved education provider shall ensure that all instructors shall abide by the Generally Accepted Principles of Education as adopted by the Real Estate Educators Association.

monitoring by the commission, or its designee, to evaluate the administration or operation of any approved real estate school or approved provider education course and to evaluate the performance of instructors.

(3) An approved education provider shall not:

(a) Advertise, or permit an advertisement to be made, in conjunction with the business of a principal broker or a real estate brokerage company;

(b) Discuss, induce, or promote affiliation with a principal broker or a real estate brokerage company;

(c) Submit an application or renewal that contains false, inaccurate, or misleading information;

(d) Violate the provisions of this administrative regulation as it relates to the establishment or conduct of the provider, any instructor, or any course material;

(e) Directly or indirectly attempt, or allow an official, employee, or a person on their behalf, to reconstruct the real estate licensing examination or portion of the examination.

(4) If an approved education provider's approval may be subject to withdrawal for the reasons set forth in this section, the commission shall:

(a) Give written notice to the school of the intent to withdraw approval and the reasons therefor; and

(b) Give the school an opportunity to address the notice, in writing, within thirty (30) days of the date of the notice of intent to withdraw approval.

Section 13. Records Retention. (1) An approved education provider shall maintain accurate records on each student enrolled in a course for three (3) years.

(2) A record shall include each student's record of courses completed or attempted, academic hours awarded, final grades, and test scores, if applicable.

(3) A certificate of completion shall be:

(a) Included in the records of each student; and

(b) Delivered to each student upon completion of a course.

Section 14. Instructors to Receive Credit for Teaching. (1) A licensee who teaches an approved continuing education course shall receive credit on an hour-for-hour basis, not to exceed three (3) hours per calendar year.

(2) To obtain continuing education credit, the instructor's name shall be added to the education attendance roster for the course.

(3) The instructor shall not receive credit more than once in a calendar year for teaching a specific course.

Section 15. Effective Date. The first provider application, course approval application, and instructor application for each provider, course, or instructor received after the effective date of this administrative regulation shall be considered an initial application for purposes of the application and renewal processes prescribed in this administrative regulation.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Provider Application and Renewal Form", KREC Form 101, 07/19;

(b) "Pre-license Course Application and Renewal Form", KREC Form 102, 07/19;

(c) "Continuing and Post-license Education Course Application and Renewal Form", KREC Form 103, 07/19;

(d) "Instructor Application and Renewal Form", KREC Form 100, 07/19;

(e) "Provider Host Form" KREC Form 105, 07/19;

(f) "Instructor Affiliation Form" KREC Form 104, 07/19;

(g) "Course Evaluation Form", KREC Form 106, 07/19; and

(h) "Generally Accepted Principles of Education", KREC Form 107, 07/19.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov. [Section 1. (1) To apply for certification as an approved real estate school or to renew certification, a real estate school shall submit a:

(a) Completed Provider Application — Form E101 including the information required concerning curriculum, instructors, required textbooks, educational materials, and policies of the school;

(b) Copy of the license from the Kentucky Commission on Proprietary Education, if applicable;

(c) Sample schedule to outline how a course will be presented;

(d) Completed detailed Course Outline — Form E105 broken into four (4) hour increments to include teaching methods, learning objectives for the course, auxiliary aids, and materials for each course, which shall include:

1. Instructor Application — Form E100 and any additional documents required to explain a response on the application for each instructor who will teach this course, as required by 201 KAR 14:175; and

2. A copy of the written material, other than the textbook or real estate license law manual, which the instructor will use in the classroom;

(e) Sample copy of a school brochure or information sheet promoting the school;

(f) Copy of legal documentation required to support an answer, if applicable;

(g) A sample copy of an official transcript that will be issued by the school;

(h) A copy of a contract or agreement signed by the student that outlines the class schedule, assignments or projects, examination requirements, grading system, and attendance requirements; and

(i) Other documents as established in Section 2 of this administrative regulation.

(2) An approved real estate school shall include a statement in the school application that a criminal conviction may prevent an applicant from qualifying for licensure under KRS 324.045. Failure to do so shall result in suspension of an approved school's certification until the information is included in the application.

(3) An approved real estate school shall notify the commission within ten (10) days of a material change in the information originally submitted on the application or in an attachment to the application.

(4) An Education Course Application, Form E102, shall be submitted by October 1 of each even-numbered year. The approval shall be for a two (2) year period, beginning November 1.

Section 2. (1) The curriculum for a pre-license course at an approved real estate school shall: (a) Include a minimum of:

1. Three (3) academic hours per course; or

2. Fifteen (15) hours for a course related to the appraisal of property;

(b) Be conducted for a maximum of no more than nine (9) hours during a twenty-four (24) hour period;

(c) Consist of a course containing the topics listed in the Pre-license Prescribed Topics — Form E112 by the Real Estate Commission.

1. A real estate course shall be designated specifically as a real estate course by an approved or accredited real estate school that offers the course.

2. The academic content for the course shall specifically focus on real estate.

3. The course shall be for academic credit and not a continuing education unit, examination preparation or review, experiential education, or competency testing.

4. A candidate shall not submit completion of the same course or essentially the same course twice for licensure credit;

(d) Include a closed-book monitored final examination of at least:

1.a. Fifty (50) multiple choice questions for a three (3) hour academic course; or

b. 100 multiple choice questions for a six (6) hour academic course.

2. The passing score shall be seventy-five (75) percent in order to pass the course.

3. Examination questions shall cover all aspects of material covered in the course, including applicable license laws and administrative regulations.

4. Two (2) retakes of the examination shall be permitted; and

(e) Include in all real estate pre-license courses, a practicum or project applicable to the topic, that shall be completed with a passing score and averaged with the final examination and other components or assignments required in the course, as part of the student's final grade.

(2) The application for course approval shall include a copy of the final examination and answer key, an explanation and copies of the project or practicum that shall be required of students, when that assignment shall be due, and how the final grade for the course shall be calculated.

(3)(a) All primary and secondary providers offering online pre-license or other distance education courses shall be approved in accordance with the provisions established in 201 KAR 11:240.

(b) The commission shall review the content to ensure that the content meets the requirements established in this administrative regulation and in 201 KAR 11:240.

(4)(a) The application and all required attachments shall be submitted to the commission for consideration at its next regularly scheduled meeting, which is posted on the commission's Web site after calendar approval.

(b) The provider shall be notified in writing of the commission's approval or denial of the course for academic credit.

Section 3. Each real estate pre-license course completed at an out-of-state accredited institution, for which credit may be granted under this section, shall be approved or rejected pursuant to subsections (1) through (9) of this section.

(1) A course description from the school catalog, course syllabus, table of contents from text used in the course, or other summary of the course shall be provided to the commission by the applicant.

(2) The commission education director shall review the material submitted by the applicant and recommend the commission either grant or reject credit under this section at the commission's regular monthly meeting.

(3) The commission education director shall record:

(a) The name of the course;

(b) If approval was granted or rejected; and

(c) The date of approval or rejection.

(4) If a course has been previously approved by the commission under this section or if a course is substantially similar to a previously-approved course, the commission education director shall be authorized to determine course approval.

(5) In determining if a course is substantially similar to a previously-approved course, one (1) or more of the following items shall be considered:

(a) The table of contents from text used in the course;

(b) The course syllabus;

(c) Course description from the school catalog; or

(d) Other summary of the course.

(6) The commission's education director shall notify an

applicant if a course is rejected for credit under this section.

(7)(a) If an applicant disagrees with the education director's decision under this section, he or she shall, within ten (10) days from the date of the education director's notification of rejection, file with the commission a written request for a commission review of the education director's decision.

(b) The request shall specifically indicate the applicant's disagreement.

(c) Failure to indicate disagreement within the ten (10) day period shall constitute waiver by the applicant and the education director's decision shall become final.

(8)(a) In addition to notifying the education director of disagreement with his or her decision, the applicant shall provide a written summary to the education director detailing why credit under this section is merited.

(b) The commission education director shall forward this summary to the commission along with his or her response to the commission for a final decision at the commission's regular monthly meeting.

(c) Failure to provide within ten (10) days a specific summary detailing why credit is merited under this section shall constitute waiver by the applicant and the education director's decision shall become final at that point;

(9)(a) If the applicant indicates disagreement with the education director's decision within ten (10) days of notification and provides a written summary detailing the disagreement within ten (10) days of notification, the commission shall consider the submissions from the applicant and the education director and reject or approve the course for credit under this section.

(b) The commission shall notify the applicant of its decision in writing.

Section 4. An approved real estate school shall not:

(1) Advertise in conjunction with the business of a broker or a brokerage firm; or

(2) Discuss, induce, or promote affiliation with a broker or brokerage firm.

Section 5. (1) An approved real estate school shall maintain accurate and permanent records on each student enrolled in a course.

(a) A permanent record shall include each student's record of courses completed or attempted, academic hours awarded, and final grades.

(b) A certificate of completion shall be:

1. Included in the permanent records of each student; and

2. Mailed to each student upon completion of a course.

(2) Records shall: (a) Be maintained for three (3) years; and

(b) Include student attendance records, final grade, and test scores.

(3) An approved real estate school shall notify the commission, in writing, within five (5) days of the beginning of a pre-license course. Notice shall include the name of the course, class location, and scheduled dates and times the class will be offered.

(4) Schools and instructors shall take appropriate steps to maintain the confidentiality of the final examinations. These steps shall include:

(a) Maintaining examinations and answer keys in a secure place accessible only to the school administrator and the instructor;

(b) Prohibiting students from retaining copies of the final examination and answer sheets; and

(c) Monitoring students continuously during examinations.

Section 6. (1) An approved real estate school shall permit an inspection and monitoring by the commission or its designee to evaluate an aspect of the administration or operation of the school or to evaluate the performance of the instructor.

(2) Monitoring may include a periodic mailing by the commission to students seeking an evaluation of his or her pre-license course and instructor.

Section 7. (1) Private school approval shall be withdrawn if the commission determines that:

~~(a) Information contained on the application or renewal is inaccurate or misleading;~~

~~(b) The establishment or conduct of the school is not in compliance with this administrative regulation or the instruction is so deficient as to impair the value of the course; or~~

~~(c) The school is not certified by the Kentucky Commission on Proprietary Education.~~

~~(2) If the commission has notice that a school's approval may be subject to withdrawal for the reasons set forth in subsection (1) of this section, the commission shall:~~

~~(a) Give written notice to the school of the intent to withdraw approval and the reasons therefor;~~

~~(b) Give the school an opportunity to address the notice, in writing, within thirty (30) days of the date of the notice of intent to withdraw approval; and~~

~~(c) Review the issues and the school's response.~~

~~Section 8. An effort made directly or indirectly by a school, official, employee, or a person on their behalf to reconstruct the real estate licensing examination or portion of the examination shall result in immediate revocation of school approval.~~

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

~~(a) "Instructor Application - Form E100", 05/15 edition, Kentucky Real Estate Commission;~~

~~(b) "Education Course Application", Form E102, 5/15;~~

~~(c) "Provider Application - Form E101", 05/15 edition, Kentucky Real Estate Commission;~~

~~(d) "Course Outline - Form E105", 05/15 edition, Kentucky Real Estate Commission; and~~

~~(e) "Pre-license Prescribed Topics - Form E112", 05/15 edition, Kentucky Real Estate Commission.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

LOIS ANN DISPONETT, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

CONTACT PERSON: Marc Manley, Acting General Counsel, Kentucky Real Estate Authority, phone (502) 564-7760, fax (502) 564-1538, email Marc.Manley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Manley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and application procedures for approval as a real estate school, post-licensing education provider, and a continuing education provider. This administrative regulation also establishes the requirements and application procedures for approval of instructors and courses for license credit. This administrative regulation establishes procedures for implementing the requirements for post-license education and the requirements for courses offered through distance education. This administrative regulation establishes the requirements of the brokerage management skills course and incorporates the curriculum by reference.

(b) The necessity of this administrative regulation: KRS 324.281(5) and 324.282 authorize the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7) and (8) authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. KRS 324.085(4) and (5) require the commission to

promulgate administrative regulations necessary to implement the continuing education, post-licensure education, and instructor qualification requirements of KRS 324.085. KRS 324.046(1)(a) requires the commission to promulgate an administrative regulation determining the required course content of a brokerage management skills course for all broker applicants.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and 324.282 authorize the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7) and (8) authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. KRS 324.085(4) and (5) require the commission to promulgate administrative regulations necessary to implement the continuing education, post-licensure education, and instructor qualification requirements of KRS 324.085. KRS 324.046(1)(a) requires the commission to promulgate an administrative regulation determining the required course content of a brokerage management skills course for all broker applicants. This administrative regulation establishes the requirements and application procedures for approval as a real estate school, post-licensing education provider, and a continuing education provider. This administrative regulation also establishes the requirements and application procedures for approval of instructors and courses for license credit. This administrative regulation establishes procedures for implementing the requirements for post-license education and the requirements for courses offered through distance education. This administrative regulation establishes the requirements of the brokerage management skills course and incorporates the curriculum by reference.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Amendment to this administrative regulation will assist in the effective administration of KRS Chapter 324 because it consolidates into one regulation the approval process for education providers, instructors, and course curriculums.

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

(a) How the amendment will change this existing administrative regulation: Amendment to this administrative regulation centralizes all of the requirements for becoming an approved prelicense, post-licensure, or continuing education provider.

(b) The necessity of the amendment to this administrative regulation: KRS 324.281(5) and 324.282 authorize the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.010(7) and (8) authorizes the commission to approve a real estate school. KRS 324.046(1) and (2) require an applicant for initial licensure as a broker or sales associate to have completed the specified number of courses from an approved or accredited real estate school. KRS 324.085(4) and (5) require the commission to promulgate administrative regulations necessary to implement the continuing education, post-licensure education, and instructor qualification requirements of KRS 324.085. KRS 324.046(1)(a) requires the commission to promulgate an administrative regulation determining the required course content of a brokerage management skills course for all broker applicants.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the requirements and application procedures for approval as a real estate school, post-licensing education provider, and a continuing education provider. This administrative regulation also establishes the requirements and application procedures for approval of instructors and courses for license credit. This administrative regulation establishes procedures for implementing the requirements for post-license education and the requirements for courses offered through distance education. This administrative regulation establishes the requirements of the brokerage management skills course and incorporates the curriculum by

reference.

(d) How the amendment will assist in the effective administration of the statutes: Amendment to this administrative regulation will assist in the effective administration of KRS Chapter 324 because it consolidates into one regulation the approval process for education providers, instructors, and course curriculums.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently approved and prospective education providers will be affected by this administrative regulation. The Kentucky Real Estate Commission will be affected by this administrative regulation as well.

(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: Approved education providers will be required to update and modernize course offerings consistent with the subject matter outlined in this administrative regulation. Approved education providers will also be required to submit and renew course and instructor materials as outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs associated with comply with this administrative regulation. Approved education providers will be required to pay a course submission fee, which will be determined by the type of course being submitted for review.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Current and prospective licensees will benefit from updated, accurate, and consistent education from approved education providers. Education providers who are approved to offer education will experience streamlined submission and renewal rules.

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

(a) Initially: There is no cost associated with implementing this administrative regulation initially.

(b) On a continuing basis: There is no cost associated with implementing this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding required to implement and enforce this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative raises the cost of submitting a continuing education course by five dollars (\$5). All fees established by this administrative regulation are provided for in statute, KRS 324.287, as modified by House Bill 436 (2019 RS).

(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.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.010(7), 324.046(1), (2), (5), 324.085, 324.090, 324.160(1)(c), (4)(u), 324.281(7), and 324.282.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation is not expected to have any effect on the expenditures and revenue of state or local government.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is expected to generate approximately \$28,000.00 in course review and approval fees. This includes pre-licensing, post-licensing, and continuing education course approvals for the 2020 education cycle. This number is an estimate based on the current number of courses approved by the Commission.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is expected to generate approximately \$10,000.00 in course review and approval fees. This includes pre-licensing, post-licensing, and continuing education course approvals for the 2021-2024 education cycles. This number is an estimate based on the current number of courses approved by the Commission. The reduction in expected revenue from the first year to subsequent years is as a result of the revised renewal procedure for courses established in this regulation whereby approved providers will not submit a full course package each year.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this program 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 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 (+/-): \$28,000.00 for the first year.

Expenditures (+/-): None.

Other Explanation: Not applicable.

PUBLIC PROTECTION CABINET Kentucky Real Estate Authority Kentucky Real Estate Commission (Amended After Comment)

201 KAR 11:190. Consumer and administrative complaints; discipline; administrative hearings[Rules of practice and procedure before the Kentucky Real Estate Commission].

RELATES TO: KRS 324.045, 324.046, 324.150, 324.151, 324.160, 324.170, 324.200, 324.281(5)

STATUTORY AUTHORITY: KRS 324.151(1), (3), 324.160, 324.170, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 require[requires] the commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) requires the commission to establish the required forms for a complaint and answer. KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license, before ordering any disciplinary action or before suspending or revoking a license. This administrative regulation establishes supplemental administrative hearing procedures for matters before the commission and the required forms for a complaint or answer and the standards when filing a sworn statement to the real estate commission. This administrative regulation is necessary to provide a settlement option after a hearing is ordered to allow opportunity for more economical and

expeditious resolution of the pending matter. This administrative regulation establishes the informal settlement process for entry of agreed orders. This administrative regulation also incorporates supplemental provisions relating to consumer access to the commission's Research, Education, and Recovery Fund.

Section 1. Filing a Complaint. (1) A complaint shall:

(a) Be filed on the Sworn Statement of Complaint, KREC Form 300.

(b) Allege a prima facie case of specific violation of KRS 324.160 by a licensee or a case of unlicensed brokerage against an unlicensed individual;

(c) State the basis of the complaint fully, including the name of the principal broker, if known.

(d) Be notarized by a notary public;

(e) Include a copy of all the following documents relevant to the complaint or a written explanation of why the documents are unavailable:

1. Listing contract;

2. Purchase contract;

3. Seller's disclosure form;

4. Agency Consent Agreement and the Guide to Agency Relationships forms;

5. Settlement statement; and

6. Any other documentation to support a claim or alleged violation; and

(2) The complaint shall be filed no more than one (1) year from:

(a) Actual knowledge of the cause of action; or

(b) The time circumstances would reasonably have put the complainant on notice of the cause of action.

Section 2. Complaint Review, Answers, and Replies. (1) Upon receipt of a complaint, commission staff shall review the complaint to determine whether the complaint states a prima facie violation of KRS Chapter 324.

(2) If a supplement to the complaint is required because the original complaint was deficient, the supplement shall be filed on Sworn Supplement to Complaint, KREC Form 302 and notarized.

(3)(a) If the commission staff determine the complaint alleges a prima facie case of a specific violation of KRS 324.160, the complaint shall be served for an answer on the licensee as established in KRS 324.151(2).

(b) A responding licensee shall file a Sworn Answer to Complaint, KREC Form 301 in accordance with KRS 324.151(3).

(4) The answer shall:

(a) State an answer to the complaint;

(b) Be notarized by a notary public; and

(c) Include a copy of the following documents or a written explanation of why the documents are unavailable:

1. Listing contract;

2. Purchase contract;

3. Seller's disclosure form;

4. Agency Consent Agreement and the Guide to Agency Relationships forms;

5. Settlement statement; and

6. Any other documentation to rebut a claim or alleged violation.

(5)(a) The complainant may file one (1) reply to the respondent's Sworn Answer to Complaint within ten (10) days of receiving the respondent's Sworn Answer to Complaint;

(b) The respondent may file one (1) reply to complainant's reply within ten (10) days of receiving the complainant's reply; and

(c) All replies shall be notarized and include any documents necessary to support or rebut an allegation or a violation.

(6)(a) For purposes of calculating filing deadlines prescribed by this administrative regulation, the commission shall follow the Kentucky Rules of Civil Procedure.

(b) A request for an extension of any filing deadline prescribed by this administrative regulation shall be made directly to the office of general counsel and granted or denied. If the request is denied, the requester shall have the opportunity to appeal the decision to the commission at its next scheduled meeting.

(7) The commission shall not entertain motions with regard to pending complaints.

Section 3. Complaint Screening Committee. (1)(a) The commission chair may create at least one (1) complaint screening committee.

(b) Each complaint screening committee shall consist of no more than three (3) commissioners.

(2) The complaint screening committee shall:

(a) Review complaints, supplements, answers, and replies consistent with the Complaint Review Process Chart;

(b) Order investigation or further investigation;

(c) Review investigative reports;

(d) Determine whether the commission's Research, Education, and Recovery fund shall be at issue; and

(e) Make recommendations as to the disposition of pending complaint to the full commission.

(3) The committee may be assisted by the commission staff and counsel.

(4)(a) Prior to the complaint screening committee's review of an investigative report, the commission's investigator shall notify the respondent that he or she may request a copy of the commission's investigation report to review and address factual matters contained in the investigation report.

(b) In the investigator's sole discretion, the report and exhibits shall be redacted to protect personal and sensitive information relating to witnesses.

(c) If the respondent believes a factual discrepancy exists in the investigation report, he or she shall notify the investigator in writing within five (5) days of receiving the report for review and provide the investigator with supporting documentation to rebut the factual discrepancy, if available.

(d) The investigator shall make any changes necessary based on his or her review of the respondent's notification.

(5) The committee shall report its findings and recommendations for disposition of complaints to the full commission in the form of a motion, and the commission shall:

(a) Dismiss the complaint without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or

(b) Find a violation of a provision of KRS Chapter 324 or 201 KAR Chapter 11 and issue notice of proposed action against the licensee consistent with KRS Chapter 13B.

(6) The commission, through the complaint screening committee, may engage in informal settlement negotiations, consistent with Section 5 of this administrative regulation.

(7) A commissioner shall recuse himself or herself from any matter relating to an administrative hearing or final order that resolves a case if he or she:

(a) Performed or directed some or all of the investigation;

(b) Has a personal or business relationship with either the complainant or the respondent(s);

(c) Is the complainant, a respondent, or a witness;

(d) Believes that his or her impartiality may fairly be called into question; or

(e) Is advised to recuse by the office of general counsel or the executive director of the Kentucky Real Estate Authority.

(8) The commission shall notify the complainant and respondent in writing of its decision regarding the disposition of a complaint. [Section 4. Complaint Review and Investigation. (1) An aggrieved party shall file a Sworn Statement of Complaint against a licensed real estate sales associate or broker. The complaint shall:

(a) Allege a prima facie case of specific violation of KRS 324.160 in accordance with KRS 324.151;

(b) State the basis of the complaint fully and concisely, including the name of the broker or principal broker;

(c) Be notarized by a notary public;

(d) Include a completed damages claimed form, with a copy of each receipt, estimate, or other evidence of damages attached to the report; and

(e) Be filed within two (2) years from:

1. Actual knowledge of the cause of action; or

2. The time circumstances would reasonably have put the aggrieved party on notice of the cause of action.

(2) If the commission staff review determines the Sworn Statement of Complaint does not allege a prima facie case of a specific violation of KRS 324.160, the aggrieved party shall file a Sworn Supplement to Complaint in accordance with KRS 324.151.

(3) A respondent shall file a Sworn Answer to Complaint if a complaint is filed against him in accordance with the requirements of KRS 324.151(3). The answer shall:

- (a) Identify the respondent;
- (b) State his responses to the complaint;
- (c) Be notarized by a notary public; and
- (d) Include a copy of the following documents:
 1. Listing contract;
 2. Purchase contract;
 3. Seller's disclosure form;
 4. Agency disclosure form; and
 5. Settlement statement.

(4) Upon completion of an investigation following the submission of a complaint and answer, the commission shall:

(a) 1. Dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or

2. Schedule an administrative hearing pursuant to KRS Chapter 13B, 324.151, and 324.170; and

(b) Notify the complainant and respondent of its decision in writing. The notification shall include a brief statement explaining the commission's reasons for the decision.

Section 2. Motions. (1) A request for the commission or a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.

(2) A motion shall state the basis for the motion, including a citation to or description of the legal authority in support of the requested action, if applicable.

(3) A party shall be given an opportunity to respond to a motion.]

Section 4[3]. Withdrawal of a Complaint. A complainant may withdraw a complaint if:

- (1)(a) An answer has not been filed; and
- (b) The withdrawal is made within twenty (20) days of the date the complaint was received by the respondent[~~filed~~]; or
- (2)(a) There is good cause for the withdrawal; and
- (b) The commission approves the withdrawal.

(3) Nothing in this subsection shall prevent the commission from filing its own complaint against a licensee.

Section 5[4]. Settlement by Informal Proceedings. (1) At any time following the filing of a complaint and answer, the commission, through its legal counsel, may enter into informal settlement proceedings with a licensee for the purpose of expeditiously resolving any disciplinary matter.

(2)(a) The commission shall approve or reject all settlement proposals.

(b) Any matter to which a licensee and the commission's legal counsel have stipulated that is rejected by the commission shall not thereafter bind the parties or the commission.

(3) The commission may employ mediation as a method of resolving the matter informally.

(4) All proposed agreed orders shall be signed by the licensee and shall advise the licensee that by entering into an agreed order, the licensee expressly acknowledges that the licensee is fully and completely informed of the due process rights afforded to the licensee and that the licensee knowingly, willingly, and voluntarily agrees to waive those rights and enter into an agreed order.

Section 6. Standards for Filing a Sworn Statement. (1) Any licensee found to have misrepresented facts in any sworn statement shall be subject to disciplinary proceedings by the commission and the commission may seek a criminal indictment for perjury.

Section 7. Emergency Orders and Hearings. (1) Consistent with KRS 324.150(1)(b) and KRS 13B.125, the commission may issue an emergency order prior to conducting a[conduct an emergency] hearing when an alleged escrow account violation warrants emergency action.

(2) An escrow account violation shall warrant emergency action if:

(a) A licensee is alleged to have committed two (2) or more escrow account violations;

(b) A licensee is alleged to have committed one (1) escrow account violation in excess of \$500; or

(c) A substantiated threat to the public's health, safety, or welfare exists.

(3) An emergency order authorized pursuant to this Section of this administrative regulation shall be signed by the Executive Director, the Chair of the commission, and one (1) member of the complaints committee. The order shall be served upon the licensee who is the subject of the emergency order pursuant to KRS 13B.125.

(4) An emergency order issued pursuant to this Section of this administrative regulation may be served on the appropriate financial institution to order an escrow account be frozen until further orders of the commission or a court of competent jurisdiction.

(5) A licensee who is the subject of an emergency order issued pursuant to this Section of this administrative regulation may request an emergency hearing in accordance with KRS 13B.125.

Section 8. Recovery Fund Proceedings. (1) When the Commission determines that the recovery fund shall be at issue in an administrative hearing, the complainant shall become a party.

(2) The Commission shall not represent the complainant in the administrative hearing.

(3) The complainant shall carry the burden of proof on the issue of damages.

Section 9. [Consolidation and Severance. (1) A hearing officer may consolidate cases assigned to his docket upon a finding by the hearing officer that:

(a) There are:

- 1. Common questions of law or fact; or
- 2. Identical issues or witnesses; and

(b) Consolidation is appropriate.

(2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.]

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

(a) "Sworn Statement of Complaint", KREC Form 300, 7/19 [3/01 edition, Kentucky Real Estate Commission];

(b) "Sworn Answer to Complaint", KREC Form 301, 7/19[7/98 edition, Kentucky Real Estate Commission];

(c) "Sworn Supplement to Complaint", KREC Form 302, 7/19 [10/00, Kentucky Real Estate Commission]; and

(d) "Complaint Review Process Chart", 7/19.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601 [40200 Linn Station Road, Suite 201, Louisville, Kentucky 40223], Monday through Friday, 8 a.m. to 4:30 p.m.

LOIS ANN DISPONETT, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

CONTACT PERSON: Marc Manley, Acting General Counsel, Kentucky Real Estate Authority, phone (502) 564-7760, fax (502) 564 1538, email Marc.Manley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Manley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative hearing procedures for matters before the commission and the required forms for a complaint or answer and the standards when filing a sworn statement to the Real Estate Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a settlement option after a hearing is ordered to allow opportunity for more economical and expeditious resolution of the pending matter. This administrative regulation establishes the informal settlement process for entry of agreed orders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 authorize the commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) requires the commission to establish the required forms for a complaint and answer. KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license or ordering discipline such as suspending or revoking a license. This administrative regulation sets forth the rules of practice before the commission, including the filing, investigation, and disposition of complaints as well as the procedure for resolving an administrative complaint initiated by the commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes within the commission's purview because it provides the mechanism for filing, reviewing, and disposing of complaints against licensees and unlicensed persons accused of unlicensed brokerage.

(2) If 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 current administrative regulation in that it adopts a more efficient process for reviewing complaints. The revised process also ensures that licensees are afforded due process by requiring recusal of a commission who has previously reviewed a complaint from the remainder of the process. The proposed administrative regulation also reduces the period of time in which a complaint may be filed against a licensee to be in line with professional liability standards for other real property boards within the Kentucky Real Estate Authority.

(b) The necessity of the amendment to this administrative regulation: Amendment to this administrative regulation is necessary to incorporate the current procedural practice of the commission with regarding to handling complaints and investigations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 authorize the commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) requires the commission to establish the required forms for a complaint and answer. KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license or ordering discipline such as suspending or revoking a license. This administrative regulation sets forth the rules of practice before the commission, including the filing, investigation, and disposition of complaints as well as the procedure for resolving an administrative complaint initiated by the commission.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes within the

commission's purview because it provides the mechanism for filing, reviewing, and disposing of complaints against licensees and unlicensed persons accused of unlicensed brokerage.

(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. 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 procedures incorporated into 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): (b) 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 with this administrative regulations, licensees will be on notice of the commission's complaint disposition practices. Members of the public will benefit from an easier to understand process for filing complaints.

(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, KRS 324.151, and KRS 324.170 require the Real Estate Commission to promulgate administrative regulations regarding the complaint review and administrative hearing process.

(a) How much 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 Comment)**

201 KAR 11:210. Licensing, education, and testing requirements.

RELATES TO: KRS 2.013, 324.010, 324.020, 324.040, 324.045(1), (2), (3), 324.046, 324.085, 324.090, 324.141, 324.160, 324.281, 324.287, 324.310, 324.330, 324.990, 28 C.F.R. 16.30-16.33

STATUTORY AUTHORITY: KRS 324.045, 324.141, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 324.282 ~~require~~authorize the Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a national criminal history check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish ~~reciprocal licensing~~license recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the real estate commission to establish an expiration and renewal date for licenses. KRS 324.310(1) requires the delivery of a sales associate's license to the commission when an association with a principal broker is terminated, and KRS 324.330(2) allows a licensee to place his or her license into inactive status with the commission. KRS 324.330(1) requires notice to be given to the real estate commission when a licensee's location, firm name, surname, or affiliation changes. KRS 324.085(1) requires an actively-licensed agent, except an agent licensed prior to June 19, 1976, to successfully complete six (6) hours of mandatory continuing education each year as a condition of licensure renewal and requires that three (3) of the six (6) hours pertain to the study of real estate law. KRS 324.085(2) requires a licensee who is issued an initial sales associate license after January 1, 2016, to complete forty-eight (48) classroom or online hours of commission-approved post-license education. This administrative regulation establishes requirements for applying for initial licensure, license renewal, and reciprocal licensing~~[license recognition]~~ and

establishes the commission's criminal background check policies for all applicants~~[standards relative to education and licensure application requirements]~~. Additionally, this administrative regulation establishes the procedures for a licensee to report changes to his or her contact information to the commission and sets the penalty for failure to comply with KRS 324.330. Also, this administrative regulation establishes the procedure for the delivery of a sales associate's license to the commission when affiliation with a principal broker is terminated. This administrative regulation establishes the requirements relating to pre-license education, continuing education, and post-license education and the disciplinary consequences for failing to comply with the requirements.

Section 1. Initial Sales Associate License. (1) Prior to applying for an initial sales associate license, a prospective applicant shall:

(a) Complete six (6) academic credit hours, or its equivalent, of prelicensing education with either:

1. An approved pre-license education provider; or

2. An accredited institution as defined by KRS 324.010(8).

(2) An applicant for initial sales associate licensure shall submit:

(a) A national criminal history check in accordance with KRS 324.045(5) and this administrative regulation;

(b) A completed application submitted on Score Report/License Application obtained from the commission's testing provider after passing the required examination, which shall contain a recent photo of the applicant;

(c) Proof of:

1. High school graduation, or its equivalent, or

2. Successful post-secondary completion of:

a. A degree program or

b. Twenty-eight (28) academic credit hours, or the equivalent;

(d) Proof of completion of six (6) academic credit hours, or its equivalent in qualifying prelicense education;

(e) Proof of Errors and Omissions insurance coverage compliant with KRS 324.395 and 201 KAR 11:220, if the license will be immediately active;

(f) The nonrefundable sixty (60) dollar original license fee and sixty (60) dollar recovery fund fee required by KRS 324.287(2) and (8); and

(g) A completed and signed "Consent to Jurisdiction and Service of Process" KREC Form 205, if the applicant resides outside of the Commonwealth of Kentucky.

(3) An applicant may submit a paper or electronic application.

(4) Within ten (10) days of being issued a license number and OP ID, the licensee shall:

(a) Create an Online Services Portal account;

(b) Verify the licensee's current residential address and telephone number; and

(c) Provide one (1) valid electronic mail address. ~~[In lieu of proof of high school graduation or a GED diploma, an applicant may submit an official transcript from a United States institution or from an institution outside of the United States, which indicates successful post-secondary completion of:~~

~~(1) A degree program; or~~

~~(2) Twenty-eight (28) academic semester hours or the equivalent.]~~

Section 2. Broker's License. (1) Prior to applying for a broker's license, a prospective applicant shall:

(a) Complete not less than twenty-one (21) academic credit hours, consistent with KRS 324.046(1)(a), of education to acquire a broker's license, including a minimum of:

1. Nine (9) academic credit hours of real estate courses, which shall not include an applicant's sales associate prelicense education;

2. Three (3) academic credit hours of Broker Management; and

3. Nine (9) academic credit hours of broker elective courses, approved by the commission.

(b) A licensee shall not get duplicate course credit toward a broker's license;

(c) A licensee shall get course credit toward his or her broker's

license by completing NAR designation courses. Credit for the designation course shall be awarded consistent with accreditation at the time the course is completed.

(d) An applicant for a broker's license may submit a request for an education review by submitting a completed "Broker Education Review Form," KREC Form 207.

(2) An applicant for a broker's license shall submit:

(a) Proof of the requisite sales associate experience as provided in KRS 324.046(1)(b) or its equivalent as provided in KRS 324.046(3) or (4);

(b) A completed application submitted on Score Report/License Application obtained from the commission's testing provider after passing the required examination;

(c) Proof of completion of the broker curriculum education real estate courses required by KRS 324.046(1)(a);[and] KRS 324.046(3); **and 201 KAR 11:170 Section 7.**

(d) Proof of Errors and Omissions insurance coverage compliant with KRS 324.395 and 201 KAR 11:220, if the license will be immediately active, or proof of extended reporting period coverage as required by KRS 324.395 if the license will be placed into inactive status;

(e) An original copy of the applicant's national criminal history check obtained consistent with KRS 324.045(5) and this administrative regulation;

(f) A completed and signed "Consent to Jurisdiction and Service of Process" KREC Form 205, if the applicant resides outside of the Commonwealth of Kentucky; and

(g) The nonrefundable sixty (60) dollar original license fee required by KRS 324.287(2).

(4) An applicant may submit a paper or electronic application.

Section 3. **Reciprocal Licensing**[**License recognition**]. (1) An individual actively licensed as a real estate professional outside of Kentucky may apply for an equivalent Kentucky license.

(2) To obtain a **sales associate** license by **reciprocal licensing** [**license recognition**], an individual shall:

(a) File with the commission a national criminal history check in accordance with KRS 324.045(5) and this administrative regulation;

(b) File with the commission a certification of licensure issued within the preceding ninety (90) days by the regulatory authority of **the state for which the individual seeks reciprocity**[**each state in which the individual has, at any time, held a real estate license**];[and]

(c) **Submit proof of completion of six (6) academic credit hours or their equivalent in real estate courses from an accredited institution or approved real estate school pursuant to KRS 324.046 and KRS 324.141(1)(a)(3);**

(d)[(c)] Pass the Kentucky law portion of the licensing examination for[**either**] a sales associate's license[**or a broker's license as appropriate**];

(e)[(d)] Submit a completed and signed "Consent to Jurisdiction and Service of Process" KREC Form 205, if the applicant resides outside of Kentucky; and

(f)[(e)] The nonrefundable sixty (60) dollar original license fee and sixty (60) dollar recovery fund fee required by KRS 324.287(2) and (7).

(3) **To obtain a broker license by reciprocal licensing an individual shall:**

(a) **File with the commission a national criminal history check in accordance with KRS 324.045(5) and this administrative regulation;**

(b) **File with the commission a certification of licensure issued within the preceding ninety (90) days by the regulatory authority of the state for which the individual seeks reciprocity;**

(c) **Submit proof of completion of twenty one (21) academic credit hours or their equivalent in real estate courses from an accredited institution or approved real estate school pursuant to KRS 324.046 and KRS 324.141(1)(a)(3);**

(d) **Pass the Kentucky law portion of the licensing examination for a broker's license;**

(e) **Submit a completed and signed "Consent to**

Jurisdiction and Service of Process" KREC Form 205, if the applicant resides outside of Kentucky; and

(f) The nonrefundable sixty (60) dollar original license fee and sixty (60) dollar recovery fund fee required by KRS 324.287(2) and (8).

(4) For purposes of subsections (2)(c) and (3)(c) of this Section, "or their equivalent" shall mean any education requirements approved by the commission pursuant to a reciprocity agreement entered into between the jurisdiction from which the applicant is seeking reciprocity and the commission.

(5) An applicant may submit a paper or electronic application.

(6)[(4)] Within ten (10) days of being issued a license number and OP ID, the licensee shall:

(a) Create an Online Services Portal account;

(b) Verify the licensee's current residential address and telephone number; and

(c)1. Provide one (1) electronic mail address;

2. The licensee may provide additional, unique electronic mail address(es).

Section 4. Real Estate Examination. (1) A successful passing score on required portions of the real estate examination mandated by KRS 324.045(2) shall be valid for sixty (60) days.

(2) An applicant who fails to pass any required portion of the examination mandated by KRS 324.045(2) three (3) times shall wait at least thirty (30) calendar days from the date of their third failed examination prior to retaking the examination, or the score shall be void.

Section 5. Foreign Language Diplomas or Transcripts. (1) If an applicant submits documentation of qualifying education in a language other than English, the diploma or transcript shall:

(a) Be accurately translated by a foreign language document translation service; and

(b) Include a certification stating that the translation is true, accurate, and complete.

(2) The applicant shall provide a letter to the commission indicating that the curriculum of the proffered education is equivalent to a high school diploma or GED. The comparison shall be made by an education credential service provider with membership in the National Association of Credential Evaluation Services.

(3) If the applicant is unable to comply with the requirements of this section, the applicant shall submit proof of the receipt of a GED granted by an agency or institution within the United States.[Section 3. An applicant who successfully passes the required portions of the real estate examination shall apply for a license within sixty (60) days after the examination. A candidate who fails to apply for a license within this period shall be reexamined.]

Section 6. National Criminal History Check. (1) Prior to taking a licensure examination, an applicant shall request a copy of the applicant's national criminal history check, which shall only be valid for ninety (90) days from the date of the record report.

(2)(a) The applicant may request a copy of his or her national criminal history check from the Federal Bureau of Investigation pursuant to the provisions of 28 C.F.R. 16.30 to 16.33 or through the Kentucky State Police for submission to the Federal Bureau of Investigation consistent with KRS 324.045(5).

(b) An applicant may submit the Criminal History Affidavit, KREC Form 209, with his or her application for licensure if:

1. The applicant is unable to obtain his or her national criminal history check from the Federal Bureau of Investigation because the applicant's fingerprints are rejected;

2. The applicant submits proof that he or she was fingerprinted at a recognized state or local law enforcement agency;

3. The applicant submits a Kentucky Administrative Office of the Courts (AOC) Fast Check Criminal Records Report, or a similar informal background report from the jurisdiction where the applicant resides; and

4. The applicant submits proof of an alternate request for a

Federal Bureau of Investigation records check by name or social security number.

(c) An issued license shall subject to discipline if, while an applicant, the licensee:

1. Having submitted a Criminal History Affidavit, KREC Form 209, with his or her application for licensure, fails to submit the national criminal history check within ten (10) days of receiving the report; or

2. Failed to report any new criminal charges or convictions that occurred after the national criminal history check report date.

(3)(a) The commission shall investigate a national criminal history check which reveals a felony conviction within the previous ten (10) years, or a misdemeanor conviction within the previous five (5) years, and may, at its discretion, investigate any charges or convictions revealed by the national criminal history check or any other evidence of dishonesty, untruthfulness, or bad reputation of the applicant.

(b) In the sole discretion of the chair of the commission, the commission may delegate the investigative process to the Applicant Review Committee, a subcommittee of the commission, to be comprised of no more than two (2) commissioners;

(c) The Applicant Review Committee shall operate consistent with KRS Chapter 335B.

(4) Following the completion of the investigation, the commission shall review the investigation report and shall:

(a) Order the applicant to appear before the commission for a hearing before the real estate commission or the real estate commission's authorized representative to determine whether the applicant meets the standards of KRS 324.045; or

(b) Allow the applicant to proceed with his or her licensure application without a hearing.

(5) If an authorized representative conducts the hearing, the authorized representative shall recommend to the real estate commission whether the applicant meets the standards of KRS 324.045. The real estate commission may accept the recommendation, reject the recommendation and enter a separate order, or remand to the representative for further proceedings in accordance with KRS Chapter 13B.

(6) Following the hearing, if all other licensing pre-requisites are satisfied, the real estate commission shall either approve or deny the application and notify the applicant of its decision along with a written explanation of the reasons for its decision.

(7) If the real estate commission denies the application, the real estate commission shall indicate in its order, if and when, the applicant will be eligible to submit a subsequent licensure application.

(8) If an applicant, or a licensee without an active license, has engaged in any unlicensed brokerage activity within this Commonwealth, that person shall, prior to the issuance or reactivation of any license by the commission, submit proof that he or she has disgorged all fees earned or received as a result of the unlicensed brokerage activity, consistent with KRS 324.990(2).

Section 7. Release by Principal Broker. (1) Upon notification from the principal broker or the affiliate licensee that an affiliate licensee has been released pursuant to KRS 324.310(1), the commission shall notify the affiliate licensee at his or her last electronic mail address(es) on file at the commission that, within thirty (30) days of the date of the release notification, the licensee shall:

(a) Reaffiliate with another broker by submitting a completed "Acceptance and Release Form", KREC Form 200, or by using the licensee's online services portal; or

(b) Request that his or her license be placed into inactive status by using the licensee's online services portal or by submitting a completed "License Status and Personal Information Update Form", KREC Form 201;

(c) If the affiliate holds a broker license and was formerly a principal broker, he or she shall:

1. Affiliate with another principal broker;
2. Open a new office as principal broker; or
3. Place his or her license into inactive status.

(2) Failure to comply with the notification issued by the

commission shall result in the cancellation of the licensee's license.

(3) A licensee with a cancelled license shall not engage in real estate brokerage activity during the period of cancellation.

Section 8. License Renewal. (1)(a) Licenses shall be renewed on or before March 31 through the licensee's Online Services Portal account.

(b) A licensee who is unable to renew his or her license using his or her Online Services Portal may utilize the License Renewal Form, KREC Form 208.

(2) A cancelled license shall not be renewed until the license is reactivated and in good standing.

(3)(a) A license shall be cancelled if not renewed.

(b) A licensee with a cancelled license is prohibited from engaging in real estate brokerage pursuant to KRS 324.160(2).

(4) A licensee shall file or verify with the commission at renewal a telephone number, residential address, and an electronic mail address or addresses.

Section 9. Licensing Records. (1)(a) A licensee shall notify the commission by submitting a completed "License Status and Personal Information Update Form", KREC Form 201, or through the online services portal, of a change in the following information:

1. The licensee's legal name;

2. The licensee's nickname;

3. Any alternate or assumed name being used by the licensee;

4. The licensee's residential address;

5. The licensee's electronic mail address or addresses; or

6. The licensee's preferred direct or personal phone number.

(b) If the licensee is changing his or her legal name, he or she shall provide legal documentation supporting the changed name.

(c) Processing of the changes contemplated in (1)(a) of this section shall require payment of a nonrefundable ten (10) dollar change request fee required by KRS 324.287.

(d) The licensee shall submit a completed and signed "Consent to Jurisdiction and Service of Process" KREC Form 205, if the licensee is moving to a residence outside the Commonwealth of Kentucky.

(2)(a) A licensee shall notify the commission by completing, signing, and filing with the commission the "Certification of Insurance Coverage" KREC Form 203, or through the online services portal, of any change in private professional liability insurance coverage or extended reporting period coverage as required by KRS 324.395.

(b) This notice shall be accompanied by a nonrefundable ten (10) dollar change request fee required by KRS 324.287(7).

(3)(a) A principal broker shall notify the commission of any change of his or her primary company location, firm name, alternate or assumed name, D/B/A(s), branch office name, branch office address, designated manager(s), escrow account(s), or email address(es) by completing, signing, and filing with the commission the "Company Information Update Form", KREC Form 202, or through the online services portal.

(b) This notice shall be accompanied by a nonrefundable ten (10) dollar change request fee required by KRS 324.287.

(4)(a) A principal broker shall notify the commission of a change in principal broker at an existing real estate brokerage company by submitting a completed "Company Change of Principal Broker Form", KREC Form 204, or through the online services portal.

(b) This notice shall be accompanied by the fee required by KRS 324.287.

(5)(a) An affiliated licensee shall submit a completed "Acceptance and Release Form", KREC Form 200, to change his or her affiliation to another principal broker.

(b) This form shall be accompanied by the fee required by KRS 324.287.

(6) A licensee requesting a license history certification shall complete and submit the "License Status and Personal Information Update Form", KREC Form 201, accompanied by a nonrefundable ten (10) dollar fee for each certification requested.

(7) A licensee shall be subject to discipline consistent with the commission's authority in KRS 324.160(1) for a violation of KRS

324.160(4)(t) if the licensee fails to submit notification to the commission of any changes required by this section within ten (10) days of the change.

Section 10. Inactive Status. (1) An active licensee who wishes to place his or her license into inactive status shall submit Form 203, "License Status and Personal Information Update Form", or through the online services portal.

(2) All licensees placing a license into inactive status shall:

(a) Obtain extended reporting period (ERP) coverage insurance for a period of one (1) year as established by KRS 324.395(1); and

(b) Submit a completed "Certificate of Insurance Coverage", KREC Form 203, with proof of the required coverage.

(3) The coverage obtained pursuant to subsection (2) of this section shall be consistent with the minimum requirements prescribed by 201 KAR 11:220.

(4) To reactivate a license from inactive status, a licensee shall complete and submit Form 203, "License Status and Personal Information Update Form", or through the online services portal, and comply with KRS 324.310 and complete the following education:

(a) If the licensee has not taken the Core course in four (4) years, the licensee shall complete Core; and

(b) If the licensee has been inactive during more than one (1) education cycle, the licensee shall take six (6) hours of continuing education for each education cycle he or she was inactive, **not to exceed a total of thirty (30) hours**, with three (3) hours for each year in law courses. **This subsection shall not take effect until January 1, 2021.**

(5) If the licensee is exempt from continuing education requirements pursuant to KRS 324.046(5), the licensee shall not be required to complete any continuing education to reactivate a license from inactive status.

Section 11. Mandatory Continuing Education. (1) An active licensee, licensed by the commission on or after June 19, 1976, shall comply with the requirements of KRS 324.085(1) by attending and successfully completing six (6) hours of continuing education courses sponsored or approved by the commission each year. Three (3) of the hours of continuing education shall be in law, and three (3) of the hours of continuing education may be electives.

(a) An active licensee shall complete the continuing education requirements consistent with KRS 324.085(1) no later December 31 of the first year in the renewal cycle. An active licensee shall receive continuing education credit for any approved course completed on or before December 31, so long as the education provider has reported the licensee's course completion to the commission before 11:59 p.m. on December 31 consistent with 201 KAR 11:170, Section 6(3) for classroom courses or 201 KAR 11:170, Section 9(10) for distance education courses.

(b) An active licensee who fails to complete his or her continuing education requirement shall have his or her license cancelled and be ineligible to renew if the licensee has not completed the continuing education required by KRS 324.085(1) and this administrative regulation.

(2) An active licensee's annual mandatory continuing education requirement shall not be satisfied by the completion of a pre-license course.

(3) A candidate shall not submit completion of the same continuing education course more than once for licensure credit in the same calendar year.

(4) A licensee shall not receive credit for more than nine (9) hours of continuing education in a calendar day.

(5) A licensee shall not receive credit for a course if the licensee arrives more than ten (10) minutes after the scheduled start of the course or after the conclusion of any break during the course.

(6) An active licensee shall attend a commission-approved core course once every four (4) years, with the first four (4) year cycle beginning from the year of initial licensure. The core course shall:

(a) Satisfy the licensee's mandatory continuing education

requirement for the year in which the course is taken; and

(b) Be a six (6) hour comprehensive review of the requirements of:

1. KRS Chapter 324;

2. 201 KAR Chapter 11;

3. Common and federal law relating to real estate; and

4. The standards of practice for a real estate licensee.

(7) An active licensee who fails to complete Core in a year in which the licensee is required to complete Core, even if the licensee completed other continuing education, shall be subject to the delinquency procedures set forth in Section 12.

Section 12. Exemptions from the Continuing Education Requirement. (1) No person licensed prior to June 19, 1976 shall be required to complete continuing education.

(2) A **reciprocal licensing[license-recognition]** broker, who has been licensed for less than three (3) months when education is due, shall not be required to attend a continuing education course during the first education cycle in which he or she is licensed in Kentucky.

(3) A **reciprocal licensing[license-recognition]** sales associate shall not be required to complete continuing education during the first two (2) full education cycles of licensure in Kentucky. A **reciprocal licensing[license-recognition]** sales associate shall complete the education required by KRS 324.085(2).

(4) A licensee shall not be required to comply with KRS 324.085(1) during the first two (2) full education cycles from the date of issuance of a sales associate license.

(5) A licensee whose license is inactive shall not be required to attend continuing education courses while the license remains inactive, except as provided in this administrative regulation.

Section 13. Continuing Education Compliance and Delinquency. (1) The commission shall, for good cause shown, extend the time requirements established by KRS 324.085(1) and this administrative regulation. Good cause may include a true hardship, extensive medical issues for the licensee or the licensee's immediate relative, active military duty or service, or other good cause that clearly warrants relief.

(2)(a) The request for extension and any supporting documentation shall be received in writing on or before the last day of the month or year in which the education requirement is due, unless the hardship prevents compliance with subsection (1).

(b) A licensee shall not be cancelled while a hardship request is pending.

(c) The commission shall review the hardship request and notify the licensee in writing of the commission's decision.

(3)(a) If a licensee fails to comply with the mandatory education requirements of this administrative regulation, the executive director or his representative shall issue a delinquency notice to the licensee.

(b) If the licensee fulfilled the education requirement in the year it was required, proof shall be forwarded to the commission upon request, and the licensee shall be reactivated.

(4)(a) If the licensee fails to request an extension and fails to forward proof of completion prior to the deadline, the license shall be cancelled automatically.

(b) A license cancelled for nonfulfillment of the continuing education requirements may be reactivated if the licensee enters into a written delinquency plan, pays a \$1,000 administrative fine, and either:

1. Places the license into inactive status; or

2. Agrees in the delinquency plan to complete the delinquent continuing education requirements for the previous calendar year on or before April 30.

(5) A licensee who places his or her license into inactive status under the provisions of this section shall not reactivate the license until he or she has:

(a) Completed all delinquent mandatory continuing education requirements; and

(b) Satisfied the requirements of KRS 324.310.

(6) A licensee who fails to place his or her license into inactive

status or file the delinquency plan immediately following the year in which continuing education requirements were not fulfilled, shall automatically have the license cancelled and shall not be eligible to renew without completing the delinquent education.

(7) If a licensee fails to complete the requirements of the delinquency plan within twenty (20) days of the agreed completion date, the commission shall issue a notice of violation to the licensee.

(8) Failure to respond to the notice of violation shall result in a default order of suspension for a period of six (6) months.

(9) If the commission suspends the license as a result of a default order or after hearing, if one is requested, the licensee shall not be allowed to activate the license unless, within ninety (90) days following expiration of the suspension, the licensee:

(a) Completes all delinquent mandatory continuing education requirements;

(b) Submits the required documents to reinstate the license; and

(c) Pays all necessary reactivation, renewal, and transfer fees.

(10) If the licensee does not reinstate the license within ninety (90) days following the completion of the suspension period, the license shall be cancelled and the licensee shall be obligated to meet the requirements for initial licensure, including retaking the examination.

(11) A license cancelled under this section shall not be reactivated until the licensee has completed all of his or her mandatory education requirements, complied with all commission orders, and submitted all other applicable licensing requirements.

(12) Failure of the executive director or his representative to issue a deficiency notice to the licensee shall not relieve the licensee of his or her mandatory education requirements or the penalties associated with the deficiency.

(13) A license cancelled for continuing education deficiency shall be subject to the provisions of KRS 324.160(2).

Section 14. Post-License Education Compliance and Delinquency. (1) The time requirements established by KRS 324.085(2) and this administrative regulation shall be extended by the commission for good cause shown, such as a true hardship, extensive medical issues for the licensee or the licensee's immediate relative, active military duty or service, or other good cause that clearly warrants relief.

(2) The license of a licensee who fails to complete his or her post-licensing education on or before the licensee's deadline shall be automatically cancelled the following day.

(3) A license cancelled for post-license education deficiency shall not be permitted to reactive his or her license until all delinquent post-licensing education is complete.

(4) A license cancelled for post-license education deficiency shall be subject to the provisions of KRS 324.160(2).

Section 15. Death or Incapacity of a Principal Broker. (1) Pursuant to KRS 324.425, an affiliated licensee may complete and close the existing business of a deceased or incapacitated broker for a temporary period, not to exceed six (6) months.

(2) Any affiliate requesting principal broker status pursuant to KRS 324.425 shall submit a completed "Notification of Death or Incapacity of a Licensee", KREC Form 206.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Acceptance and Release Form", KREC Form 200, 7/2019;

(b) "License Status and Personal Information Update Form", KREC Form 201, 7/2019;

(c) "Company Information Update Form", KREC Form 202, 7/2019;

(d) "Certification of Insurance Coverage", KREC Form 203, 7/2019;

(e) "Company Change of Principal Broker Form", KREC Form 204, 7/2019;

(f) "Consent to Jurisdiction and Service of Process", KREC Form 205, 7/2019;

(g) "Notification of Death or Incapacity of a Licensee", KREC

Form 206, 7/2019;

(h) "Broker Education Review Form", KREC Form 207, 7/2019;

(i) "License Renewal Form", KREC Form 208, 7/2019; and

(j) "Criminal History Affidavit", KREC Form 209, 7/2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available from the commission's Web site: www.krec.ky.gov.

LOIS ANN DISPONETT, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

CONTACT PERSON: Marc Manley, Acting General Counsel, Kentucky Real Estate Authority, phone (502) 564-7760, fax (502) 564-1538, email Marc.Manley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Manley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for applying for initial licensure, license renewal, and license recognition and establishes the commission's criminal background check policies for all applicants. Additionally, this administrative regulation establishes the procedures for a licensee to report changes to his or her contact information to the commission and sets the penalty for failure to comply with KRS 324.330. Also, this administrative regulation establishes the procedure for the delivery of a sales associate's license to the commission when an association with a principal broker is terminated. Lastly, this administrative regulation also introduces the online portal and electronic application process for all current a prospective licensees.

(b) The necessity of this administrative regulation: KRS 324.281(5) and 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 carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a criminal background check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the Real Estate Commission to establish an expiration and renewal date for licenses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and 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 carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a criminal background check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the Real Estate Commission to establish an expiration and renewal date for licenses. KRS 324.310(1) requires the delivery of a sales associate's license to the commission when an association with a

principal broker is terminated, and KRS 324.330(2) allows a licensee to place his or her license into inactive status with the commission. KRS 324.330(1) requires notice to be given to the Real Estate Commission when a licensee's location, firm name, surname, or affiliation changes. This administrative regulation establishes requirements for applying for initial licensure, license renewal, and license recognition and establishes the commission's criminal background check policies for all applicants. Additionally, this administrative regulation establishes the procedures for a licensee to report changes to his or her contact information to the commission and sets the penalty for failure to comply with KRS 324.330. Also, this administrative regulation establishes the procedure for the delivery of a sales associate's license to the commission when an association with a principal broker is terminated.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Amendment to this administrative regulation will allow for almost all processes to be completed by licensees by using an online services portal. This will drastically reduce paperwork and time to achieve basic licensing functions. Additionally, amendment to this administrative regulation will provide concise, clear guidance on the licensing process.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation establishes requirements for applying for initial licensure, license renewal, and license recognition and establishes the commission's criminal background check policies for all applicants. Additionally, this administrative regulation establishes the procedures for a licensee to report changes to his or her contact information to the commission and sets the penalty for failure to comply with KRS 324.330. Also, this administrative regulation establishes the procedure for the delivery of a sales associate's license to the commission when an association with a principal broker is terminated. Lastly, this administrative regulation also introduces the online portal and electronic application process for all current a prospective licensees.

(b) The necessity of the amendment to this administrative regulation: KRS 324.281(5) and 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 carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a criminal background check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the Real Estate Commission to establish an expiration and renewal date for licenses. Amendment to this administrative regulation will bring the commission's processes into conformity with statute while also modernizing the process and reducing the need for duplicative paperwork.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.281(5) and 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 carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a criminal background check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS

324.090(1) requires the Real Estate Commission to establish an expiration and renewal date for licenses. KRS 324.310(1) requires the delivery of a sales associate's license to the commission when an association with a principal broker is terminated, and KRS 324.330(2) allows a licensee to place his or her license into inactive status with the commission. KRS 324.330(1) requires notice to be given to the Real Estate Commission when a licensee's location, firm name, surname, or affiliation changes. This administrative regulation establishes requirements for applying for initial licensure, license renewal, and license recognition and establishes the commission's criminal background check policies for all applicants. Additionally, this administrative regulation establishes the procedures for a licensee to report changes to his or her contact information to the commission and sets the penalty for failure to comply with KRS 324.330. Also, this administrative regulation establishes the procedure for the delivery of a sales associate's license to the commission when an association with a principal broker is terminated.

(d) How the amendment will assist in the effective administration of the statutes: Amendment to this administrative regulation will allow for almost all processes to be completed by licensees by using an online services portal. This will drastically reduce paperwork and time to achieve basic licensing functions. Additionally, amendment to this administrative regulation will provide concise, clear guidance on the licensing process.

(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. 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: Current and prospective licensees and members of the general public are not required to take any action to be in compliance with this administrative regulation. Education providers will be required to amend their instruction materials to comply with the new procedures incorporated into 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 with this administrative regulations, current and prospective licensees will benefit from a simplified licensing process, from initial application to renewal and changing business relationships. Members of the public will benefit from real-time information for license verification purposes.

(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) 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 carry out and enforce the provisions of KRS Chapter 324. KRS 324.040(2) requires applicants for licensure as a broker or sales associate to apply in writing on forms prepared or furnished by the Real Estate Commission. KRS 324.045(4) authorizes the commission to promulgate an administrative regulation to require a criminal background check prior to licensure. KRS 324.141(1) authorizes the commission to promulgate administrative regulations to establish license-recognition procedures that allow out-of-state actively-licensed sales associates and brokers to apply for a Kentucky license that is the same as, or equivalent to, their out-of-state license. KRS 324.090(1) requires the Real Estate Commission to establish an expiration and renewal date for licenses.

(a) How much 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 approximately \$1,320,900.00 in revenue for state government in the first year from renewal licensing fees, and approximately \$1,320,900.00 in revenue for state government in the first year from recovery fund fees. These estimates are based on the current number of licensees. The Commission anticipates generating approximately \$192,000.00 in revenue from initial licensing fees based on current licensing trends in the first year. The Commission anticipates generating approximately \$178,000.00 in revenue from miscellaneous licensing fees in the first year based on current trends. This administrative regulation will not generate any revenue for 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 generate approximately \$1,320,900.00 in revenue for state government in subsequent years from renewal licensing fees, and approximately \$1,320,900.00 in revenue for state government in subsequent years from recovery fund fees, with every other year being a year in which revenue is generated for license renewal and recovery fund fees. These estimates are based on the current number of licensees. The Commission anticipates generating approximately \$192,000.00 in revenue from initial licensing fees based on current licensing trends in subsequent years. The Commission anticipates generating approximately \$178,000.00 in revenue from miscellaneous licensing fees in subsequent years based on current trends. This administrative regulation will not generate any revenue for 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 beyond ordinary revenues and expenditures.

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amended After Comments)**

201 KAR 11:220. Errors and omissions insurance requirements.

RELATES TO: KRS 324.010, 324.020, 324.395

STATUTORY AUTHORITY: KRS 324.282, 324.395(4), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and 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 to carry out and enforce the provisions of KRS Chapter 324. KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry[(4) allows licensees the option of obtaining] errors and omissions insurance to cover all activities contemplated under KRS Chapter 324[independently, and] KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage. This administrative regulation sets forth the minimum terms and conditions of insurance coverage required under KRS 324.395[procedures and standards for obtaining insurance independently].

Section 1. Minimum coverage requirements. (1) A licensee shall carry continuous errors and omissions coverage that, at a minimum includes:[(1) An insurance company providing real estate errors and omissions insurance for real estate licensees shall provide a signed certification to the insured licensee which shall confirm that the obligations of the insurance company meet the minimum requirements set forth in this administrative regulation.

(2) A licensee who chooses to be insured by other than the group insurance policy obtained by the commission shall file the private carrier certification of coverage with the license renewal application in accordance with KRS 324.395(6). This certification shall be available on the commission's Web site, www.krec.ky.gov, and shall be included in the yearly renewal package mailed to all principal brokers.

Section 2. The insurance for which the certification has been executed shall not be terminated, cancelled, lapsed, or nonrenewed unless the insurance company has provided the commission with prior written notice.

Section 3. The minimum requirements for the coverage contained in the insurance policy for which the certification has been executed shall provide that: (1) Coverage shall be that known as real estate agents errors and omissions insurance or real estate agents professional liability insurance.]

(a) A[(2) The] limit of liability[shall] not[be] less than \$100,000 for any one (1) claim, excluding the cost of investigation and defense; and

(b) An annual aggregate limit of liability of not[-, nor] less than \$1,000,000[annual aggregate limit of liability], excluding the cost of investigation and defense.

Section 2. Firm Coverage. (1) A principal broker who purchases[decides to purchase independent] errors and omissions "firm coverage" insurance shall have at least the following aggregate amounts:

(a) One (1) to forty (40) licensees shall carry a \$1,000,000 annual aggregate; or

(b) Forty-one (41) or more licensees shall carry a \$2,000,000 annual aggregate.

Section 3. Deductibles. All errors and omissions or professional liability insurance policies shall have maximum deductibles, which may be separate deductibles, which shall not exceed:

(1) \$2,500 for judgment or settlement and

(2) \$1,000 for the cost of investigation and defense. [(3) The maximum deductibles, which may be separate deductibles, shall not exceed \$2,500 for judgment or settlement and \$1,000 for the cost of investigation and defense.]

(4) Coverage shall apply for any covered claim resulting from a licensed activity that occurred subsequent to April 1, 1987, unless the claim had been made against the licensee before the present insurance policy's inception or is insured by a previous insurance policy.

Section 4. Except as provided in Section 5 of this administrative regulation, coverage shall not exclude claims brought against the insured arising out of an act or failure to act by the insured licensee when performing a professional service for which a license is required by the Commonwealth of Kentucky under KRS 324.020.]

Section 4. Exclusions permitted[5]. Coverage may exclude claims brought against the insured, regardless of whether the professional service involves an activity for which a license is required by the Commonwealth of Kentucky, consistent with common custom in the market.

Section 5. Licensee certification of compliance. A licensee who chooses to obtain an insurance policy other than the group insurance policy obtained by the commission pursuant to KRS 324.395(3) shall file with the commission a Certification of Insurance Coverage, KREC Form 203 annually upon issuance of the initial private insurance policy or its renewal.]:

(1) Arising out of a dishonest, fraudulent, criminal or malicious act, error, or omission, if committed by, at the direction of, or with the knowledge of the insured;

(2) Arising as a result of the insolvency of the insured;

(3) Brought about or contributed to by any inability or failure to pay or collect premium, escrow, or tax money;

(4) Brought about by any employee, or former employee arising out of the contract of employment with the insured and alleging breach thereof;

(5) Arising out of any injury or damage which the insured either expected or intended;

(6) Brought about by bodily injury, sickness, disease, or death of any person or physical injury to, or destruction of, or loss of use of tangible property;

(7) Arising out of libel, slander, defamation of character, false arrest or imprisonment, wrongful entry, [or] eviction, or other invasion of the right of private occupancy, publications or utterances in violation of an individual's right of privacy, or malicious prosecution;

(8) Arising out of services performed by the insured which are subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, as amended;

(9) Arising out of any violation of the Securities Act of 1933, 15 U.S.C. 77a, as amended or the Securities Exchange Act of 1934, 15 U.S.C. 78a, as amended or any state blue sky or securities law, or similar state or federal statutes;

(10) Arising out of the conversion, misappropriation, commingling, or defalcation of funds or other property;

(11) Brought against a real estate property manager for failure to effect or maintain adequate levels or types of insurance;

(12) Arising out of unlawful discrimination;

(13) Arising out of liability assumed by the insured under any indemnity, hold harmless, or similar provisions or agreements, except this exclusion shall not apply to liability the insured would have in the absence of these agreements;

(14)(a) Arising:

1. Out of the insured's business; and

2. By or on behalf of an investor, shareholder, or partner in any corporation, limited or general partnership, real estate trust, or venture in which the insured has or had a participating interest, directly or indirectly, in the profits or losses; or

(b) In connection with the insured's activities as an underwriter, sponsor, partner, joint or coventurer, or member in any real estate partnership, venture, or syndicate;

(15) Arising out of, relating to, or based upon the dispersal, discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases, or other materials, irritants, contaminants, or pollutants. Pollutants shall include any solid, liquid, gaseous, thermal, biological, or radioactive substance, material, matter, toxin, irritant or contaminant, including radon, asbestos, chemicals and waste. Waste shall include materials to be recycled, reconditioned, or reclaimed;

(16) Excluded by the Nuclear Energy Liability Exclusion Endorsement (broad form) filed by the Insurance Services Office, Inc. with the Kentucky Department of Insurance and identified as form #IL 00-21-11-85;

(17)(a) Arising from the sale or property management of property developed, constructed, or owned by:

1. The insured;

2. Any firm or corporation in which the insured has a financial interest; or

3. Any firm coming under the same financial control as the insured.

(b) This exclusion shall not apply and coverage shall be extended to claims arising from the sale of real property, if all three (3) of the following conditions are met:

1. The property was acquired by the insured under a guaranteed sale listing contract;

2. The title to the property was only temporarily held by the insured during the transit period, not to exceed one (1) year, from acquisition to resale; and

3. The property is listed for sale during the entire transit period; or

(18) Arising out of the interests, operations, or activities of the insured as a mortgage banker or correspondent, escrow agent, construction manager, or property developer. An insured shall not be considered engaging in the activities of an escrow agent merely because the insured holds earnest money deposits, rental deposits, or similar items.].

LOIS ANN DISPONETT, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

CONTACT PERSON: Marc Manley, Acting General Counsel, Kentucky Real Estate Authority, phone (502) 564-7760, fax (502) 564-1538, email Marc.Manley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Marc Manley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the terms and conditions of insurance coverage required under KRS 324.395.

(b) The necessity of this administrative regulation: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324. KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324. KRS 324.395(5) requires the commission to determine the terms and conditions of

mandatory errors and omissions insurance coverage. This administrative regulation sets forth the minimum terms and conditions of insurance coverage required under KRS 324.395.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324, and this regulation discharges the commission's duty under KRS 324.395(5) to determine the terms and conditions of mandatory errors and omissions insurance coverage.

(2) If 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 the requirements and application to be consistent with statute.

(b) The necessity of the amendment to this administrative regulation: Amendment to this administrative regulation is necessary to eliminate unnecessary and inappropriate provisions from the former regulation and to clarify requirements for required insurance coverage going forward. The amendment further requires licensees to provide certification of their coverage to the Commission if they choose to secure coverage by a policy other than the Commission's group policy.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324. KRS 324.395(5) requires the commission to determine the terms and conditions of mandatory errors and omissions insurance coverage. This administrative regulation sets forth the minimum terms and conditions of insurance coverage required under KRS 324.395

(d) How the amendment will assist in the effective administration of the statutes: KRS 324.395 requires all real estate licensees except those whose licenses are in inactive status to carry errors and omissions insurance to cover all activities contemplated under KRS Chapter 324, and this regulation discharges the commission's duty under KRS 324.395(5) to determine the terms and conditions of mandatory errors and omissions insurance coverage.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Current and prospective licensees will be affected by this administrative regulation. Insurance providers will be affected to a lesser extent, as they may be required to provide new policies to satisfy the revised minimum terms and conditions of the required coverage.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will be required to ensure that their coverage complies with the revised minimum terms and conditions of the required coverage. Insurance companies will have to offer compliant insurance products.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The coverage limits, deductibles, and exclusions for individual policies are not changing. Therefore, the entities identified in question (3) should not incur significant costs to comply with this administrative regulation. Costs may vary depending on the insurer and the type of policy.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with the amended administrative regulation, licensees will benefit from clear, consistent requirements for the required coverage.

(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? Yes, tiering is applied. A principal broker who decides to purchase firm coverage is required to have aggregate coverage based on the number of licensees he or she employs to accurately account for risk.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 324.395 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.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amended After Comments)

401 KAR 6:001. Definitions for 401 KAR Chapter 6.

RELATES TO: KRS 223.400 -[through] 223.460[223.400-223.460], 223.991[-, EO 2008-507, 2008-534]

STATUTORY AUTHORITY: KRS 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate administrative regulations to

carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.~~[EO-2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.]~~ This administrative regulation establishes definitions for~~[is necessary to define]~~ terms used by the cabinet in 401 KAR Chapter 6.

Section 1. Definitions. (1) "Abandon" means to seal or plug a well or borehole to prevent entry of surface water or contaminants and to prevent mixing of water from different water-bearing formations.

(2) "Annular space" means the opening between a well-bore or excavation and the well casing or between an outer casing pipe and an inner casing pipe or liner pipe.

(3) "Aquifer" means a water-bearing formation that transmits water in sufficient quantity to supply a well.

(4) "Base flood elevation" means the elevation of surface water resulting from a flood that has a one (1) percent~~[(4%)]~~ chance of equaling or exceeding that level in any given year.

(5) "Bedrock" means a consolidated rock exposed at the surface of the earth or overlain by unconsolidated materials or soils.

~~(6) [(5)]~~ "Bentonite" means a clay in the montmorillonite series with a predominance of sodium as its major cation, having the property of expanding several times its original volume if saturated, and used to seal or plug wells, well annuluses, and well bores.

~~(7) [(6)]~~ "Board" is defined by KRS 223.400(2).

~~(8) [(7)]~~ "Bridging" means the deliberate or accidental closing or plugging of a section of a drill hole or annulus, beneath which is an open borehole or unfilled annulus.

~~(9)~~ "Certified well driller" means a person who has met all requirements of 401 KAR 6:320 and to whom the cabinet has issued a well driller certificate.

~~(10)~~ "Certified well driller assistant" means a person who has met all requirements of 401 KAR 6:320 and to whom the cabinet has issued a well driller assistant certificate.

~~(11) [(8)]~~ "Confining layers~~[zones]~~" or~~[and]~~ "confining formation" means a zone~~[body]~~ of sufficiently low permeability~~[impermeable material]~~ as to impede the vertical migration of groundwater.

~~(12) [(9)]~~ "Consolidated formation~~[formation]~~" means a geological rock formation that has grains that are bonded together~~[is bedrock]~~.

~~(13) [(10)]~~ "Construction":

(a) Means all acts necessary for obtaining groundwater by wells, including drilling or excavation of the well and installation or modification of casing; and

(b) Does not mean, ~~but excluding~~ the installation of permanent pumps and pumping equipment.

~~(14) [(11)]~~ "Direct supervision" means that a certified water well driller oversees and manages~~[shall oversee and manage]~~ the work of the water well driller's assistant, including providing specific instruction regarding the construction, modification, alteration, repair, and abandonment of a water well, but the certified water well driller is not~~[shall not be]~~ required to provide in-person supervision at the drilling site.

~~(15)~~ "Driller" means "water well driller" as defined by KRS 223.400(8).

~~(16) [(12)]~~ "Drilling derived waste" or "DDW" means soils, drill cuttings, drilling fluids, product-contaminated water, and decontamination rinsate.

~~(17) [(13)]~~ "Finished ground surface" means the final or permanent elevation of the ground surface at the site of the well or abandoned borehole.

~~(18) [(14)]~~ "Grout-pipe method" means that grout is placed~~[emplaced]~~ into the borehole or annulus from bottom to top via gravity flow or by pumping through a pipe or funnel-like apparatus~~[with a funnel or hopper-like top]~~.

~~(19) [(15)]~~ "High solids sodium bentonite" means bentonite containing a minimum of thirty (30) percent solids.

~~(20) [(16)]~~ "Impervious" means a material that will not permit the passage of water at a rate greater than 1×10^{-7} centimeters per second (cm/sec).

~~(21) [(17)]~~ "Modification" means a change, replacement, or alteration of the water well.

~~(22) [(18)]~~ "Monitoring well" means a well constructed if~~[when]~~ the actual or intended use in whole or part is the removal of water for sampling, measuring, treating, or~~[test]~~ pumping for scientific, engineering, or regulatory purposes.

~~(23) [(19)]~~ "Perched" means a region in the unsaturated zone separated from an underlying aquifer where the materials are locally saturated because they overlie a confining layer.

~~(24)~~ "Person" shall be defined by KRS 223.400(5)~~["Natural person" means an individual person distinguished from a person as defined in KRS 224.01-010(17)].~~

~~(25) [(20)]~~ "Pit" means a hole, shaft, or cavity in the ground.

~~(26) [(21)]~~ "Pitless well adapter" means a device designed for attachment to one (1) or more openings through a well casing.

~~(27) [(22)]~~ "Pitless well unit" means an assembly that extends from the upper end of the well casing to above the finished ground surface.

~~(28) [(23)]~~ "Perched" means a region in the unsaturated zone separated from an underlying aquifer where the materials are locally saturated because they overlie a low-permeability unit.

~~(29) [(24)]~~ "Potable water" means water that complies with the requirements~~[meets the provisions]~~ of 401 KAR Chapter 8, the quality of which is approved by the cabinet for human consumption.

~~(30) [(25)]~~ "Sealing materials" means neat cement, cement-bentonite grout, or bentonite.~~[Drill cuttings are not sealing materials.]~~

~~(31) [(26)]~~ "Special flood zone" means an area that is subject to a one (1) percent~~[(4%)]~~ or greater chance of flooding in any given year.

~~(32)~~ "Special well types" means a well that is:

(a) Bored;

(b) Driven;

(c) Irrigation; or

(d) Radial collector.

~~(33) [(26)]~~ "Static water level" means the level at which water stands in a well when water is not being taken from the aquifer either by pumping or by free flow.

~~(34) [(27)]~~ "Unconsolidated formation" means a loose-grained, non-lithified geological formation such as soil, sand, or gravel.

~~(35) [(28)]~~ "Undesirable geologic formation" means a geologic formation with physical characteristics or water quality not conducive to the construction and use of a well.

~~(36) [(29)]~~ "Undesirable groundwater" means groundwater not suitable for human or animal consumption, irrigation, manufacturing process water, or cooling.

~~(37) [(30)]~~ "Water supply well" means "water well" or "well" as defined by KRS 223.400(7).

~~(38)~~ "Water well driller's assistant" is~~[shall be]~~ defined by KRS 223.400(9).~~[(34)]~~ "Water supply well" means "water well" or "well" as defined by KRS 223.400(7).

~~(32)]~~

~~(39)~~ "Well unsuitable for its intended use" means a well:

(a) The use of which has been permanently discontinued;

(b) That is in such a state of disrepair that it cannot be used to supply groundwater;

(c) That presents a health or safety hazard;

(d) From which usable groundwater is not obtainable; or

(e) With boreholes that:

1. Are dry;

2. Have caved in; or

3. Are unsuitable for further development and well construction.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 3, 2019

FILED WITH LRC: October 4, 2019 at 11 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. 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 6.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms used in 401 KAR Chapter 6.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate regulations to carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(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 6 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 has been made to comply with KRS Chapter 13A drafting requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary for clarification of terms used in 401 KAR Chapter 6 required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate regulations to carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

(d) How the amendment will assist in the effective administration of the statutes: The amendment has been made to comply with KRS Chapter 13A drafting requirements. The amendment to this administrative regulation is necessary for clarification of terms used in 401 KAR Chapter 6 required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

(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 to comply with this

administrative regulation.

(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 6.

(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? This administrative regulation will impact the Kentucky Division of Water and any division of state or local government that may employ a certified water well driller and well driller's assistant.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420 requires the cabinet to promulgate regulations to carry out the purposes of KRS 223.405 through 223.460. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction.

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation establishes definitions only and will not result in additional costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation establishes definitions only and will not result in additional costs.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: This administrative regulation establishes definitions only and will not result in additional revenue or costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate regarding well construction.
2. State compliance standards. KRS 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate regarding well construction.
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 well construction.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate regarding well construction.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
(Amended After Comments)

401 KAR 6:310 Water supply well construction practices and standards.

RELATES TO: KRS 223.400 ~~through~~ 223.460 [223.400-223.460], 223.991, 224.1-010, 224.1-400 [224.01-010, 224.01-400, EO 2008-507, 2008-531]

STATUTORY AUTHORITY: KRS [451-140,] 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. [EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

Section 1. General Requirements. (1) ~~[Certified water supply well driller requirement.]~~ Each water supply well subject to this administrative regulation shall be constructed, modified, or abandoned only by a certified water supply well driller or certified well driller assistant as established in [natural persons certified to drill water supply wells in accordance with] KRS 223.425 and 401 KAR 6:320.

(2) A water supply well driller's assistant shall work under the "direct supervision", as defined by 401 KAR 6:001(14), of a certified water supply well driller.

(3) Well specifications shall be:

(a) [Be] Provided by the certified well driller to the well driller's assistant, as required under "direct supervision" as defined by 401 KAR 6:001(14), for the work to be conducted including:

1. Construction;
2. Alteration;
3. Maintenance;
4. Repair;
5. Reworking;
6. Development;
7. Abandonment; or
8. Plugging; and

(b) [Shall be] Recorded on the Uniform Kentucky Well Construction Record, which shall be:

1. Retained by the water supply well driller's assistant; and
2. Available for inspection upon request by the cabinet.

(4) [c] Changes made to water supply well specifications during any work being conducted on a water supply well shall be:

1. Approved in advance by a certified water supply well driller;
2. Recorded on an amended Uniform Kentucky Well Construction Record;
3. Retained by the water supply well driller's assistant; and

4. Available for inspection upon request by the cabinet.

(5) [4] [Construction and well performance requirement.] Permanent and temporary water supply wells shall be constructed, modified, and abandoned in [such] a manner that prevents [as to prevent] the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(6) [5] [(3) Reporting requirement.] Within sixty (60) days after a water supply well has been completed, modified, or abandoned, the certified water supply well driller shall submit [a report of well construction, modification, or abandonment] to the cabinet [using] the Uniform Kentucky Well Construction Record or the Uniform Kentucky Well Maintenance and Plugging Record, as appropriate.
The report shall include:

(a) All information about the depth and the materials used in the water supply well construction, modification, or abandonment; and [shall also be recorded.]

(b) The [certified water supply well driller shall complete the bacteriological section on the Uniform Kentucky Well Construction Record to report the] results of the bacteriological [coliform] sampling as established [required] in Section 9(6) of this administrative regulation. [The certified driller shall retain the results of the bacteriological sample analysis.]

(7) [6] [(4)] Records to water supply well owner. Within sixty (60) days after the water supply well has been completed or modified, the certified water well driller shall provide [the following material] to the well owner a copy of the:

(a) [A copy of the] Uniform Kentucky Well Construction Record or the Uniform Kentucky Well Maintenance and Plugging Record submitted to the cabinet, as appropriate;

(b) [A copy of the] Results of bacteriological sample analysis collected in accordance with Section 9(6) of this administrative regulation;

(c) Water Well Owner's Guide; and

(d) [A copy of] Analytical results if additional water quality analysis is conducted.

(8) [7] [(5)] The certified well driller shall tag Each well constructed or modified shall be tagged with a well identification number tag provided by the cabinet.

(a) An existing well identification number shall be included on the Uniform Kentucky Well Maintenance and Plugging Record for any well being modified or abandoned.

(b) If a well identification number does not exist at the time of modification or abandonment, the well shall be tagged [certified driller shall tag the well, as appropriate,] and [include] the well identification number assigned shall be recorded on the Uniform Kentucky Well Maintenance and Plugging Record.

(9) [8] [(6)] Variances. If conditions exist or are believed to exist that preclude compliance with the requirements established in [of] this administrative regulation, the certified water supply well driller may request a variance prior to well construction, modification, or abandonment. The variance request shall be submitted to the cabinet on the Kentucky Water Well Variance Request form.

(a) The variance request shall include [the following]:

1. A thorough description of the land use at the site and adjacent properties;

2. The distance between the proposed well location and existing water supply wells and monitoring wells on adjacent properties;

3. The distance between the proposed well location and potential pollution sources, both on site and on adjacent properties, including septic systems, sewers, and petroleum and chemical storage tanks;

4. A description of the geologic conditions at the site, including soil thickness, type of bedrock, perched water, confining zones, and the depth to groundwater;

5. A summary of the provisions, including the section numbers of this administrative regulation, for which the variance is requested;

6. A justification for the variance; and

7. a. The proposed well construction procedures to be used in lieu of compliance with this administrative regulation; and

b. An explanation of how the alternate well construction procedures ensure the protection of the quality of the groundwater and the protection of public health and safety.

(b) Written variance procedure.

1. The certified water supply well driller shall request a variance by submitting to the cabinet a Water Well Variance Request form signed by the certified water supply well driller and water supply well owner, and shall obtain written cabinet approval before well construction begins. ~~1. The driller shall submit the Kentucky Water Well Variance Request form, signed by the certified driller and well owner, and obtain written cabinet approval before well construction begins.~~

2. The cabinet shall notify the applicant in writing within ten (10) days of its decision to either grant or deny the variance.

3. The cabinet shall not issue a variance if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.

(c) Verbal variance for an emergency.

1. A certified water supply well driller may request a verbal variance for an emergency if the delay incurred due to the written variance procedure in paragraph (b) of this subsection could result in:

a. Loss of access to potable water for the intended user;

b. Failure to address an existing or impending environmental emergency in accordance with KRS 224.1-400[224.01-400]; or

c. A risk to public health or safety.

2. The cabinet shall not issue a variance for an emergency if the proposed water supply well construction will not ensure the protection of groundwater quality and public health and safety.

3. Within fifteen (15) days of the date the cabinet approves the verbal variance for an emergency, the certified water well driller shall submit to the cabinet a Kentucky Water Well Variance Request form signed by the certified water supply well driller and water supply well owner ~~to the cabinet~~.

(d) The variance approval shall list the conditions of the variance, including the:

1. ~~The~~ Approved alternate well construction procedures;

2. ~~The~~ Well sampling requirements; and

3. ~~The~~ Requirement to notify surrounding property and well owners of the variance, if applicable.

(e) Within sixty (60) days of completing the well, the certified water supply well driller shall submit to the cabinet a copy of the Kentucky Water Well Variance Request form signed by the certified water supply well driller and the water supply well owner to the cabinet within sixty (60) days after the well is completed.

(f) 1. After a variance is issued regarding the location of a well with respect to various pollution sources as established in Section 5(1) of this administrative regulation, ~~the certified well driller for which a variance has been issued shall collect~~ water samples from the well shall be collected and ~~have these samples~~ analyzed for the parameters as stated ~~specified~~ in the ~~Kentucky Water Well Variance Request~~ variance approval letter issued by the cabinet.

2. The certified water well driller shall submit a copy of the analytical results on the Water Well Bacterial Report and Chain of Custody form to the well owner and the cabinet within ten (10) days of the receipt of the analytical results from the laboratory.

Section 2. Construction Materials and Requirements. (1) All materials ~~to be~~ used for the construction, modification, or abandonment of water supply wells shall be approved for use in water wells by ~~the one (1) or more of the following~~:

(a) National Sanitation Foundation (N.S.F.)(NSF);

(b) American Society for Testing and Materials (A.S.T.M.)(ASTM); or

(c) American Petroleum Institute.

(2) Permanent well casing and liners.

(a) Well casing and liners shall be able to withstand the physical forces acting upon them during and following their installation and during their use including forces ~~This includes forces~~

1. Due to suspension in the borehole, grouting, development, purging, pumping, or sampling; and

2. forces Exerted on the well casing and liners by the

surrounding geologic materials.

(b) Steel or PVC well casing and liners shall have a minimum inside diameter of four (4) inches, except for driven point wells and jetted wells as established ~~which are addressed~~ in Section 8(3) of this administrative regulation.

(c) ~~The certified well driller shall install~~ Well casing and liners shall be installed in accordance with manufacturer specifications.

(d) ~~The certified well driller shall not install~~ Used, damaged, or contaminated well casing or liner pipe shall not be installed.

(e) Steel well casing and liners.

1. Steel well casing and liners shall meet or exceed the minimum standards established ~~provided~~ in Table A of this administrative regulation.

Size (inches)	External Diameter (inches)	Thickness (inches)	Weight (pounds per foot)
4	4.500	0.188	8.66
5	5.563	0.188	10.79
6	6.625	0.188	12.92
8	8.625	0.277	24.70
10	10.750	0.307	34.24
12	12.750	0.330	43.77
14	14.000	0.375	54.57
16	16.000	0.375	62.58
18	18.000	0.375	70.59
20	20.000	0.375	78.60

2. Joints and couplings shall be welded or threaded.

3. Joints shall be watertight.

(f) PVC well casing and liners.

1. PVC well casing and liners shall:

a. Meet ~~or exceed~~ the minimum standards established ~~provided~~ in Table B of this administrative regulation;

Size (inches)	SDR	External Diameter (inches)	Minimum Wall (inches)
4	26	4.500	0.173
5	26	5.563	0.214
6	26	6.625	0.255
8	26	8.625	0.332
10	26	10.750	0.413
12	26	12.750	0.490
14	26	14.000	0.539
16	26	16.000	0.616

b. ~~Have minimum Standard Dimension Ratio (SDR) 26;~~

c. ~~Have a minimum Impact Classification of IC-1 in accordance with A.S.T.M. Standard F480-14; and~~

c. ~~At a minimum, meet or exceed~~

(i) ~~A.S.T.M. American Society for Testing and Materials (ASTM) Specification D1784-11[D1784-07] or F480-14[F480-06b] found in A.S.T.M. American Society for Testing and Materials (A.S.T.M.) Specification D1784-11[D1784-07], Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds and A.S.T.M. American Society for Testing and Materials (A.S.T.M.) Specification F480-14[F480-06b], Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80;~~

(ii) ~~N.S.F. e. Meet or exceed the National Sanitation Foundation (NSF) Standard 14-2018[14] for potable water applications found in N.S.F. National Sanitation Foundation (N.S.F.) Standard 14-2018[14], Plastics Piping System Components and Related Materials; and~~

(iii) ~~N.S.F. f. Meet or exceed the NSF Standard 61 found in National Sanitation Foundation (N.S.F.) Standard 61-2018, Drinking Water System Components – Health Effects[61, Drinking Water System Components Health Effects].~~

2. Joints and couplings shall be welded, cemented, or threaded.

3. Joints shall be watertight.

4. PVC casing shall not be driven or pushed by force of the rig, either by direct hydraulic force or by hammer.

(3)(a) Temporary outer casing. Temporary outer casing used during well construction shall be sufficiently strong to permit installation without distorting or rupturing, and shall be removed upon well completion.

(b) If ~~the driller determines that~~ temporary outer casing is to be used as permanent outer casing, the temporary outer casing shall be grouted in place.

(4) Well screens.

(a) 1. Well screens shall be capable of withstanding the stress to which the pipe will be subjected and the corrosiveness of the water with which it comes in contact.

2. Used, damaged, or contaminated well screens shall not be installed.

(b) Steel or PVC well screens with a minimum inside diameter of four (4) inches shall be installed, except for bored, driven, or jetted wells.

(c) Well screens shall be:

1. Installed in accordance with the manufacturer's specifications; and [.]

2. ~~Wells screens shall be~~ Centered in the borehole.

(d) ~~(e)~~ Steel screens. Joints and couplings shall be welded or threaded.

(e) ~~(f)~~ PVC screens shall:

1. Have minimum Standard Dimension Ratio (SDR) 26;

2. Have a minimum Impact Classification of IC-1 in accordance with A.S.T.M. Standard F480-14;

3. At a minimum, meet; ~~or exceed~~

a. A.S.T.M. [ASTM] Specification D1784-11[D1784-07] or F480-14[F480-06] found in A.S.T.M. [American Society for Testing and Materials (A.S.T.M.)] Specification D1784-11[D1784-07], Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds and A.S.T.M. [American Society for Testing and Materials (A.S.T.M.)] Specification F480-14[F480-06b], Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80; and

b. N.S.F. [4. Meet or exceed the NSF] Standard 14-2018[14] for potable water applications found in N.S.F. [National Sanitation Foundation (N.S.F.)] Standard 14-2018[14], Plastics Piping System Components and Related Materials and rated potable water (PW) or well casing (WC); and

4. ~~5~~. Joints and couplings shall be welded, cemented, or threaded.

(f) ~~(g)~~ Screen slot size shall be selected to prevent the entry of sediment or other harmful material into the well.

(5) Air rotary drilling. Water shall be injected into the air stream at a rate sufficient to eliminate dust and to keep the borehole clean of cuttings.

(6) Mud rotary drilling ~~method~~. Pits to contain or re-circulate drilling fluids shall be constructed in a manner as to isolate the drilling fluid from runoff to a stream or other waterway.

(7) ~~Lead~~. Materials containing lead shall not be used in the construction of a water supply well.

Section 3. Sealing Materials. (1) ~~Mixing~~. Sealing materials and additives that control or affect setting times or physical properties of the sealing materials shall be mixed in accordance with the manufacturer's specifications.

(2) Application. Grouting shall be performed using the grout-pipe method or a pressure grouting device to add the sealing materials and other materials used to seal the annulus from the bottom of the annulus upward in one (1) continuous operation until the annulus is filled to two (2) feet below the surface or to the point of pitless adapter attachment. If temporary or permanent outer casing is used, sealing materials ~~shall~~ may be added prior to installing the inner casing.

(a) Cement and concrete grout. The appropriate type of neat cement and concrete grout for the conditions present in the well shall be used in accordance with the manufacturer's specifications and this subsection ~~guidelines~~.

(b) Neat cement-bentonite grout. Neat cement-bentonite grout shall set for a minimum of seventy two (72) hours prior to resuming

drilling operations.

(c) ~~4~~. Bentonite grout.

1. Bentonite grout shall set until the slurry has hydrated according to the manufacturer's specifications.

2. Bentonite grout shall not be used if chlorides in groundwater exceed 1,000 parts per million (ppm).

(d) Reduced setting time. Setting time may be reduced with additives if used in accordance with the manufacturer's specifications.

(e) Bentonite in pellet, chip, or granular form.

1. If bentonite pellets, chips, or granules are placed above the water table, ~~the certified driller shall comply with the following~~:

a. ~~1~~. Dry bentonite pellets, chips, or granules shall be placed in increments not greater than two (2) feet in thickness to provide proper hydration and prevent bridging; and

b. ~~2~~. Each increment shall be hydrated prior to the continued placement of dry bentonite pellets, chips, or granules.

2. ~~and 3~~. Bentonite pellets, chips, or granules shall not be used if chlorides in groundwater exceed 1,000 parts per million (ppm).

(f) Construction water. Water used in the drilling or decontamination process shall be potable.

(g) 1. Drill cuttings. ~~The certified well driller may use~~ Clay, shale, or limestone drill cuttings may be used if cuttings are allowed to seal portions of the annulus.

2. Sandstone cuttings shall not be used.

Section 4. Design Factors. Each well shall be constructed to include ~~the following~~:

(1) Natural protection. The well shall be located to protect groundwater quality and public health and safety; [.]

(2) Geologic formations.

(a) The well construction shall be adapted to the local or site-specific geologic formations and groundwater conditions.

(b) Undesirable groundwater shall be cased off or otherwise prevented from contributing to a well; [.]

(3) Capacity. The well shall be constructed to optimize yield while maintaining the safe functioning and integrity of the aquifer; [.]

(4) Pitless well adapters.

(a) A well casing shall not be cut off or cut into below finished ground surface except ~~by a certified water supply well driller~~ to install a pitless well adapter, a pitless well unit, or to make modifications.

(b) Construction or installation of pitless well adapters or pitless well units shall ~~be done in such a manner as to~~ provide a leak-proof seal. If a frost-free hydrant is installed, a Double ~~Dual~~ Check Valve Backflow Preventer that meets the specifications of American Society of Sanitary Engineering (A.S.S.E.) 1015-2011[4024] Performance Requirements for Double ~~Dual~~ Check Backflow Prevention Assemblies ~~Preventers~~ shall be installed between the pitless adapter and the frost-free hydrant; [.]

(5) Flowing artesian wells. A flowing artesian well shall be constructed to:

(a) Maintain the head pressure within the aquifer; and

(b) Prevent an uncontrolled discharge of groundwater into the environment; and [.]

(6) ~~(5)~~ Accessibility. The well shall be constructed to allow access for repairs, maintenance, treatment, and inspection.

Section 5. Setback requirements. (1) Wells shall be installed ~~in accordance~~ with the minimum lateral distances between the well and potential pollution sources established in Table C of this administrative regulation.

Table C: Setback Requirements	
Lateral Sources of Contamination	Minimum Distances
Leaching Pit	100 Feet
Petroleum Storage Tank	100 Feet
Grave or Cemetery	75 Feet
Manure Pile, Animal Waste Stor- age, or Confined Animal Feeding Operation	75 Feet
Wastewater Treatment Disposal System	75 Feet
Side Wall of Lateral Trench, Bed, or Lagoon	70 Feet

Geothermal – Closed Loop, Un- grouted	70 Feet
Water Supply Well	50 Feet
Septic Tank or Sewer Line	50 Feet
Livestock Pen, Corral, or Stable	50 Feet
Surface Water Body	25 Feet
Geothermal – Closed Loop, Grouted; Abandoned Water Well Grouted	20 Feet
Property Lines, Utility Lines, or Roadway Right of Way	10 feet

(2) The certified water supply well driller shall evaluate land-use activities, both on the property on which the well is to be located and on adjacent properties, and identify other potential pollution sources not listed subsection (1) of this section.

(3) If the unconsolidated material is less than twenty (20) feet thick and composed of predominantly sand or gravel, the minimum lateral distances established in subsection (1) of this section shall be doubled.

(4) A well[Wells] may be constructed in an identified special flood hazard area[constructed in flood zones] if an alternate site does not exist.

(5)~~[The certified well driller shall terminate]~~ The casing shall be terminated:

(a) A minimum of two (2) feet above the highest base[maximum known] flood elevation at the site; and[, or]

(b) Any known conditions of flooding by drainage or run-off from the surrounding land.

(6)~~[Buildings:]~~ The well extended vertically shall clear a projection from a building by a minimum of five (5) feet.

(7)~~[Pits and basements:]~~ Wells shall not be constructed in pits or basements.

Section 6. Wells Drilled into Consolidated Formations Using the Cable Tool, Air Rotary, Mud Rotary, Reverse Rotary, or Sonic Methods. (1) Borehole construction.

(a) The diameter of the borehole shall be a minimum of 1.75 inches greater than the outer diameter of the casing.

(b) Steel casing may be driven or advanced through unconsolidated material without over-drilling using the dry-driven grout method in accordance with Section 8(2) of this administrative regulation.

(c) The borehole diameter of the open-hole portion of the well shall be smaller than the inside diameter of the lowermost permanent casing ~~so[in order]~~ that the:

1. Permanent casing can rest on the shoulder of the open borehole; and[in order that the]

2. Lower portion of the permanent casing can be properly sealed.

(d) Plumbness and alignment. The borehole shall:

1. Be sufficiently plumb and straight to receive well casing, liner, and screen without binding; and[shall]

2. Not interfere with the installation and operation of the pump.

(2) Casing installation.

(a) Casing shall extend below the surface a minimum of twenty (20) feet.

(b) Single-cased wells.

1.~~[Unconsolidated material thirty (30) feet thick or less.]~~ If unconsolidated material is thirty (30) feet thick or less, ~~the[certified well driller shall install]~~ casing shall be installed to extend[extending] a minimum of ten (10) feet into bedrock.

2.~~[Unconsolidated material greater than thirty (30) feet thick.]~~ If unconsolidated material is greater than thirty (30) feet thick, ~~the[certified well driller shall install]~~ casing shall be installed to extend[extending] a minimum of two (2) feet into bedrock.

3.~~[Fractures, crevices, voids, and undesirable geologic formations:]~~ Permanent casing shall be installed a minimum of two (2) feet below any fractures, crevices, voids, or undesirable geologic formations that may introduce harmful materials, pollutants, or undesirable groundwater to the well.

4.~~[The certified driller shall case off]~~ Undesirable water-bearing formations shall be cased off[,] leaving a minimum of two (2) feet below the bottom of the production zone.

(c) Multiple-cased wells.

1.~~[a:]~~ Temporary outer casing shall[:-]

a. Have ~~an[The]~~ inside diameter~~[of temporary outer casing shall be]~~ a minimum of two (2) inches greater than the outside diameter of the inner casing;~~[-]~~

b.~~[Temporary outer casing shall]~~ Be removed prior to well completion; and[:-]

c. If~~[the driller determines that]~~ temporary outer casing is to be used as permanent outer casing, the temporary outer casing shall be grouted in place.

2.~~[Permanent outer casing:]~~ The inside diameter of permanent outer casing shall be a minimum of two (2) inches greater than the outside diameter of the inner casing.

3.~~[Inner casing. The certified well driller shall install]~~ Permanent inner casing shall be installed in accordance with the requirements established in[of] subsection (2)(b) of this section.

(3) Screen and liner installation.

(a)~~[If a screen or liner is installed,]~~ Screen or liner slot size shall~~[be selected to]~~ prevent the entry of fine-grained sediment and other anticipated harmful material into the well.

(b) Screens and liners shall conform to the requirements established in[of] Section 2 of this administrative regulation.

(4) Filter pack.

~~[a][If]~~ An artificial filter pack ~~[is installed, the filter pack]~~ shall~~[meet the following criteria]:~~

1.~~[(a) Filter pack material]~~ Be of a size that works[shall work] in conjunction with the well screen to prevent the entry of fine material and sediment into the well;

2.~~[(b) Filter pack material shall]~~ Be disinfected prior to placement in the well or shall be disinfected in the well; and

3.~~[(c) The filter pack shall]~~ Extend a minimum of two (2) feet above the screen;~~[- and]~~

~~[b][d)]~~ Filter pack refill pipes may be installed if refill pipes:

1. Terminate above finished ground surface;~~[-]~~

2. Are provided with a watertight cap;~~[-]~~ and

3. Are sealed in the annulus.

(5) Annular seal.

(a) ~~The[certified well driller shall seal the]~~ annulus shall be sealed in a manner that prevents the migration of pollutants through the annulus and[:-] ~~The certified well driller shall seal the annulus~~ by~~[one (1) of the following methods]:~~

1. Sealing the entire annulus with sealing materials;

2. Sealing a minimum of the bottom two (2) feet of the annulus between the borehole and the permanent casing and sealing the remainder of the annulus with impervious drill cuttings, sealing materials, native clay, or a combination of these materials; or

3. Using the methods in subparagraphs 1 or 2 of this paragraph~~[used]~~ in combination with a mechanical packer.

(b) Single-cased wells.

1. Open-hole construction.~~[The certified well driller shall seal]~~

a. The bottom two (2) feet of the annulus shall be sealed with sealing materials; and[shall seal the]

b. The remainder of the annulus shall be filled with[impervious] drill cuttings, sealing materials, native clay, or a combination of these materials.

2. Screened construction.~~[The certified well driller shall seal]~~

a. The bottom two (2) feet above the filter pack shall be sealed with sealing materials; and[shall seal]

b. The remainder of the annulus shall be filled with[impervious] drill cuttings, sealing materials, native clay, or a combination of these materials.

(c) Multiple-cased wells.

1. Temporary outer casing.

a. ~~The[certified well driller shall seal the]~~ annulus shall be sealed below the temporary outer casing prior to removal of the temporary outer casing; and[:-]

b. ~~The[certified well driller shall seal the]~~ remainder of the annulus shall be filled in the zone where temporary outer casing was used upon removal of the temporary outer casing.

2. Permanent outer casing.~~[The certified well driller shall seal]~~

a. The annulus shall be sealed between the borehole and permanent outer casing at the installation of the permanent outer casing;~~[- The certified well driller shall seal]~~

b. The bottom two (2) feet of the annulus shall be sealed

between the bore hole and the permanent outer casing with sealing materials; and ~~shall seal~~

c. The remainder of the annulus shall be filled with ~~impervious~~ drill cuttings, sealing materials, native clay, or a combination of these materials.

3. Inner casing. ~~The certified well driller shall seal~~

a. The entire annulus shall be sealed around the inner casing, including the annulus between the outer and inner casing; ~~The certified well driller shall seal~~

b. The bottom two (2) feet of the annulus shall be sealed between the outer casing and the inner casing with sealing materials; and ~~shall seal~~

c. The remainder of the annulus shall be filled with ~~impervious~~ drill cuttings, sealing materials, native clay, or a combination of these materials.

Section 7. Wells Drilled in Unconsolidated Formations. (1) Borehole construction.

(a) The borehole diameter shall be a minimum of four (4) inches greater than the outside diameter of the well casing and screen; or

(b) Steel casing may be driven or advanced without over-drilling using the dry-driven grout method in accordance with Section 8(2) of this administrative regulation.

(c) Plumbness and alignment. The borehole shall:

a. Be sufficiently plumb and straight to receive well casing, liner, and screen without binding; and ~~shall~~

b. Not interfere with the installation and operation of the pump.

(2) Casing installation.

(a) Single-cased wells. A minimum of twenty (20) feet of permanent casing shall be installed below finished ground surface excluding the screened interval.

(b) Multiple-cased wells.

1. Temporary outer casing.

a. ~~(a)~~ The inside diameter of temporary outer casing shall be a minimum of four (4) inches greater than the outside diameter of the inner casing.

b. ~~(b)~~ Temporary outer casing shall be removed prior to well completion.

2. Permanent outer casing. The inside diameter of permanent outer casing shall be a minimum of four (4) inches greater than the outside diameter of the inner casing.

3. Inner casing. A minimum of twenty (20) feet of permanent inner casing shall be installed below finished ground surface excluding the screened interval.

(3) ~~Screen installation.~~ Screen slot size shall ~~be selected to~~ prevent the entry of fine sediment or other harmful material into the well.

(4) Filter pack. The natural formation may be developed to serve as a filter pack, or an artificial filter pack shall be installed.

(a) The artificial filter pack shall ~~meet the following criteria~~:

1. ~~(a) Filter pack material shall~~ Be sized to prevent the entry of fine sediment or other harmful material into the well;

2. ~~(b) Filter pack material shall~~ Be disinfected prior to placement in the well, or disinfected in place; and

3. ~~(c) The filter pack shall~~ Extend a minimum of two (2) feet above the screen; and

(b) ~~(d)~~ Filter pack refill pipes may be installed if they:

1. Terminate above finished ground surface; and

2. Are provided with a watertight cap; and

3. Are sealed in the annulus.

(5) Annular seal.

(a) The annulus shall be sealed in a manner that prevents the migration of groundwater and pollutants through the annulus and ~~The certified well driller shall seal the annulus~~ by ~~one (1) of the following methods~~:

1. Sealing the entire annulus with sealing materials;

2. Sealing the:

a. Two (2) feet of annulus directly above the filter pack with sealing materials; and ~~sealing the~~

b. Remainder of the annulus with drill cuttings, sealing materials, native clay, or a combination of these materials; or

3. Using the method established in subparagraph 2. of this

paragraph outlined above in combination with a mechanical packer.

(b) Single-cased wells.

1. ~~The certified well driller shall seal~~ The annulus shall be sealed by sealing the ~~using one (1) of the following methods~~:

a. ~~Sealing the~~ Entire annulus with sealing materials; or

b. ~~(i) Sealing the~~ Two (2) feet of annulus directly above the filter pack with sealing materials; and

~~(ii) sealing the~~ Remainder of the annulus with drill cuttings, sealing materials, native clay, or a combination of these materials.

2. The annular seal shall extend to a minimum depth of eighteen (18) feet below finished ground surface.

(c) Multiple-cased wells.

1. Temporary outer casing. ~~The certified well driller shall seal~~

a. The bottom two (2) feet of the annulus shall be sealed above the filter pack with sealing materials; and

b. The remainder of the annulus shall be sealed below the temporary outer casing with drill cuttings, sealing materials, native clay, or a combination of these materials prior to removal of the temporary outer casing.

2. Permanent outer casing. ~~The certified well driller shall seal the~~

a. The bottom two (2) feet of the annulus shall be sealed between the borehole and permanent outer casing above the filter pack with sealing materials; and

b. The remainder of the annulus shall be sealed between the borehole and permanent outer casing with drill cuttings, sealing materials, native clay, or a combination of these materials at the installation of the permanent outer casing.

3. Inner casing. ~~The certified well driller shall seal~~

a. The bottom two (2) feet of the annulus shall be sealed between the inner casing and outer casing with sealing materials; and

b. The remainder of the annulus shall be sealed between the inner casing and outer casing ~~shall be sealed~~ with drill cuttings, sealing materials, native clay, or a combination of these materials.

Section 8. Special Well Types. Wells in this classification shall include bored, driven, irrigation, and radial collector wells. (1) Bored well construction. Bored wells shall be constructed using the concrete-collar or the buried-slab method.

(a) ~~Borehole diameter.~~ The borehole diameter shall be a minimum of four (4) inches greater than the outside diameter of the well casing or precast concrete tiles used below the buried-slab or concrete-collar method.

(b) ~~Casing materials.~~ Casing materials for bored wells shall consist of pre-cast concrete tiles or corrugated fiberglass casing that meet the material construction standards established ~~set out~~ in Section 2 of this administrative regulation.

(c) Filter pack. The natural formation may serve as a filter pack, or an artificial filter pack may be installed in the annulus below the buried slab. ~~The filter pack shall meet the following criteria:~~

1. ~~An~~ ~~The~~ artificial filter pack ~~material~~ shall:

a. Be sized to prevent the entry of fine-grained sediment and other material into the well; ~~and shall~~

b. Be free from clay, silt, or other deleterious material;

c. ~~2. Artificial filter pack material shall~~ Be disinfected prior to placement in the well; and

d. ~~3. The filter pack shall~~ Not extend above the buried slab or concrete collar; and

2. ~~4.~~ Filter pack refill pipes shall ~~may be installed if they~~ terminate above finished ground surface, shall be ~~are~~ provided with a watertight cap, and shall be ~~are~~ sealed in the annulus.

(d) Bored well construction using the buried-slab method.

1. The buried slab shall:

a. Be a minimum of ten (10) feet below ground surface; and

b. ~~2. The slab shall~~ Consist of reinforced concrete constructed without joints; and

c. ~~3. The buried slab shall~~ Have a diameter sufficient to extend to the outer edge of the casing or tiles installed below the buried slab.

2. ~~4.~~ The top of the buried slab shall slope away from the center and shall provide a watertight joint where the buried slab

rests on the well casing.

3.[5.] A coupling shall be cast in the buried slab in which to install the upper well casing.

4.[6.] The joint between the well casing and coupling shall be water tight.

5.[7. Bentonite seal.] A bentonite seal shall be:

a. ~~Installed~~[The certified well driller shall install a bentonite seal] above the buried slab that extends the entire diameter of the borehole; and[-]

b.~~[The bentonite seal shall be]~~ A minimum of twelve (12) inches thick.

6.[8.] Upper well casing shall[-]

a. ~~Be installed~~[The certified well driller shall install well casing] above the buried slab to extend a minimum of eight (8) inches above the ground surface;[-]

b. ~~Have an~~[The] inside diameter of at least[the casing shall be a minimum of] four (4) inches;[-]

c.~~[The upper casing shall]~~ Conform to the requirements of Section 2 of this administrative regulation; and

d.~~[shall]~~ Have only threaded or welded joints.

7.[9.] Pitless adapter.

a. ~~A~~[If a pitless adapter is installed, installation of the] pitless adapter[adapters] shall be installed so that it provides[done in such a manner as to provide] a leak-proof seal.

b. If a frost-free hydrant is installed, a ~~Double~~[Dual] Check Valve Backflow Preventer that meets the specifications of ~~A.S.S.E. [American Society of Sanitary Engineering (A.S.S.E.)] 1015-2011~~[4024] Performance Requirements for ~~Double~~[Dual] Check Backflow Prevention Assemblies[Preventers] shall be installed between the pitless adapter and the frost-free hydrant.

8.[10.] The annulus fill for the upper casing above the bentonite seal shall consist of sealing materials or clean, inert earth materials.

9.[11. The certified well driller shall install] A water-tight well cap shall be installed at the top of casing.

(e) Bored well construction with concrete-collar method.

1. The upper ten (10) feet of the borehole diameter shall be a minimum of six (6) inches greater than the outside diameter of the well casing.

2. The annular space in the upper ten (10) feet of the borehole between the excavation and the installed concrete collar casing shall be sealed with concrete or sealing materials.

3. The diameter of the borehole below the grouting shall be a minimum of four (4) inches greater than the outside diameter of the well casing.

4. The casing shall extend a minimum of eight (8) inches above the finished ground surface.

5. The cover slab shall be a minimum of four (4) inches thick.

6. A pipe sleeve shall be cast in place in the slab to accommodate the type of pump or pump piping to be used for the well.

7. A watertight joint shall be made where the slab rests on the well casing.

(2) Dry-driven grout method.

(a) General.

1. Steel casing may be driven using the dry-driven grout method.

2. PVC casing shall not be driven or pushed by force of the rig, either by direct hydraulic force or by hammer.

(b)[Pilot hole.] A pilot hole shall be constructed a minimum of three (3) feet deep and a minimum of six (6) inches larger in diameter than the outside diameter of the casing to be driven.

(c) Casing installation.

1. Dry bentonite granules ~~no less~~[not smaller] than fifty (50) mesh and ~~no more~~[not larger] than eight (8) mesh shall be poured into the pilot hole prior to driving the casing.

2. Bentonite shall continue to be poured into the pilot hole as the casing is driven and bentonite is drawn into the annulus.

(3) Driven point wells and jetted wells. Driven point wells and jetted wells shall be used for temporary dewatering purposes only.

(a) The well point, drive pipe, and joints shall be structurally suitable to prevent rupture or distortion during driving.

(b)[Driven point wells and jetted wells shall not supply water for

human consumption.

(e)] Driven point wells shall have a water-tight cap.

~~(c)]~~[(d)] Driven point wells and jetted wells shall:

1. ~~Not supply water for human consumption; and~~

2. Be abandoned in accordance with Section 11 of this administrative regulation.

(4) Radial collector wells.

(a) The certified ~~water~~ well driller shall submit plans for a proposed radial collector well to the cabinet and receive written approval prior to construction of a radial collector well.

(b) Factors that shall be considered for approval of a radial collector well include:

1. Depth of the well;

2. Types of formations;

3. The location of the well;

4. Sources of potential contamination in the area surrounding the well;

5. Intended use of the well; and

6. Planned or approved treatment schemes, if applicable.

(5) Irrigation wells.

(a) Irrigation wells shall be constructed with Double Check Valve Backflow Preventers that meet the specifications of the ~~A.S.S.E. 1015-2011 Performance Requirements for Double Check Backflow Prevention Assemblies~~ to prevent reverse flow of discharged water into the wellhead and aquifer.

(b) Reduced Pressure Backflow Preventers that meet the specifications of A.S.S.E. 1013-2011 Performance Requirements for Reduced Pressure Principle Backflow Preventers shall be installed:

1. ~~Onto irrigation wells that are capable of pumping greater than ten thousand gallons per day or supplying groundwater to center pivot irrigation systems; and~~

2. ~~In line between the final discharge point and the well discharge head.~~

Section 9. Well Finishing, Disinfection, and Testing. (1) Upper terminal. Upon well completion, ~~the~~[certified driller shall] requirements established in this section shall be completed.~~[comply with the following:]~~

(a) Upper terminal. The casing shall be terminated:

1.~~[The certified well driller shall terminate the casing]~~ A minimum of four (4) inches above finished ground surface and shall slope the ground surface away from the well; and

2. ~~In a flood zone.~~[(b) Flood zones. The certified well driller shall terminate the casing] a minimum of two (2) feet above the ~~highest base~~[maximum known] flood elevation at the site.

(2)[Well development.] Newly installed water supply wells shall be developed until the column of water in the well is free of visible sediment.

(3) Disinfection. Wells shall be disinfected in accordance with the ~~procedures established in this subsection~~[paragraph].~~[following procedures:]~~

(a) Determine the:

1. Feet of water in the well by subtracting the static water level from the total depth of the well;

2.~~[(b) Determine the]~~ Amount of chlorine disinfectant to use in order to provide a minimum chlorine concentration of 100 parts per million (ppm) in the well ~~as established in this subparagraph.~~[-]

a.~~[1.]~~ For a four (4) inch-diameter well, ~~there shall be~~[the certified well driller shall use] a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per 150 feet of water in the well.

b.~~[2.]~~ For a six (6) inch-diameter well, ~~there shall be~~[the certified well driller shall use] a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per seventy-five (75) feet of water in the well.

c.~~[3.]~~ For an eight (8) inch-diameter well, ~~there shall be~~[the certified well driller shall use] a minimum of three (3) cups of chlorine bleach or two (2) ounces of hypochlorite granules per fifty (50) feet of water in the well.

d.~~[4.]~~ For a twenty-four (24) inch-diameter well, ~~there shall be~~[the certified well driller shall use] a minimum of eight (8) cups of chlorine bleach or five (5) ounces of hypochlorite granules per ten

(10) feet of water in the well; and

~~(b)(e)~~ Chlorine disinfection procedure.

1. Introduce the chlorine or hypochlorite granules into the well;~~;~~

2. Circulate the chlorine solution throughout the well for a minimum of thirty (30) minutes, ensuring that the chlorinated water contacts all parts of the well casing, borehole, discharge pipes, and all internal well components;~~;~~

3. Allow chlorinated water to stand in the well for a minimum of thirty (30) minutes;~~;~~

4. After the chlorinated water solution has stood in the well for a minimum of thirty (30) minutes, purge the well of all chlorinated water; ~~and~~;

5. Chlorinated water shall:

a. Be discharged to the ground in a manner that prevents environmental harm; and
b.~~shall~~ Not be discharged to a surface water body.

(4) A sanitary seal or watertight well cap shall be installed~~Well cap~~.

~~(a) The certified well driller shall install a well cap or sanitary seal.~~

~~(b) The well cap shall be watertight.~~

(5) Vents. (a) A vent shall consist of a pipe:

1. That extends~~extending~~ above the top of the well and above base~~known~~ flood elevation;~~elevations;~~

2. With the open end turned down;~~;~~ and

3. The open end shall be covered with twenty-four (24) mesh or finer screen of durable material.

(b) For wells with naturally occurring methane, a vent shall be installed.

(6) ~~Bacteriological~~~~[Fecal coliform]~~ sampling.

(a) A well~~[If the well is]~~ for potable use~~;~~ the certified well driller shall be~~have the well~~ analyzed for E. coli~~[fecal coliform bacteria]~~ within thirty (30) days of the completion of the well.

(b) The sample shall not be collected until all residual chlorine has been purged from the well.

(c) Sample containers shall be sterile glass or plastic.

(d) Samples for E. coli~~[fecal coliform bacteria]~~ shall be:

1. Delivered to the laboratory within six (6) hours of the time they are collected;~~;~~

2.~~[(d) Samples shall be]~~ Kept at four (4) degrees Centigrade (forty (40) degrees Fahrenheit) until delivered to the laboratory; ~~and~~; during that time samples shall not be frozen.

(e) Sample containers shall be sterile glass or plastic;

3. Analyzed~~[(f) Fecal coliform analysis shall be conducted]~~ at a laboratory certified in accordance with 401 KAR 8:040.

Section 10. Well Modification. (1) General.~~[If]~~ A water supply well being~~[is]~~ modified shall be brought~~;~~ the certified driller shall bring the well construction into compliance with this administrative regulation.

(2) Well pits.

(a) A new well pit shall not be constructed, and~~a person shall not modify~~ an existing well pit shall not be modified.

(b) If~~When~~ a well is being modified, the:

1.~~The certified well driller modifying a well shall eliminate an~~ Existing well pit shall be eliminated; and

2. Casing shall be extended~~shall extend the casing~~ a minimum of four (4) inches above the finished ground surface.

(c) 1. Flooring and the walls of the pit shall be broken and removed;~~;~~ and

2. The pit shall be filled with compacted earth.

(3) Finishing and testing. The well~~[certified well driller]~~ shall be:

1. Finished~~[Finish the well]~~; and

2.~~Have the well~~ Tested for E. coli~~[fecal coliform bacteria]~~ in accordance with Section 9(6) of this administrative regulation.

(4)~~[Reporting requirement]~~ Within sixty (60) days of modification of a well, the certified water supply well driller shall submit a Uniform Kentucky Well Maintenance and Plugging Record to the well owner and the cabinet as established in~~accordance with~~ Section 1~~[4(3) and Section 4(4)]~~ of this administrative regulation.

Section 11. Well Abandonment. (1) Well unsuitable for its intended use. A water supply well that has been damaged, or is otherwise unsuitable for use as a water supply well, shall be abandoned within thirty (30) days from the date it is determined that the well is no longer suitable for its intended use.

(a) Water supply wells shall be abandoned in~~[such]~~ a manner that prevents~~[as to prevent]~~ the migration of:

1. Surface water or contaminants to the subsurface; and

2.~~[to prevent migration of]~~ Contaminants among water bearing zones.

(b) A record of the abandonment of a water supply well shall be submitted by the certified water supply well driller on the Uniform Kentucky Well Maintenance and Plugging Record to the cabinet~~[water well drillers program]~~ within sixty (60) days from the date abandoned.

(2) Well preparation for abandonment.

(a) Measurements. Prior to abandoning a water supply well, the certified water supply well driller shall record the measurements established in subparagraphs 1 through 3 of this paragraph on the Well Maintenance and Plugging Record:

1.~~[Measure the]~~ Well depth;

2.~~[Measure the]~~ Well diameter; and

3.~~[Measure the]~~ Depth to static water level~~;~~ and

4. Record the information in subparagraphs 1 through 3 of this paragraph on the Uniform Kentucky Well Maintenance and Plugging Record.

(b) Obstructions.

1. All obstructions shall be removed from the well prior to abandoning; or

2. If the pump or equipment is stuck in the well and cannot be removed,~~[the certified driller shall push]~~ the material shall be pushed to the bottom of the well~~;~~ as far as possible.

(c)~~[Disinfection]~~ The~~certified well driller shall disinfect the~~ well shall be disinfected as established in~~accordance with~~ Section 9(3) of this administrative regulation.

(3) Drilled wells.

(a) Well casing, screen, and liner removal.

1. ~~[1.a.]~~ All well casing, screens, and liners;

a. Shall be removed from the well prior to placing the sealing material by pulling or over-drilling; and;

b.~~[Well casing, screens, and liners]~~ May be removed simultaneously with the introduction of sealing material if necessary to avoid borehole collapse.

2.a. If the well casing has been grouted in place and~~the driller is unable to remove~~ the casing cannot be removed, the casing may be cut off~~the certified well driller may cut off the casing~~ a minimum of five (5) feet below the ground surface.

b. The~~driller shall fill the~~ well shall be filled with sealing materials or inert earth materials from the bottom of the well to a minimum of twenty (20) feet below the ground surface.

c. The~~certified well driller shall fill the~~ remainder of the well shall be filled with sealing materials to a minimum of five (5) feet below the ground surface.

d. The uppermost five (5) feet of the well shall be filled with sealing materials or other inert earth material suitable to land use at the site.

(b) Sealing material placement.

1.~~[1.a.]~~ The~~certified well driller shall fill the~~ well or borehole shall be filled:

a. With sealing materials or other inert materials from the bottom to a minimum of twenty (20) feet below the ground surface; and;

b.~~[Filling the well or borehole with sealing materials or inert material shall be done in a manner]~~ So that all voids are completely filled and in a manner that prevents bridging across the well or well bore.

2. The~~certified well driller shall fill the~~ well or borehole shall be filled with sealing materials from a minimum of twenty (20) feet below ground surface to a minimum of five (5) feet below the ground surface~~;~~ in a manner that prevents the migration of pollutants along the well or well bore.

3.~~The certified well driller shall use~~ Sealing materials, clay, or other inert material suitable to the proposed land use shall be used

to fill the upper five (5) feet or less of a well being abandoned.

(4) Wells with multiple casing. The ~~certified well driller shall remove the~~ innermost well casing, screen, or liner shall be removed first and ~~fill~~ the well filled up to the level of the bottom of the next outer casing before removing the next outer casing.

(a) Voids. The ~~certified well driller shall fill the~~ well or borehole shall be filled with sealing materials or other inert materials from the bottom of the well to a minimum of five (5) feet below the bottom of a void.

1. A packer, expansion bridge, or other support shall be placed at the top of the void.

2. A permanent bridge consisting of a minimum of ten (10) feet of sealing materials shall be placed above the expansion bridge.

(b) ~~1. The certified well driller shall plug the~~ remainder of the well or borehole shall be plugged with sealing materials or other inert materials from the bottom to a minimum of twenty (20) feet below the ground surface; and ~~The certified well driller shall~~

~~2. Fill~~ The well or borehole shall be filled with sealing materials from a maximum of twenty (20) feet below the ground surface to a minimum of five (5) feet below the ground surface.

(c) ~~The certified well driller shall use~~ Sealing materials, clay, or other inert material suitable to the proposed land use shall be used to fill the upper five (5) feet or less of a well being abandoned.

(5) Bored ~~and hand dug~~ wells.

(a) The ~~certified well driller shall fill the~~ well shall be filled with sealing materials, dense grade aggregate, limestone sand, or native clay from the bottom of the well to a maximum of five (5) feet below finished ground surface.

(a) The ~~certified well driller shall fill the~~ well shall be filled with sealing materials, dense grade aggregate, limestone sand, or native clay from the bottom of the well to a maximum of five (5) feet below finished ground surface.

(b) The ~~certified well driller shall remove the~~ upper five ~~(5)~~ (five) feet of well casing, tiles, or other well-wall material shall be removed. A minimum one (1) foot thick concrete surface seal shall be poured and allowed to cure for twenty-four (24) hours ~~and fill~~ The uppermost five (5) feet of the borehole shall be filled with clay or an ~~inert~~ impermeable material appropriate to the intended use of the land.

(6) Driven wells.

(a) ~~The certified well driller shall remove~~ Well casing and screens shall be removed; and sealing materials shall be introduced ~~simultaneously~~ from the bottom of the well to a maximum five (5) feet below finished ground surface. A minimum one (1) foot thick concrete surface seal shall be poured and allowed to cure for twenty-four (24) hours.

(b) ~~The certified well driller shall use~~ Sealing materials, clay, or other inert material suitable to the proposed land use shall be used to fill the upper five (5) feet or less of a well being abandoned.

(7) Flowing artesian wells.

(a) ~~The certified well driller shall plug~~ Flowing artesian wells or wells in which there is upward movement of water between aquifers shall be plugged with neat cement grout that is pumped under pressure and mixed with the minimum quantity of water that will permit handling.

(b) ~~The driller may restrict~~ Artesian flow may be restricted if necessary.

(c) ~~The certified well driller shall place~~ A well packer, cast-iron plug, or temporary bridge shall be placed at the bottom of the confining formation immediately overlying the artesian water-bearing horizon to seal off the flow.

(8) Hand dug wells.

(a) The pumps, casing, and equipment shall be removed, and the well surface pad shall be demolished.

(b) The well shall be filled from the bottom to the top with clean rock, gravel, or sand to within five (5) feet of the ground surface.

(c) The poured concrete surface seal shall be:

1. A minimum of one (1) foot thick; and

2. Allowed to cure for twenty-four (24) hours before finishing to the ground surface.

(d) The remaining three (3) feet or less of annular space shall be filled from the top of the surface seal to the ground surface with clean soil or other appropriate surface material.

~~(9) [Reporting requirement.]~~ Within sixty (60) days after a water well has been abandoned, the certified water supply well driller shall complete and submit a Uniform Kentucky Well Maintenance and Plugging Record to the well owner, if known, and to the cabinet.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Uniform Kentucky Well Construction Record", DEP No. DOW6010, July 2019 ~~April 2008~~;

(b) "Water Well Owner's Guide", Kentucky Energy and Environment Cabinet, DEP No. DOW6020, September 8, 2009 ~~July 2008~~;

(c) "Kentucky Water Well Variance Request", DEP No. DOW6030, July 2019 ~~2008~~;

(d) "Uniform Kentucky Well Maintenance and Plugging Record", DEP No. DOW6040, Month 2019 ~~April 2008~~;

(e) Water Well Bacterial Report and Chain of Custody form, DEP No. DOW6050, July 2019;

~~(f) [(e)]~~ American Society for Testing and Materials (A.S.T.M.) Specification D1784-11 ~~D1784-07~~, "Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds", 2011 ~~November 2007~~;

~~(g) [(f)]~~ American Society for Testing and Materials (A.S.T.M.) Specification F480-14 ~~F480-06b~~, "Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80", 2014 ~~August 2006~~;

~~(h) [(g)]~~ National Sanitation Foundation (N.S.F.) Standard 14-2018 ~~14~~, "Plastics Piping System Components and Related Materials", June 2018 ~~March 2007~~;

~~(i) [(h)]~~ National Sanitation Foundation (N.S.F.) Standard 61-2018, "Drinking Water System Components – Health Effects" ~~61~~, "Drinking Water System Components Health Effects", February 2018 ~~May 2008~~; and

~~(j) [(i)]~~ American Society of Sanitary Engineering (A.S.S.E.) 1015-2011 ~~1024~~, "Performance Requirements for Double ~~Dual~~ Check Backflow Prevention Assemblies and Double Check Fire Protection Backflow Prevention Assemblies ~~Preventers~~", August 2011 ~~2004~~.

~~(k)~~ American Society of Sanitary Engineering (A.S.S.E.) 1013-2011, "Performance Requirements for Reduced Pressure Principle Backflow Preventers and Reduced Pressure Principle Fire Protection Backflow Preventers", August 2011.

(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. The material in subsection (1)(a) through (d) of this section is also available on the Division of Water Web site, <https://eec.ky.gov/Environmental-Protection/Water/GW/Pages/default.aspx/www.water.ky.gov>.

(3)(a) American Society for Testing and Materials (A.S.T.M.) Specification D1784-11, "Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Compounds and Chlorinated Poly(Vinyl Chloride) (CPVC) Compounds", 2011, may also be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428-2949; Phone 1-610-832-9585.

~~(b)~~ American Society for Testing and Materials (A.S.T.M.) Specification F480-14, "Standard Specification for Thermoplastic Well Casing Pipe and Couplings Made in Standard Dimension Ratios (SDR), SCH 40 and SCH 80", 2014, may also be obtained from the American Society for Testing Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428-2949; Phone 1-610-832-9585.

~~(c)~~ National Sanitation Foundation (N.S.F.) Standard 14-2018, "Plastics Piping System Components and Related Materials", June 2018, may also be obtained from the National Sanitation Foundation International, P.O. Box 130140, 789 N. Dixboro Road, Ann Arbor, MI, 48105; Phone 1-800-673-6275.

~~(d)~~ National Sanitation Foundation (N.S.F.) Standard 61-2018, "Drinking Water System Components – Heath Effects" ~~61~~, "Drinking Water System Components Health Effects", February

2018, may also be obtained from the National Sanitation Foundation International, P.O. Box 130140, 789 N. Dixboro Road, Ann Arbor, MI, 48105; Phone 1-800-673-6275.

(e) American Society of Sanitary Engineering (A.S.S.E.) 1015-2011, "Performance Requirements for Double Check Backflow Prevention Assemblies and Double Check Fire Protection Backflow Prevention Assemblies", August 2011, may also be obtained from the American Society of Sanitary Engineering, 18927 Hickory Creek Drive, Suite 220, Mokena, IL, 60448; Phone (708) 995-3019.

(f) American Society of Sanitary Engineering (A.S.S.E.) 1013-2011, "Performance Requirements for Reduced Pressure Principle Backflow Preventers and Reduced Pressure Principle Fire Protection Backflow Preventers", August 2011, may also be obtained from the American Society of Sanitary Engineering, 18927 Hickory Creek Drive, Suite 220, Mokena, IL, 60448; Phone (708) 995-3019.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 3, 2019

FILED WITH LRC: October 4, 2019 at 11 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 provides performance standards and minimum standards for the construction, modification, and abandonment of water supply wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards of practice for water well construction as required by KRS 223.435.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes performance standards and minimum standards and requirements for the construction, modification, and abandonment of water supply wells as required by KRS 223.435.

(2) If 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 has been made to meet the drafting requirements of KRS Chapter 13A. The amendment to this administrative regulation will provide clear, updated standards for certified well drillers and well driller assistants in the construction, modification, and abandonment of water supply wells.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to include well driller assistant roles and responsibilities required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460, and to update standards and practices for well construction, modification, and abandonment to current standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation provides minimum standards and re-

quirements for construction, modification, and abandonment of water supply wells.

(d) How the amendment will assist in the effective administration of the statutes: The amendment has been made to meet the drafting requirements of KRS Chapter 13A. The amendment to this administrative regulation will provide clear, updated standards for certified well drillers and well driller assistants in the construction, modification, and abandonment of water supply wells.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

(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 identified in question (3) will need to comply with the updated minimum standards for the location, construction, modification, and abandonment of water supply wells.

(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 is not expected to increase costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements established in KRS 223.400 through 223.460.

(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: Water well driller and well driller assistant certification fees, Clean Water Act Section 106 for groundwater, and general funds.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because it establishes minimum standards for the construction, modification, and abandonment of water wells.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Water and those divisions of state or local government that would require a certified well driller to construct, modify, or abandon a water well, such as a municipally owned public water system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to

promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

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

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

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

(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 administrative regulation will not generate additional revenue or result in additional costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the construction, modification, or abandonment of water wells.

2. State compliance standards. KRS 223.435, 224.10-100, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the construction, modification, or abandonment of water wells.

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 for the construction, modification, or abandonment of water wells.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for the construction, modification, or abandonment of water wells.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amended After Comments)

401 KAR 6:320 Certification of water well drillers and water well driller assistants.

RELATES TO: KRS 223.400 ~~through~~ 223.460[223.400-223.460], 223.991, 224.10-010, 224.10-100, 224.10-410 ~~through~~ 224.10-470[224.10-410 ~~through~~ 224.10-470], Chapter 322, Chapter 322A[~~EO 2008-507, 2008-531~~]

STATUTORY AUTHORITY: KRS 223.410, 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420[223.420(1)(e)] requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers and water well driller assistants.[EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental

and Public Protection Cabinet and establish the new Energy and Environment Cabinet.] This administrative regulation establishes provisions[provides] for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

Section 1. General Requirements. (1) The cabinet shall issue a water well driller or water well driller assistant[drillers] certificate [pursuant to KRS Chapter 223] to qualified applicants as established in KRS Chapter 223 and[natural persons who qualify under] this administrative regulation.

(2) Certificate issuance.[The cabinet shall issue separate certificates for separate methods and activities as follows:]

(a) Monitoring well driller. A certificate[Separate certificates] shall be issued for drilling monitoring wells that[The certificates] shall state[specify] the[for which] methods for which the certified driller is qualified to drill, including:

1. Cable tool drilling;
2. Air rotary drilling;
- 3.[Mud rotary drilling;
- 4.] Reverse rotary drilling;
- 4.[5.] Jetting and driving wells in unconsolidated material;[or]
5. Sonic drilling;
6. Direct push; or
- 7.[6.] Boring and auguring in unconsolidated materials.]; and]

(b) Water supply well driller. A certificate[Separate certificates] shall be issued for drilling water supply wells that[The certificates] shall state[specify] the[for which] methods for which the certified driller is qualified to drill, including:

1. Cable tool drilling;
2. Air rotary drilling;
3. Mud rotary drilling;
4. Reverse rotary drilling;
5. Jetting and driving wells in unconsolidated material;[or]
6. Sonic drilling;
7. Direct push; or
8. Boring and auguring in unconsolidated materials.

(c) A combined certificate may be issued for drilling monitoring wells and water supply wells that shall specify the methods for which the water well driller is qualified to drill as established in this subsection.

(3) A person shall not construct, alter, repair, or abandon a water well without first obtaining a water well driller[driller's] or water well driller assistant certificate from the cabinet.

(4) Each water well driller or water well driller assistant certified to drill water supply wells may construct, alter, repair, or abandon water supply wells using the drilling method or methods stated[specified] on the[driller's] certificate.

(5) Each water well driller or water well driller assistant certified to drill monitoring wells may construct, alter, repair, or abandon monitoring wells using the drilling method or methods stated[specified] on the[driller's] certificate.

(6) In order to receive a water well driller or water well driller assistant certificate, an applicant[a driller] shall:

(a) Submit a complete[Provide an] application as established in[pursuant to] this administrative regulation;

(b) Earn a minimum passing score of seventy (70) percent on[Pass] applicable examinations as established in[taken pursuant to] this administrative regulation;

(c) Demonstrate that the:

1. Applicant[Driller] has the education and experience to qualify for a certificate as established in KRS Chapter 223 and[pursuant to] this administrative regulation; and

2. Applicant's[d] ~~Demonstrate that the Driller's~~ certificate is not under suspension, temporary revocation, or permanent revocation as established in[pursuant to] Section 6[6(2)] of this administrative regulation.

Section 2. Applications. (1) Water well driller application. Each person desiring a water well driller certificate shall submit to the cabinet a complete[provide the Cabinet with an] application which shall include:[-]

(a)[Each application for certification shall be accompanied by]

Payment of the application fee as established~~[specified]~~ in KRS 223.447.~~[-]~~

~~(b)[The application shall be made on] The[Water Well and Monitoring Well Driller's Certification] Application for Certification;[-]~~ provided by the cabinet.

~~(2) The application shall include:]~~

~~(c)[(a)] All[The] information required by KRS 223.425;[-]~~ including proof the applicant is eligible to be a driller pursuant to KRS 223.425(2);

~~(d)[(b)] Proof of the insurance and bond required by[pursuant to] KRS 223.430; and~~

~~(e)[(e)]1. A notarized statement from a certified water well driller, a driller in another state, or another person who has directly supervised the applicant, that the applicant has worked under the driller's supervision for a minimum of two (2) years as established in[the statutory period of time pursuant to] KRS 223.425(2); or~~

~~2. Notarized proof of other qualifying experience, including:~~

~~a. Employment as an environmental professional working with the design and installation of wells and well drilling operations for a minimum of two (2) years; and~~

~~b.[One (1) of the following:]~~

~~(i) Employment as a registered professional geologist as established in[accordance with] KRS Chapter 322A;~~

~~(ii) Employment as a registered professional engineer as established in[accordance with] KRS Chapter 322; or~~

~~(iii) A graduate, bachelor's~~[bachelors]~~, or associate~~[associates]~~ degree in a natural science.~~

~~(2) Water well driller assistant application. An applicant desiring a water well driller assistant certification shall submit a completed application to the cabinet and[which] shall include:~~

~~(a) The Application for Certification;~~

~~(b) All information required by KRS 223.425(5); and~~

~~(c) Payment of the application fee as established in KRS 223.447.~~

Section 3. Examinations. (1) An applicant for a water well driller or water well driller assistant certification shall earn a minimum passing score of seventy (70) percent on an applicable examination in order to receive a certificate~~[All persons receiving a certification shall pass an exam].~~

(2) The cabinet shall prepare and administer the examinations that determine the knowledge, ability, and judgment of approved applicants as established in this section and~~[in accordance with] Section 1[2] of this administrative regulation.~~

~~(a)1. Examinations shall be administered at least annually[at a place and time scheduled] by the cabinet.~~

~~2. The applicant and cabinet shall schedule the cabinet-administered examination at a mutually agreeable date and time[The cabinet shall an advanced announcement of each examination and the availability of National Groundwater Association examinations].~~

~~(b) The applicant shall schedule to take other examinations required by this administrative regulation directly with the National Groundwater Association.[Arrangements may be made with the cabinet to take the examination at an alternate time].~~

(3) The cabinet shall administer the examination only to a qualified applicant who has:

~~(a) Submitted a complete application;~~

~~(b) Met all requirements established in[of] KRS 223.425;~~

~~(c) Met all requirements established in[of] Sections 1 and 2 of this administrative regulation; and~~

~~(d) Paid the examination fee[all applicable fees for the examination] as established[list] in KRS 223.447.~~

~~(4)[The cabinet shall certify those applicants who pass the applicable examination.]~~

~~(a) An[Each applicant shall achieve a score of not less than seventy (70) percent to pass each examination administered.~~

~~(b)1. Each] applicant who does not pass an examination may repeat the examination after forty-five (45) days from the date the cabinet notifies the applicant[is notified] of the results.~~

~~(b)[2.] An applicant shall not repeat an examination more than six (6) times per calendar year.~~

~~(c) Examinations shall not be returned to the applicant, but the~~

applicant may review results with a member of the board or an employee of the cabinet upon request.

(5) Contents of the water supply well driller examination.

(a) For a certificate to drill water supply wells, an examination shall consist of~~[the following]~~:

1. The Kentucky Water Well Certification Examination;

2. The National Ground Water Association General Exam; and

3. One (1) or more of the~~[following]~~ National Ground Water Association specialty examinations applicable~~[applying]~~ to each drilling method for which the applicant wishes to be certified, including:

a. Cable Tool Drilling Exam;

b. Air Rotary Drilling Exam;

c. Mud Rotary Drilling Exam;

d. Reverse Rotary Drilling Exam;

e. Jetting and Driving Wells in Unconsolidated Material Exam;

f. Boring and Augering in Unconsolidated Materials Exam; or

g. A substitute examination as identified or developed~~[jointly]~~ by the cabinet in consultation with~~[and]~~ the board to test~~[testing for]~~ knowledge of local laws or regulations as established in~~[accordance with]~~ KRS 223.410.

(b) For a certificate to drill monitoring wells using hollow stem auger, solid stem auger, or direct push method, an examination shall consist of~~[the following]~~:

1. The Kentucky Monitoring Well Certification Examination;

2. The National Ground Water Association General Exam; and

3. The National Ground Water Association Augering and Monitoring Exam; or

4. A substitute examination as identified or developed~~[jointly]~~ by the cabinet in consultation with~~[and]~~ the board to test~~[testing for]~~ knowledge of local laws or regulations as established in~~[accordance with]~~ KRS 223.410.

(c) For a certificate to drill monitoring wells using another method, an examination shall consist of~~[the following]~~:

1. The Kentucky Monitoring Well Certification Examination;

2. The National Ground Water Association General Examination;

3. The National Ground Water Association Augering and Monitoring Exam; and

4. One (1) or more of the~~[following]~~ National Ground Water Association specialty examinations applicable~~[applying]~~ to each drilling method for which the applicant wishes to be certified, including:

a. Cable Tool Drilling Exam;

b. Air Rotary Drilling Exam;

c. Mud Rotary Drilling Exam;

d. Reverse Rotary Drilling Exam;

e. Jetting and Driving Wells in Unconsolidated Material Exam;

f. Boring and Augering in Unconsolidated Materials Exam; or

g. A substitute examination as identified or developed~~[jointly]~~ by the cabinet in consultation with~~[and]~~ the board to test~~[testing for]~~ knowledge of local laws or regulations as established in~~[accordance with]~~ KRS 223.410.

(6) Contents of the water supply well driller assistant examination. An applicant shall earn a minimum passing score of seventy (70) percent on:

(a) The Kentucky Water Well Driller Assistant Certification Examination; or

(b) A substitute examination as identified or developed by the cabinet in consultation with the board to test knowledge of local laws or regulations as established in KRS 223.410.

(7) Contents of the monitoring well driller assistant examination. An applicant shall earn a minimum passing score of seventy (70) percent on the:

(a) Kentucky Monitoring Well Driller Assistant Certification Examination; or

(b) A substitute examination as identified or developed by the cabinet in consultation with the board to test knowledge of local laws or regulations as established in KRS 223.410.

Section 4. Issuance of Certificate. (1)~~[Upon satisfactory fulfillment of the requirements established in[of] this administrative regulation,] The cabinet shall issue a certificate~~~~[to the applicant]~~

designating the classification~~[of drilling]~~ for which the water well driller or water well driller assistant has demonstrated competence.~~[-]~~

(a) Upon satisfactory fulfillment of the requirements established ~~in~~[of] this administrative regulation; and

(b) Payment of the initial certification fee as established in KRS 223.447.

(2) ~~A~~[If the driller's employment or mailing address changes from that listed on the application, the] water well driller or water well driller assistant shall provide written notification to the cabinet within thirty (30) days of a change of employment or mailing address.

(3) Display of certificate number.

(a) A certified water well driller shall have the certificate number affixed and prominently displayed on the drill rig used at the well site.

(b) The certificate number shall be:

1. Inscribed with the format~~[in the following manner]~~: KY. CERT. XXXX-XXXX-XX~~[XXXX-XXXX]~~ (insert certificate number in place of the Xs).~~[-]~~

2.~~[-]~~(c) Inscribed with numbers that shall be~~[are]~~[Numbers shall be] at least three (3) inches in height and of a color that shall be easily distinguishable from that of the drill rig; and~~[-]~~

3.~~[-]~~(d) This number shall be Removed if the:

a. Drill rig is scrapped, sold, or otherwise changes ownership.~~[-]~~or

b.~~[-]~~[if the] Certified water well driller's certificate becomes invalid.

Section 5. Service of Process. Each applicant, certified water well driller, and certified water well driller assistant~~[and driller]~~ shall provide the cabinet with an address for receipt of applicable legal documents for service of process. The last address provided to the cabinet~~[pursuant to this provision]~~ shall be the address at which the cabinet shall tender applicable legal notices in connection with an enforcement or disciplinary action.

Section 6. Disciplinary Action. (1) A certified water well driller or certified water well driller assistant shall be subject to disciplinary action if the water well driller or water well driller assistant:

(a) Practiced fraud or deception in obtaining a certificate or filing cabinet mandated reports;

(b) Did not use reasonable care or judgment in the performance of duties;

(c) Failed to apply knowledge in the performance of duties;

(d) Is~~[incompetent,]~~ unable~~[-]~~ or unwilling to properly perform duties; or

(e) Does not have bond and insurance required by KRS 223.430.

(2) The disciplinary action shall be as~~[take the form of]~~[the following]~~[sanctions]~~ established in this subsection depending on the severity, duration, and number of the violations, including:

(a) Probation, not to exceed one (1) year;

(b) Suspension of the water well driller's or water well driller assistant certificate, not to exceed one (1) year, during which the certificate shall be considered void;

(c)~~[-]~~ Temporary revocation of the~~[driller's]~~ certificate which;

2. Temporary revocation shall be greater than one (1) year and not more than four (4) years;

(d) Permanent revocation of the~~[driller's]~~ certificate~~[certification]~~; or

(e) Civil or criminal penalties against the driller.

(3) Initial review procedures. Valid~~[Written]~~ complaints or a significant enforcement action against a water well driller or water well driller assistant may, ~~unless duplicitous or frivolous, shall~~ be reviewed at the next regularly scheduled board meeting.

(a) If the board decides a complaint or enforcement action warrants~~[complaints warrant]~~ further investigation, the water well driller or water well driller assistant shall be requested to appear before the board.

(b) Upon completion of its review of the complaint and available facts, the board shall send its recommendation and supporting facts to the cabinet.

(c) The cabinet shall:

1. Decide whether or not to take disciplinary action against the water well driller or water well driller assistant based on the board's recommendation and supporting facts; and~~[-]~~

2.~~[-]~~(d) The cabinet shall Notify the water well driller or water well driller assistant and the board of its decision and the facts supporting its decision in writing.~~[-]~~(e) The cabinet shall notify the board of its decision and the facts supporting its decision.

(4) Action taken by the cabinet pursuant to this section shall not preclude the cabinet from pursuing additional civil or criminal action.

(5)(a) A water well driller or water well driller assistant whose certificate has been suspended or revoked shall not drill wells.

(b) If a certificate is permanently revoked, the water well driller or water well driller assistant shall be ineligible to receive a certificate as a water supply well driller,~~[or]~~ monitoring well driller, or well driller assistant in the future.

(c) Experience gained during a suspension or temporary revocation shall not be included toward meeting the requirements established in~~[of]~~ Section 2~~[-]~~(5) of this administrative regulation.

(6)(a) Sanction review and removal. During the water well driller's or water well driller assistant's probation or suspension the board and cabinet shall monitor the water well driller's or water well driller assistant's work activities.

(b) At the end of the sanction period, the board shall recommend that the cabinet lift the sanction or take additional action against the water well driller or water well driller assistant.

(7) Pursuant to KRS 224.10-420(2) and 400 KAR 1:100, a water well driller or water well driller assistant may contest~~[who considers himself aggrieved by]~~ a disciplinary action of the cabinet by filing~~[may file]~~ a petition for a hearing with the cabinet.

Section 7. Expiration and Renewal of Certificates. (1) All certified water well drillers and water well driller assistants shall renew their certificates annually.

(2)(a) Certificates shall be valid from the date of issuance until the following June 30. If an initial certificate is issued after May 1, it shall be effective until June 30 of the next calendar year.

(b) Certificates shall be renewed by July 1 of each year.

(3) Certificate renewal shall require submitting to the cabinet:~~[-]~~(3)(a) A certified water well driller desiring to renew a certificate shall file

(a) A complete Application for Certification Renewal~~[Application with the cabinet]~~; and

(b) Payment of the renewal fee as established~~[Pay the fees specified]~~ in KRS 223.447.~~[-]~~(b) The renewal application shall be made on the Well Driller's Certification Renewal Application.

(4)(a) If the certificate renewal fee is not received within sixty (60) days of the renewal date of July 1, the certificate shall expire.

(b) Expired certificates may be renewed without examination within two (2) years of the expiration date, if the applicant:

1. Pays the renewal fee as established in KRS 223.447.~~[-]~~

2. Meets the continuing education requirements established~~[outlined]~~ in subsection 5~~[-]~~(five-5) of this section within the twelve (12) months immediately preceding~~[prior to]~~ recertification.~~[-]~~ and

3. Meets all other statutory and regulatory requirements for certification.

(5) Continuing education requirement.

(a) Certified water well drillers shall complete a minimum of five (5) hours of cabinet-approved continuing education for certificate renewal. A minimum of three (3) hours of continuing education shall pertain directly to well drilling.

(b) Certified well driller assistants shall complete a minimum of eight (8) hours of cabinet-approved continuing education as established in KRS 223.425. A minimum of four (4) hours of continuing education shall pertain directly to well drilling.

(c)~~[-]~~(a) Continuing education shall include correspondence courses, short courses, trade association meetings, and other job training courses relevant to water well construction.

(d)~~[-]~~(b) A~~[The]~~ certified water well driller or water well driller assistant shall obtain written confirmation~~[approval]~~ from the cabinet that a continuing education training course has been

approved by the cabinet prior to completing the continuing education training course.

~~(e)[(e)]~~ The cabinet shall approve continuing education training events ~~that meet[for all drillers if the training meets]~~ the requirements ~~established in paragraphs[of paragraph]~~ (a) and (b) of this subsection.

~~(f)[(4)]~~ An applicant for certificate renewal shall submit documentation of continuing education~~[training]~~ with the renewal application.

Section 8. Certificates and Wallet Cards. (1) The cabinet shall provide certified water well drillers and water well driller assistants with certificates and wallet cards.

(2) A certified water well driller or water well driller assistant~~[The driller]~~ shall carry wallet cards at the job site.

~~Section 9.[Rig Operators. Rig operator cards shall not be issued after the most recent effective date of this administrative regulation.]~~

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

~~(a) "Application for Certification", DEP No. DOW6060, July 2019["Water Well and Monitoring Well Driller's Certification Application", July 2008; and];~~

~~(b) "Application for Certification Renewal", DEP No. DOW6070, July 2019["Well Driller's Certification Renewal Application", July 2008]; and~~

~~(c) "Affidavit of Supervision", DEP No. DOW6080, July 2019.~~

(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. This material is also available on the Division of Water Web site at <https://eec.ky.gov/Environmental-Protection/Water/GW/Pages/GWDrillers.aspx>, ~~www.water.ky.gov~~.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 3, 2019

FILED WITH LRC: October 4, 2019 at 11 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for certification and certification renewal for water well and monitoring well drillers and well drillers assistants, including examinations, applications, disciplinary action, and certification renewal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the requirement to promulgate administrative regulations for well driller and well driller assistants pursuant to KRS 223.420.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification

of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(2) If 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 was made to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative is necessary to establish a water well driller's assistant program required by Senate Bill 32 of the 2019 legislative session, which amended KRS 223.400 through 223.460.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation establishes a water well driller's assistant program required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460. The amendment was made to comply with the drafting requirements 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 affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

(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 individuals identified in question (3) will need to comply with the requirements for becoming certified, and to renew certification, as a water well driller's assistant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation, an applicant for initial certification as a water well driller or water well driller's assistant will pay a total of \$330 (\$50 application fee, eighty dollar \$80 examination fee, and \$200 certification fee) as established in KRS 223.447. Certified well drillers must also pay for the cost of the surety bond and \$1000,000 of general liability insurance. Certification renewal for water well drillers and water well driller assistants will cost \$200 as established in KRS 223.447.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements of KRS 223.400 through 223.600. Additionally, the entities will benefit from having a new water well driller's assistant program.

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

(a) Initially: The current cost of the program is about \$300,000 for 2.5 FTEs for certified water well drillers, which is well above the current annual revenue between approximately \$15,000 to \$20,000. The certified population could potentially triple, from about 150 to 450, with implementation of the new water well driller's assistant program.

(b) On a continuing basis: Should the new program triple the number of applicants, the program would require at least one additional FTE which would cost approximately \$69,000, to bring total annual cost to about \$369,000.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Water well driller and water well driller assistant certification fees, Clean Water Act Section 106 grant for groundwater, and general funds allocated by the legislature.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Senate Bill 32 of the 2019 legislative session amended KRS 223.447 (Fees for water well driller certification) by increasing fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fees contained in this administrative regulation were established by Senate Bill 32 of the 2019 legislative session, which amended KRS 223.447 (Fees for water well driller certification) by increasing fees.

(9) TIERING: Is tiering applied? Tiering is applied. The fees and information required for certification are based on whether the certification is for a water well driller or water well driller's assistant, and whether certification is initial or a renewal.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Water, which certifies water well drillers and water well driller assistants, and those divisions of state or local government that may employ certified water well drillers and water well driller assistants and pay their certification or renewal fees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.420(1)(e) requires the cabinet to promulgate administrative regulations concerning examination and certification of water well drillers. This administrative regulation provides for the certification of water well drillers and water well driller assistants, including the requirements for examination, application, and disciplinary action.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 revenue generated by the certification fees revised by amendments to KRS 223.447 will result in revenue to the Division of Water of about \$136,800 if the new water well driller assistant program triples the current certified population.

(b) How 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 revenue generated by the certification fees revised by amendments to KRS 223.447 will result in revenue to the Division of Water of about \$136,800 if the new water well driller's assistant program triples the current certified population.

(c) How much will it cost to administer this program for the first year? The current cost of the program is about \$300,000 for 2.5 FTEs.

(d) How much will it cost to administer this program for subsequent years? The Division of Water may require an additional FTE if the new water well driller's assistant program triples the certified population, which will cost approximately \$369,000 per year.

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

Revenues (+/-): Approximately \$136,800
Expenditures (+/-): Approximately \$369,000
Other Explanation: N/A

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the certification of water well drillers or water well drillers assistants.

2. State compliance standards. KRS 223.410, 223.420(1)(e), 223.435, 224.10-100, 224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the certification of water well drillers or water well drillers assistants.

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 for the certification of water well drillers or water well drillers assistants.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for the certification of water well drillers or water well drillers assistants.

ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division of Water (Amended After Comments)

401 KAR 6:350. Monitoring well construction practices and standards.

RELATES TO: KRS ~~223.400 -[through] 223.460~~[223.400--223.460], 223.991, ~~224.1-400, 224.1-405, 224.43-010 -[through] 224.43-815, 224.46-012 -[through] 224.46-870, 224.60-100 -[through] 224.60-160~~[224.01-400, 224.01-405, 224.43-010--224.43-815, 224.46-012--224.46-870, 224.60-100--224.60-160, EO 2008-507, 2008-531]

STATUTORY AUTHORITY: KRS 151.110, 223.435, 224.10-100, 224.70-100, 224.70-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the secretary of the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. ~~[EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet.]~~ This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

Section 1. General Requirements. (1)~~[Certified monitoring well driller requirement.]~~ Each monitoring well shall be constructed, modified, or abandoned by a monitoring well driller or monitoring well driller assistant~~[natural persons]~~ certified in accordance with KRS 223.425 and 401 KAR 6:320.

(2) A monitoring well driller's assistant shall work under the "direct supervision", as defined by 401 KAR 6:001(14), of a certified monitoring water well driller.

(3) Well specifications shall:

(a) Be provided by the certified well driller to the well driller's assistant, as required under "direct supervision", as defined by 401 KAR 6:001(14), for the work to be conducted including:

1. Construction;
2. Alteration;
3. Maintenance;
4. Repair;
5. Reworking;
6. Development;
7. Abandonment; or
8. Plugging; and

(b) Shall be recorded on the Uniform Kentucky Well Construction Record, which shall be:

1. Retained by the well driller's assistant; and

2. Available for inspection upon request by the cabinet.

(c) Changes made to well specifications during any work being conducted on a well shall be:

1. Approved in advance by a certified well driller;

2. Recorded on an amended Uniform Kentucky Well Construction Record;

3. Retained by the well driller's assistant; and

4. Available for inspection upon request by the cabinet.

(4) ~~Construction and well performance requirement.~~ Permanent and temporary monitoring wells shall be constructed, modified, and abandoned in ~~such~~ a manner ~~that prevents~~ ~~as to prevent~~ the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(5) ~~(3)~~ Reporting requirement. Within sixty (60) days after completion, modification, or abandonment of a monitoring well or temporary monitoring well, the certified monitoring well driller shall ~~submit a report of well construction to the cabinet.~~

(a) Record all information about the depth and the materials used in the monitoring well construction, modification, or abandonment; ~~and~~ ~~shall also be recorded.~~

(b) ~~Submit a complete~~ The report shall be submitted on the ~~form~~ Uniform Kentucky Well Construction Record ~~form to the cabinet and monitoring well owner.~~

(6) ~~(4)~~ Records to monitoring well owner. The certified monitoring well driller shall provide a copy of the Uniform Kentucky Well Construction Record to the monitoring well owner within sixty (60) days after a monitoring well has been constructed, modified, or abandoned. ~~(7) (5)~~ The certified well driller shall tag Each well constructed or modified shall be tagged with a well identification number tag provided by the cabinet.

(a) An existing well identification number shall be included on the Uniform Kentucky Well Maintenance and Plugging Record for any well being modified or abandoned.

(b) If a well identification number does not exist at the time of modification or abandonment, the well shall be tagged ~~certified driller shall tag the well, as appropriate,~~ and ~~include~~ the well identification number assigned shall be recorded on ~~in~~ the Uniform Kentucky Well Maintenance and Plugging Record.

(7) ~~(8)~~ ~~(6)~~ Variance. If conditions exist or are believed to exist that preclude compliance with the requirements ~~established in~~ ~~of~~ this administrative regulation, the certified monitoring well driller may request a variance from the ~~cabinet~~ ~~water well drillers program~~ prior to well construction or well abandonment.

(a) The variance request shall be submitted in writing on the Kentucky Monitoring Well Variance Request form ~~and shall include~~.

(a) The variance shall include the following:

1. A thorough description of the;

a. Land use at the site and at adjacent and surrounding properties; and

b. Expected geologic conditions at the site, including:

i. Soil thickness;

ii. Type of bedrock;

iii. Depth to groundwater;

iv. Perched water; and

v. Confining zones;

2. Distance between the proposed monitoring well ~~monitoring-well~~ location and:

a. Other existing water-supply wells or monitoring wells on adjacent properties; and

b. ~~Distance between the proposed monitoring-well location and~~ Potential pollution sources, both on site and on adjacent properties, including:

(i) Septic systems; ~~and~~

(ii) Sewers; ~~and~~

(iii) Petroleum and chemical storage tanks, or other potential pollution sources;

3. ~~A description of the geologic conditions expected at the site, including soil thickness, type of bedrock, if present, perched water, confining zones, and depth to groundwater;~~

5. A summary of the provisions, including the section numbers of this administrative regulation, for which the variance is

requested;

4. ~~(6)~~ A justification for the variance; ~~and~~

5. ~~(7)~~ Proposed construction, modification, or abandonment procedures to be used in lieu of compliance with this administrative regulation; and

6. An explanation ~~of~~ ~~as to~~ how the alternate well construction procedures will ensure the protection of the quality of the groundwater and the protection of public health and safety.

(b) Written variance procedure.

1. The certified monitoring well driller shall:

a. Request a variance by submitting to the cabinet a complete Kentucky Monitoring Well Variance Request form signed by the certified monitoring well driller and, if possible, by the monitoring well owner; and

b. Obtain cabinet approval before well construction begins. ~~1. The driller shall submit the Kentucky Water Well Variance Request form, signed by the certified driller and well owner, and obtain written cabinet approval before well construction begins.~~

2. The cabinet shall:

a. Notify the applicant in writing within ten (10) days of its decision to either grant or deny the variance; ~~and~~ ~~if~~

b. ~~3. The cabinet shall~~ Not issue a variance if the proposed monitoring ~~water supply~~ well construction will not ensure the protection of groundwater quality and public health and safety.

(c) Verbal variance for an emergency.

1. A certified monitoring well driller may request a verbal variance for an emergency if the delay incurred due to the written variance procedure established in paragraph (b) of this subsection may result in:

a. ~~Loss of access to potable water for the intended user;~~

b. Failure to address an existing or impending environmental emergency in accordance with KRS 224.1-400 ~~224.01-400~~; or

c. ~~A risk to public health or safety.~~

2. The cabinet shall not issue a variance if the proposed monitoring ~~water supply~~ well construction will not ensure the protection of groundwater quality and public health and safety.

3. Within fifteen (15) days of the date the cabinet approves the verbal variance for an emergency, the certified monitoring ~~water~~ well driller shall submit to the cabinet a complete Kentucky Monitoring ~~Water~~ Well Variance ~~variance~~ Request form ~~signed by the certified monitoring well driller and monitoring well owner,~~ ~~to the cabinet.~~

(d) The variance approval shall list the conditions of the variance, including the:

1. ~~The~~ Approved alternate well construction procedures;

2. ~~The~~ Well sampling requirements; and

3. ~~The~~ Requirement to notify surrounding property and well owners of the variance, if applicable.

(e) The certified monitoring well driller shall submit to the cabinet and the monitoring well owner a copy of the Kentucky Monitoring Well Variance Request form ~~signed by the certified monitoring well driller and the monitoring well owner,~~ ~~to the cabinet and the monitoring well owner~~ within sixty (60) days after the well is completed.

Section 2. Design Factors. Monitoring well construction shall comply with the requirements established in this section. ~~The certified monitoring well driller shall construct each monitoring well to comply with the following:~~ (1) Monitoring wells shall not be constructed in an identified special flood hazard area ~~unless constructed in flood zones;~~

(a) An alternate site ~~if a reasonable location~~ does not exist; ~~if~~

(b) ~~monitoring wells may be constructed in flood zones providing~~ The well is water tight; and

1. The well is of flush mounted construction; ~~or~~ ~~and~~

2. The well casing extends a minimum of two (2) feet above the highest base ~~maximum known~~ flood elevation at the site.

(2) ~~(b)~~ Measures shall be taken during drilling and well construction to prevent the introduction or migration of contaminants to a water-bearing zone or aquifer; ~~if~~

(3) ~~(2)~~ Water used in the drilling or decontamination process shall be potable; ~~and~~

(4) ~~(3)~~ Each water-bearing zone that is intercepted during

the drilling phase but not intended for groundwater monitoring shall be:

1. Sealed off to prevent down-hole cross contamination before advancing the borehole[;] and

2. ~~[(a) Each water-bearing zone that is intercepted during the drilling phase but not intended for groundwater monitoring shall be] Prevented from contributing to a well by installing outer casing with a watertight seal.~~

(b) The permanent outer casing shall have a minimum two (2) inch annulus between the:

1. Borehole and the outside diameter of the outer casing; and

2. ~~[a minimum two (2) inch annulus between the] Outer casing and the inner casing.~~

(c) The outer casing shall be grouted with sealing materials using a grout pipe.

(d) A minimum cure time in accordance with~~[following]~~ the sealing material manufacturer's specifications~~[recommendation]~~ shall be required before drilling through the grout seal.

(e) Temporary outer casing may be installed.

Section 3. Monitoring Well Construction. (1) General Requirements.

(a) All permanent and temporary monitoring wells shall be constructed, modified, and abandoned in a manner that prevents~~[as to prevent]~~ the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(b) Monitoring wells shall be constructed in a manner that yields~~[as to yield]~~ both groundwater samples and groundwater-level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.

(2) Boreholes.

(a)1. Boreholes drilled in unconsolidated formations shall be a minimum of four (4) inches greater than the outside diameter of the well casing and well screen except for sonic wells, direct push wells, and temporary wells.

2. ~~The [driller shall clean out the] open borehole shall be cleaned~~ if soil or rock fall into the open borehole during auger or drill-stem retrieval.

(b) Boreholes drilled in consolidated formations shall be a minimum of two (2) inches greater than the outside diameter of the well casing and screen.

(c) Boreholes drilled by the hollow-stem auger or sonic drill method shall have a minimum auger or casing inner diameter (ID) as established in this paragraph [subsection]~~[for the following:]~~

1. Four and one quarter (41/4) inches ID for the installation of two (2) inch monitoring well casing;

2. Six and one quarter (61/4) inches ID for the installation of four (4) inch monitoring well casing; or

3. Larger augers shall be required if installation difficulties due to geologic conditions or greater depths are anticipated.

(3)(a) Lubricant shall not be used on drill pipe threads, hollow-stem or solid-stem augers, or on the exterior of the drill pipe, unless approved in advance by the cabinet following the variance procedure established in Section ~~1(7)(4)(b))~~1(4)(6)) of this administrative regulation.

(b) A request to use a lubricant shall:

1. Be submitted by the certified monitoring well driller in writing to the ~~cabinet; [water well drillers program,] and~~

2. Include a ~~[Material] Safety Data Sheet [(MSDS)]~~ for the proposed lubricant~~[shall be submitted with the request]~~.

(4)(a) If the air rotary drilling method is used, drill cuttings shall be contained.

(b) Air rotary drills using screw compressor systems shall have a coalescing filter system that captures excess entrained compressor oils.

(5) Drilling Derived Waste (DDW) shall be properly containerized.

Section 4. Monitoring Wells Completed Below Ground Surface.

(1)(a) Flush mount wells may be approved in~~[used for parking lot] areas where above-ground completion is not practical or poses a threat to monitoring well integrity and safety~~~~[with high traffic, and~~

~~limited space, such as Underground Storage Tank (UST) facilities, if installed in a manner that prevents surface water or contaminants from migrating into the well].~~

(b) Monitoring wells completed below ground surface shall have a flush-mount manhole with a bolt-down well cover and waterproof seals installed to prevent the inflow of surface water and contaminants.

(2) The concrete surface pad shall slope away from the monitoring well to prevent precipitation or contaminants from accumulating around the well.

(3) (a) Waterproof seals shall be installed between the cover and the box[;] and

(b) O-rings or gaskets shall be installed around the bolts that mount on the cover.

(4) The cover shall consist of material able to withstand the maximum expected loadings.

(5) A water-tight lockable cap shall be attached to the top of the well casing.

(6) The well casing shall be cut so that the locking cap shall install properly and provide a waterproof seal.

(7) A flush-mount monitoring well shall have a concrete surface pad that shall be a minimum of four (4) inches thick with a minimum two (2) foot diameter or square pad centered on the well.

Section 5. Direct Push Monitoring Wells. (1) Direct push monitoring wells installed using direct push technology shall be constructed, modified, and abandoned in~~[such] a manner that prevents~~~~[as to prevent]~~ the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials.

(2) Temporary monitoring wells installed by the direct push method shall:

(a) Be constructed in~~[such] a manner that yields~~~~[as to yield]~~ both groundwater samples and groundwater level measurements that shall be representative of the water-bearing zone or aquifer to be monitored[;]

(b) Not allow the mixing of hydrogeologically distinct groundwater zones;

(c) Not exceed fifty (50) feet in depth unless otherwise approved by the cabinet; and

(d) Comply with requirements as established in Section 6 of this administrative regulation.

(3) Direct push monitoring wells shall also comply with the ~~[following] additional standards established in this subsection.[;]~~

(a) The outside diameter of the borehole shall be a minimum of one (1) inch greater than the outside diameter of the well casing[;]

(b) Premixed bentonite slurry or bentonite chips with a minimum of one-eighth (1/8) inch diameter shall be used in the sealed interval below the static water level[; and]

(c) 1. Direct push monitoring wells shall not be constructed through more than one (1) water-bearing formation unless the upper water bearing zone is isolated by temporary or permanent casing.

2. The direct push tool string may serve as temporary casing.

(4) Prepacked well screens may be used.

Section 6. Temporary Monitoring Wells. (1) Temporary monitoring wells shall be:

(a) Constructed, modified, and abandoned in~~[such] a manner that prevents~~~~[as to prevent]~~ the introduction or migration of contamination to a water-bearing zone or aquifer through the casing, drill hole, or annular materials; and[.]

~~[(a) Temporary monitoring wells shall be]~~ Constructed in~~[such] a manner that yields~~~~[as to yield]~~ both groundwater samples and groundwater level measurements that shall be representative of the water-bearing zone or aquifer to be monitored.

~~[(b)]~~ The annulus between the borehole and the well casing shall be sealed at the surface with a bentonite seal to prevent surface water from migrating into the borehole.

~~[(3)]~~~~[(2)]~~ Each temporary monitoring well shall be properly abandoned, as established in Section 11 of this administrative regulation, within seventy-two (72) hours after the well was

constructed.

~~(4)(3)(a)~~ A record of a temporary monitoring well constructed and abandoned shall be submitted by the certified monitoring well driller on the Uniform Kentucky Well Maintenance and Plugging Record to the cabinet and the monitoring well owner within sixty (60) days from the date abandoned.~~[(b) A copy of the Uniform Kentucky Well Construction Record and the Uniform Kentucky Well Maintenance and Plugging Record shall also be submitted to the Division of Waste Management program regulating the facility, if applicable.]~~

Section 7. Materials for Monitoring Wells and Temporary Monitoring Wells. (1) Well casing and screens.

(a) Monitoring well casing and screens~~[well screen materials]~~ shall:

1. Be constructed of materials determined on a site-specific basis to ensure that the integrity of the material shall not be affected by contaminants or introduce contaminants to the groundwater.~~[-]~~

~~2. [(b) Well casing and screens shall]~~ Be resistant to chemical and microbiological corrosion and degradation.~~[-]~~

~~3. [(c) Monitoring well casings and screens shall]~~ Be able to withstand the physical forces acting upon them during and following their installation, and during their use, including force.~~[-]~~ This includes force]

a. Due to suspension in the borehole, grouting, development, purging, pumping, sampling.~~[-]~~ and

b. ~~[forces]~~ Exerted on the well casing and screens by the surrounding geologic materials; and.~~[-]~~

4. Have a minimum inside diameter of two (2) inches except for direct push and temporary wells.

~~(b) [(d) The certified driller shall not install]~~ Used, damaged, or contaminated well casing or screens shall not be installed.~~[(e) Well casing and screens shall have a minimum inside diameter of two (2) inches except for direct push and temporary wells.]~~

(2) Joints and couplings.

(a) 1. All joints and couplings shall be a threaded flush joint design~~[type]~~.

2. All joints shall be watertight.

(b) The monitoring well casing shall extend a minimum of two and one half (2 1/2) feet above ground surface, except as established~~[provided for]~~ in Section 4 of this administrative regulation.

(c) 1. A minimum annular space of two (2) inches shall be maintained between the borehole wall and the outside diameter of the monitoring well casing.

2. In a multi-cased monitoring well the annulus between the well casings shall be a minimum of two (2) inches.

(d) Centralizers shall be installed:

1. ~~[Used]~~ In monitoring wells greater than fifty (50) feet in depth; and.~~[-]~~

2. ~~[Centralizers shall be installed]~~ At a minimum of ten (10) foot intervals.

(3) Filter pack.

~~(a) [(a) 1.]~~ The filter pack materials shall:

1. Consist of clean, rounded to well-rounded, insoluble particles of quartz silica composition; and.~~[-]~~

2. ~~[The filter pack materials shall]~~ Be of a size that minimizes head losses through the filter pack and prevents sediment movement through the well screen into the well.

(b) The filter pack shall be placed:

1. a. In the annulus in [such] a manner that prevents~~[as to prevent]~~ bridging; and.~~[-]~~

b. ~~[2.]~~ ~~[At a minimum, the filter pack shall be placed]~~ Slowly and carefully by the free-fall method; or

2. ~~[3.]~~ Using another method that ensures proper placement of the filter pack.

(c) The depth to the filter pack shall be continually monitored during installation.

(d) 1. A minimum of six (6) inches of filter pack shall be placed below the bottom of the well screen.

2. The filter pack shall extend at least two (2) feet above the top of the well screen.

(e) Prepacked well screens may be used if the filter-pack material, filter-pack grain size, and the screen slots are properly sized for the monitoring zones.

(4) Sealing materials.

(a) Only potable water shall be used in mixing sealing materials used in the construction or abandonment of monitoring wells.

(b) The sealing material shall be placed in the annulus by a grout pipe, starting at the top of the bentonite seal to within three (3) feet of the ground surface.

(c) Side-discharge grout pipes shall be used if sealing the annulus for wells that are 100 feet deep or greater.

(d) The concrete surface pad or surface casing shall not be installed until the sealing materials placed in the annulus have settled and cured.

(e) Bentonite seal.

1. The bentonite seal shall:

a. Consist of high solids sodium bentonite pellets with a minimum of thirty (30) percent solids; and

b. ~~[shall]~~ Be placed in the annulus by a method that ensures the prevention of bridging.

2. a. The depth to the bentonite seal shall be continually monitored during installation.

b. The bentonite seal shall extend a minimum of two (2) feet above the top of the filter pack.

3. a. Hydration time of the bentonite seal shall be according to the manufacturer's specifications~~[recommendation]~~.

b. Only potable water shall be used~~[-]~~ if necessary, as the hydration medium.

c. The surface opening and the annulus shall be protected during the hydration period to prevent material from falling into the borehole.

(f) Annular seal.

1. The annular seal shall be installed in [such] a manner that prevents~~[as to prevent]~~ the migration of contaminants or pollutants along the monitoring well annulus into the well.

2. The sealing material shall be placed so that pollutants cannot migrate through the annulus.

3. The sealing materials shall not have a harmful effect on the well casings or screens or damage the surface completion of the well.

Section 8. Surface Completion. (1) Surface casing.

(a) Monitoring wells completed with the well casing extending above ground surface shall be constructed with a steel, anodized aluminum, or PVC outer protective surface casing with a locking cap.

(b) A water tight well cap shall be installed on the well casing.

(c) The well casing shall be cut in a manner so that the locking cap shall install properly and provide a waterproof seal.

~~(d) [1-a.]~~ The outer~~[Outer]~~ protective surface casing~~[casings]~~ shall:

1. Have a minimum of two (2) inches of clearance between the inside diameter of the outer protective casing and the outside diameter of the well casing.~~[-]~~

2. ~~[b- The outer protective surface casing shall]~~ Extend a minimum of one (1) inch and a maximum of twelve (12) inches above the inner well casing.~~[-]~~

3. a. ~~[c- The outer protective surface casing shall]~~ Be installed by pouring a concrete slurry mix into the borehole from the top of the annular seal to the ground surface; and.~~[-]~~

b. ~~[2- The outer protective surface casing shall]~~ Then be pushed into the wet concrete slurry a minimum of two (2) feet below the ground surface.~~[-]~~

4. a. ~~[3- The outer protective surface casing shall]~~ Have a minimum of two (2) weep holes for drainage.~~[-]~~

b. The weep holes shall be a minimum diameter of one-quarter (1/4) inch and shall be located directly above the top of the concrete surface pad; and.~~[-]~~

5. ~~[4- The outer protective surface casing shall]~~ Bear the Kentucky Water Well Tag with the water well number.

(2) Bumper guards.

a. Monitoring wells extending above ground surface shall

have:

1. Four (4) protective bumper guards consisting of steel pipes a minimum of three (3) inches in diameter; and
2. A minimum of five (5) feet in length.

~~(b)(a)1.~~ The bumper guards shall:

1. Be installed to a minimum depth of two (2) feet below ground surface in a concrete footing; and

2. ~~shall~~ Extend a minimum of three (3) feet above ground surface; and

3. Be filled with concrete for additional strength if the bumper guards are steel pipe; and

4. ~~Concrete shall be placed into the steel pipe bumper guards for additional strength.~~

~~(b) The bumper guards shall~~ Be painted a highly visible color.

(c) A modification to the bumper guard requirement shall be pre-approved by the cabinet ~~[water well drillers program]~~ according to the variance procedure established in Section 1(7)(18)(1)(6) of this administrative regulation.

(3) Concrete surface pad.

(a) All monitoring wells shall have a concrete surface pad a minimum of six (6) inches thick with a minimum three (3) foot diameter or square pad centered on the well.

(b) The concrete surface pad shall slope away from the monitoring well in a manner as to prevent precipitation or contaminants from accumulating around the well.

Section 9. Well Development. (1) Newly installed monitoring wells shall be developed until the column of water in the well is free of visible sediment.

(2) ~~The~~ This well-development protocol established in subsection (1)(paragraph 1 of this) section shall not be used as a method for purging prior to water quality sampling.

Section 10. Repairs or modifications to the well casing shall ~~be performed by a certified monitoring well driller and shall be~~ reported to the cabinet by the certified monitoring well driller ~~[water well drillers program]~~ on the Uniform Kentucky Well Maintenance and Plugging Record.

Section 11. Monitoring Well Abandonment. (1) General requirements.

(a) A monitoring well that has been damaged or is otherwise unsuitable for use as a monitoring well; ~~shall be abandoned within thirty (30) days from the:~~

1. ~~Within thirty (30) days from the~~ Last sampling date; or

2. ~~Thirty (30) days from the~~ Date it is determined that the well is ~~no~~ not longer suitable for its intended use.

~~(b)(a)~~ Monitoring wells shall be abandoned ~~in such~~ a manner ~~that prevents~~ as to prevent the migration of:

1. Surface water or contaminants to the subsurface; and

2. ~~to prevent migration of~~ Contaminants among water bearing zones.

~~(c)(b)~~ A Division of Waste Management program that permits or regulates the facility at which a monitoring well is to be abandoned shall be notified by the certified monitoring well driller a minimum of ten (10) working days prior to abandonment of each monitoring well.

(d) ~~A~~ (e) Each temporary monitoring well shall be abandoned within seventy-two (72) hours after installation.

~~(e)(d)1.~~ A record of the monitoring well abandonment shall be submitted to the cabinet by the certified monitoring well driller on the Uniform Kentucky Well Maintenance and Plugging Record ~~to the water well drillers program~~ within sixty (60) days from the date abandoned. ~~2. A copy of the Uniform Kentucky Well Maintenance and Plugging Record shall be submitted to the cabinet program regulating the facility, if applicable.~~

(2) Abandonment methods and sealing materials for all types of monitoring wells.

(a) The surface casing, monitoring well casing, well screen, filter pack, bentonite seal, and cement shall be removed.

(b) The borehole shall be plugged with sealing material by grout-pipe method or by pressure injection from the bottom of the boring to within three (3) feet of the top of the borehole, except as

established ~~[provided]~~ in paragraph (c) of this subsection.

(c) The borehole may be plugged using the gravitational displacement, or free-flow method to a maximum depth of fifty (50) feet with bentonite. ~~If this method is employed, the well driller shall use bentonite~~

1. With a minimum particle size of three-eighths (3/8) inch; ~~and~~

2. ~~the bentonite shall be~~ Used according to the manufacturer's specifications ~~[recommendation]~~.

(d) The top two (2) feet of the borehole shall be filled with materials consistent with the surrounding ground surface.

(e) If the well casing cannot be removed, an alternate method of abandonment may be used ~~[employed]~~, if approved in advance by the cabinet in accordance with the variance process established in Section 1(7)(18)(1)(6) of this administrative regulation.

Section 12. Division of Waste Management Program Requirements. (1) Prior to the installation or abandonment of a monitoring well at a facility regulated by the cabinet ~~[Division of Waste Management]~~, all monitoring well ~~[monitoring well]~~ construction designs and all monitoring-well materials shall be pre-approved by the cabinet ~~[Division of Waste Management]~~ in accordance with the requirements established in KRS 224.1-400, 224.1-405, ~~[224.01-400, 224.01-405,]~~ 224.43-010 through 224.43-815, 224.46-012 through 224.46-870, and 224.60-100 through 224.60-160.

(2) The cabinet ~~[Division of Waste Management regulating program]~~ shall be notified at least ten (10) working days prior to a monitoring well ~~[monitoring well]~~ construction, modification, or abandonment so that a cabinet representative may be present at the construction, modification, or abandonment. ~~(3) A copy of the Uniform Kentucky Well Construction Record and the Uniform Kentucky Well Maintenance and Plugging Record shall be submitted to the Division of Waste Management program regulating the facility, if applicable.~~

Section 13. Documents Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Uniform Kentucky Well Construction Record", DEP No. DOW6010, July 2019 ~~[April 2008]~~;

(b) "Uniform Kentucky Well Maintenance and Plugging Record", DEP No. DOW6040, July 2019 ~~[April 2008]~~; and

(c) "Kentucky Monitoring Well Variance Request", DEP No. DOW6090, July 2019 ~~[2008]~~.

(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. This material is also available on the Division of Water Web site, <https://eec.ky.gov/Environmental-Protection/Water/GW/Pages/GWDrillers.aspx> ~~[www.water.ky.gov]~~. 401 KAR 6:350 Monitoring well construction practices and standards is approved for filing.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 3, 2019

FILED WITH LRC: October 4, 2019 at 11 a.m.

CONTACT PERSON: Carole J. Catalfo, Internal Policy Analyst, RPPS, Division of Water, 3rd Floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 564-3410, fax (502) 564-9003, email: water@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carole J. Catalfo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and minimum standards for the location, construction, modification, and abandonment of monitoring wells and temporary monitoring wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish standards of practice for water well construction as required by KRS 223.435.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the Secretary of the Cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements and minimum standards for the location, construction, modification, and abandonment of monitoring wells and temporary monitoring wells as required by KRS 223.435.

(2) If 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 was made to clarify that monitoring wells shall use only joints and couplings with a threaded flush joint design and to conform to the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to include well driller assistant roles and responsibilities as required by Senate Bill 32 of the 2019 legislative session which amended KRS 223.400 through 223.460, and to update standards and practices for monitoring well construction, modification, and abandonment to current standards.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the Secretary of the Cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation establishes requirements for the construction of monitoring wells, including temporary monitoring wells, and provides minimum standards for location, construction, modification, and abandonment.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will clarify that monitoring wells shall use only joints and couplings with a threaded flush joint design and to conform to the drafting requirements 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 affects approximately 1000 water well owners per year, approximately 200 certified water well drillers and potentially 400 well driller assistants, and as many as 300 drilling/consulting companies. This administrative regulation also affects the Kentucky Division of Water, Kentucky Water Well Certification Board, and the Kentucky Ground Water Association.

(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 identified in question (3) will need to comply with the updated minimum standards for the location, construction, modification, and abandonment of monitoring wells.

(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 is not expected to increase costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will be in compliance with all statutory requirements established in KRS 223.400 through 223.460.

(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: Monitoring well driller and monitoring well driller assistant certification fees, Clean Water Act Section 106 grant for groundwater, and general funds.

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because it establishes minimum standards for the construction, modification, and abandonment of monitoring wells.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Water and those divisions of state or local government that would require a certified well driller to construct, modify, or abandon a monitoring well, such as a municipally owned public water system.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.70-100, and 224.70-110 authorize the cabinet to establish administrative regulations to protect water quality. KRS 223.435 requires the cabinet to promulgate administrative regulations establishing standards of practice for water well construction. This administrative regulation provides minimum standards and requirements for construction, modification, and abandonment of water supply wells.

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

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

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

(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 administrative regulation will not generate additional revenue or result in additional costs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the construction, modification, or abandonment of monitoring wells.

2. State compliance standards. KRS 223.435, 224.10-100,

224.70-100, 224.70-110

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the construction, modification, or abandonment of monitoring wells.

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 for the construction, modification, or abandonment of monitoring wells.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for the construction, modification, or abandonment of monitoring wells.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(Amended After Comments)**

805 KAR 1:001. Definitions for 805 KAR Chapter 1.

RELATES TO: KRS 353.500 through 353.730

STATUTORY AUTHORITY: KRS 353.500

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.500 authorizes the department to promulgate administrative regulations to regulate the all aspects of oil and gas wells in the Commonwealth. This administrative regulation defines terms used in 805 KAR Chapter 1.

Section 1. Definitions. (1) "Abandoned" is defined by KRS 353.510(12).

(2) "Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.

(3) "Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.

(4) "Best management practices" or "BMPs" is defined by KRS 353.510(28).

(5) "Blow-out preventer" or "BOP" means a device installed on the first and largest diameter casing cemented in a well or installed on the intermediate casing. The device is used to prevent the uncontrolled flow of a well at the surface during drilling or workover operations.

(6) "Casing or casing string" means steel tubes or pipes installed in a well.

(7) "Cement" is defined by KRS 353.010(4).

(8) "Commission" is defined by KRS 353.510(4).

(9) "Correlative rights" is defined by KRS 353.510(6).

(10) "Deep well" is defined by KRS 353.510(16).

(11) "Deepening" means the drilling deeper of any existing well where new drilling is to proceed past the depth at which the initial drilling of the well ceased.

(12) "Directional survey" is defined by KRS 353.010(8).

(13) "Director" is defined by KRS 353.510(3).

(14) "Division" means the Division of Oil and Gas.

(15) "Drilling unit" is defined by KRS 353.510(19).

(16) "Eligible well" is defined by KRS 353.510(47).

(17) "Environmentally sensitive feature" means a stream, spring, sinkhole, wetland, state or national park, wilderness area, or wildlife refuge.

(18) "Existing gathering line" means any gathering line installed and not abandoned or taken out of service prior to March 18, 2004.

(19) "Field" is defined by KRS 353.510(10).

(20) "Final reclamation" means the date on which the operator has completed drilling operations at the well site, has plugged the well, and has performed all obligations described in the operations and reclamation plan.

(21) "GPS" means the collection method of acquiring location data using the Global Positioning System that is:

(a)1. Reported as latitude and longitude in degrees and decimal degrees;

2. Captured in three (3) meter accuracy for stationary location

data, such as line markers; and

3. Submitted as waypoints and track logs for the gathering line location;

(b) Recorded in the datum of WGS84; and

(c) Submitted as ArcView shape file or as an ASCII file is submitted electronically.

(22) "Gas" is defined by KRS 353.510(8).

(23) "Gas production flow line" means:

(a) The segment of a gathering line running from a well to the point of interconnection with another gathering line or production compressor; or

(b) If a well produces both oil and gas, the line from a well.

(24) "Gas storage operator" is any corporation, partnership, or individual who is engaged in the work of preparing to inject, or who injects gas into, or who stores gas in, or removes gas from, a gas storage reservoir, and who owns the right to do so, including but not limited to those engaged in transporting and delivering such gas in public service.

(25) "Gas storage reservoirs" are special geologic and geometric elements of underground strata which are or can be so arranged and situated as to be recognized as useful for the retention, injection, storage and recovery of gas therefrom on a commercial service level.

(26) "Gathering line" means any pipeline that is installed or used for the purpose of transporting produced water, crude oil, or natural gas from a well or production facility; or produced water to a well or production facility to the point of interconnection with another gathering line, an existing storage facility or a transmission or main line, including all lines between interconnections, except those lines or portions thereof subject to the exclusive jurisdiction of the U.S. Department of Transportation under 49 C.F.R. Parts 191, 192, 194, and 195.

(27) "Horizontal well" is defined by KRS 353.510(25).

(28) "Intermediate casing" means one or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.

(29) "Intersection length" means the horizontal distance between the point at which the well penetrates the top of the intended formation and the end point within that formation.

(30) "KYEM" means the state Kentucky Emergency Management office under authority of the Department of Military Affairs in Frankfort, Kentucky, with regional offices throughout the Commonwealth.

(31) "Long casing string" means the last casing installed in a well to be used for production or injection purposes.

(32) "Mcf" means 1,000 cubic feet of natural gas.

(33) "Measured depth" means the total length of the vertical and horizontal leg of the actual wellbore.

(34) "NFPA" means the National Fire Protection Association.

(35) "Net gas sales" means the amount of metered or prorated gas sold into the line of first purchase and may be different from produced gas, due to line loss and compressor usage.

(36) "Oil" is defined by KRS 353.510(7).

(37) "Oil production flow line" means:

(a) A gathering line running from a well or wells to a tank battery for production treatment and storage; or

(b) If an injection well, the line from the tank battery to an injection system and then to a wellhead.

(38) "Operating a well" means to reenter, reopen, deepen, drill, inject into, produce, attempt to produce, or work over, any well.

(39) "Operator" is defined by KRS 353.510(17).

(40) "Overriding royalty interest owner" means a person other than a royalty owner, with a right to a percentage share of production or the value derived from production that is:

(a) Free of all costs of drilling and production; and

(b) Created by the lessee or working interest owner and paid by the lessee or working interest owner.

(41) "Person" is defined by KRS 353.510(5).

(42) "Pit" means:

(a) An earthen excavation or steel tank used for the temporary storage of fluids, muds and cuttings associated with the drilling operations of an oil or gas well;

(b) An earthen excavation or steel tank used to temporarily

store well completion fluids associated with acidizing, hydraulic fracturing, workover or plugging of oil and gas and other related wells under the authority of KRS Chapter 353; or
(c) An earthen excavation or steel tank utilized for temporary storage of fluids and solids generated from drilling and completion operations addressed in paragraphs (a) and (b) of this subsection.

~~(43)~~ "Pool" is defined by KRS 353.510(9).

~~(44)~~~~(43)~~ "Prevailing royalty" is defined by KRS 353.510(27).

~~(45)~~~~(44)~~ "Produced gas" means the amount of produced gas metered or prorated at the well head on a monthly basis.

~~(45)~~~~(46)~~ "Production compressor" means a compressor installed on a gathering line and used to regulate gas pressure to enhance delivery.

~~(47)~~~~(46)~~ "Purchaser number" means the number assigned by the purchasing company to the lease or well for accounting and payment purposes.

~~(48)~~~~(47)~~ "Royalty owner" is defined by KRS 353.510(18).

~~(49)~~~~(48)~~ "Shallow well" is defined by KRS 353.510(15).

~~(50)~~~~(49)~~ "Surface casing" means the first and largest diameter casing installed in a well and its primary uses are to stabilize the borehole and to protect the fresh water zones.

~~(51)~~~~(50)~~ "TENORM" is defined by KRS 211.862(13), and is subject to the exemption established in KRS 211.863(5).

~~(52)~~~~(51)~~ "Tank battery" means any aboveground storage tank or interconnected grouping of tanks maintained in conjunction with the production and storage of crude oil or produced water.

~~(53)~~~~(52)~~ "Topographic spot" means the act of locating a well on a United States Geological Survey 1:24,000 Topographic Map and scaling that well location on the map to determine its Carter Coordinate location.

~~(54)~~~~(53)~~ "Transmission line" means a pipeline that is subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195.

~~(55)~~~~(54)~~ "True vertical depth" means the depth of the well from any point in the well being measured to the surface of the ground above the point being measured.

~~(56)~~~~(55)~~ "Underground gas storage" is the utilization of subsurface strata and associated facilities for storing and withdrawing gas held in place for the primary purposes of conservation, fuller utilization of pipeline facilities, and more effective and beneficial service of gas to the public.

~~(57)~~~~(56)~~ "Unit" is defined by KRS 353.010(18).

~~(58)~~~~(57)~~ "Vertical well" is defined by KRS 353.510(26).

~~(59)~~~~(58)~~ "Well" is defined by KRS 353.510(14).

~~(60)~~~~(59)~~ "Well operator" is any person who proposes to or does locate, drill, operate or abandon any well.

~~(61)~~~~(60)~~ "Wellsite boundary" means the area of disturbance by an operator, excluding access roads, to drill an oil or gas well.

~~(62)~~~~(61)~~ "Wildcat well" means any deep vertical or horizontal well that is drilled:

(a) With the intent of discovering or producing hydrocarbons from a formation or formations not previously productive of oil or gas well within 10,000 feet of its location; or

(b) Under proven geological conditions that, even though located within 10,000 feet from the nearest deep well previously productive of oil or gas, will not, if completed successfully, produce from a previously productive pool.

~~(63)~~~~(62)~~ "Working interest owner" means an operator with the obligation to bear all or a proportionate share of the costs and expenses of unit operation.

~~(64)~~~~(63)~~ "Zone" means a layer of strata capable of producing or receiving fluids.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator,
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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 defines terms used in 805 KAR Chapter 1.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to defined terms used in 805 KAR Chapter 1.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.500 authorizes the department to promulgate administrative regulations to regulate all aspects of oil and gas wells in the Commonwealth. This administrative regulation conforms to the authorizing statutes by defining terms necessary to correctly interpret the administrative regulations in 805 KAR Chapter 1.

(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 defining terms necessary to correctly interpret the administrative regulations in 805 KAR Chapter 1.

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

(a) How the amendment will change this existing administrative regulation: The amended after comments version of this administrative regulation inserts a definition of "Pit" as due to a comment received during the public comment period.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to respond to a comment received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.500 authorizes the department to promulgate administrative regulations to regulate all aspects of oil and gas wells in the Commonwealth. This administrative regulation conforms to the authorizing statutes by defining the term pit, which is necessary to interpret the amendments to 805 KAR 1:170 made in response to comments.

(d) How the amendment will assist in the effective administration of statutes: This administrative regulation assists in the effective administration of the statutes by defining the term "pit" which will aid in the correct interpretation of the amendments to 805 KAR 1:170.

(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 regulated entities identified in question (3) will need to use the terms defined in this administrative regulation to correctly interpret the administrative regulation. The entities will also have the term "pit" to correctly interpret the amendments to 805 KAR 1:170 made in response comments received in the public comment period.

(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 for using the terms defined in this administrative regulation. The terms defined in this administrative regulation are simply moved from other administrative regulations in this chapter. There is also a new definition of "pit" that was inserted in response to comments receive during the public comment period.

(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 central location to find defined terms.

(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 new administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering was not used. The terms defined in this administrative regulation will apply equally to all oil and gas operator.

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 almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 353.500 through 353.730.

3. Estimate the effect of this administrative regulation on the 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 Oil and Gas (Amended After Comments)

805 KAR 1:020. Protection of fresh water zones.

RELATES TO: KRS 349.045, 349.110, 353.520

STATUTORY AUTHORITY: KRS 349.115, [Chapter 13A,] 353.540, 353.550, 353.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the Department for Natural Resources to administer and enforce the provisions of KRS 353.500 to 353.720. KRS 349.115 authorizes the Department for Natural Resources to adopt all rules,

administrative regulations, and amendments to implement the provisions of KRS Chapter 349 governing coal bed methane wells. This administrative regulation establishes the requirements to protect fresh water zones from contamination associated with the production of oil and gas. [The waste of oil and gas is prohibited by KRS 353.520. It is the purpose of this administrative regulation to protect fresh water zones from contamination associated with the production of oil and gas. KRS 353.550 provides that the department shall have the authority to set forth the requirements for casing, operation and plugging of wells to prevent escape of oil or gas, the detrimental intrusion of water, blowouts, cave-ins, seepages and fires.]

Section 1. [Definitions. The definitions contained in KRS 353.540 and the following additional definitions shall apply to this administrative regulation:

(1) "Abnormal pressure" means a reservoir pressure that exceeds the hydrostatic pressure of fresh water extending from the reservoir to the surface.

(2) "Annulus" means the space between two (2) strings of casing or between a string of casing and the bore hole wall.

(3) "Casing (casing string)" means steel tubes or pipes installed in a well.

(4) "Surface casing" means the first and largest diameter casing installed in a well and its primary uses are to make the bore hole stand up and to protect the fresh water zones.

(5) "Intermediate casing" means one or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous.

(6) "Long casing string" means the last casing installed in a well to be used for production or injection purposes.

(7) "Zone" means a layer of strata capable of producing or receiving fluids.

Section 2. [Protection of Fresh Water Zones for Drilling and/or] Plugging Operations. (1) During drilling operations, one (1) of the following methods shall be used to protect fresh water zones:

(a) Method A. Casing shall be set on a casing shoulder and said casing shall have a shoe installed on the bottom of the bottom joint. Upon the completion of the drilling program, all the recoverable casing must be removed or cemented to the surface.

(b) Method B. Casing shall be set on a shoulder and cemented sufficiently to cover 100 feet including the shoe. Upon completion of the drilling, all of the recoverable casing must be removed or cemented to the surface.

(c) Method C. A top to bottom drilling mud system with a filtrate water loss of less than ten (10) cubic centimeters, as established in "Recommended Practice for Field Testing Water-based Drilling Fluids" API RP 13B-1 Fourth Edition, March, 2009 [determined by American Petroleum Institute standards, in its publication "Standard Procedures for Field Testing Water Based Drilling Fluids" API RP 13B-1, Sections 1, 2 and 3, June 1, 1990, filed and incorporated herein by reference. Copies may be obtained from the Department for Natural Resources, P. O. Box 14090, Lexington, Kentucky 40512-4090]. Certification of filtrate water loss shall [must] be made by the operator.

(2) In the event a well is to be plugged, then it shall be plugged in the manner prescribed by 805 KAR 1:060 [or 805 KAR 1:070].

Section 2[3]. Protection of Fresh Water Zones. Any well drilled in the Commonwealth of Kentucky subject to the jurisdiction of the Division of Oil and Gas [Department for Natural Resources subsequent to the effective date of this administrative regulation] shall be equipped with the following fresh water protection prior to production or injection. (1) A protective string of casing, be it surface, intermediate, or long string, shall extend thirty (30) feet below the deepest known fresh water zone. The [Such] protective string shall have cement circulated in the annular space outside said casing of a sufficient volume of cement, calculated using approved engineering methods, to assure the return of the cement to the surface. In the event cement does not return to the surface, every reasonable attempt will be made to fill the annular spaces by introducing cement from the surface. If the intermediate casing or

long casing string is:

- (a) Cemented to the surface; or
- (b) Cemented thirty (30) feet into the next larger string of cemented casing in conformity with prescribed procedure, the string or combination of strings shall be considered as the fresh water protection.

(2) In areas where abnormal pressures are expected or encountered, the surface and/or intermediate casing string shall be anchored in sufficient cement, at a sufficient depth to contain said pressures, and blowout prevention valves and related equipment shall be installed.

(3) If a well is drilled through a void, the hole shall be drilled at least thirty (30) feet below the void, the annular space shall be cemented from the base of the casing up to the void and to the surface from the top of the void, or it shall be cemented at least fifty (50) feet into the next higher string or strings of casing that are cemented to the surface and be verified by a cement top log. If an operator is unable to perform the casing and cementing requirement described above, the department may approve alternative casing procedures proposed by the operator, if the director determines that the alternative casing procedures are operationally equivalent to the requirements imposed by this subsection. If an operator encounters more than one (1) void, the department may also impose special requirements on the operator to prevent communication between two (2) or more voids. [Section 4. Wells Used for Injection of Fluids.

(1) ~~The injection of fluids shall be accomplished through a tubing and packer arrangement with the packer set immediately above the injection zone, and the annulus between the tubing and casing shall be monitored by pressure sensitive devices. The injection pressure shall be regulated to minimize the possibility of fracturing the confining strata. Upon application, and after notice and hearing, a variance from this requirement may be granted by the director, upon a showing by an individual operator that alternate prudent engineering practices shall result in fresh water protection. The following are exempted from the requirements of this section:~~

- (a) ~~Injection of fluids for the purpose of well stimulation; and~~
- (b) ~~Injection of gas for the purpose of storage.~~

(2) ~~Before injecting fluids into a well not previously permitted for injection purposes, the operator shall make application to the department for an injection permit for said well. The application for a permit to drill, deepen or convert a well for the purpose of injection of fluids shall include:~~

- (a) ~~A statement by the operator as to whether the well is to be used for pressure maintenance, secondary recovery, tertiary recovery, gas storage or for disposal purposes;~~
- (b) ~~The approximate depths of the known fresh water zones; and~~

(c) ~~A plat showing:~~

1. ~~The names of all lessees and lessors contiguous to the tract on which the injection shall occur;~~
2. ~~The Carter Coordinate location and the elevation of the well site;~~
3. ~~The geologic name and depth of the injection zone;~~
4. ~~At least two (2) surface features, by bearing and distance from the proposed well site, which appear on the U.S.G.S. seven and one-half (7 1/2) minute topographic map of the area;~~
5. ~~The name of said topographic map and county;~~
6. ~~The location of all known fresh water wells within a radius of 1,000 feet of the proposed injection well site;~~
7. ~~The location and completion and/or plugging record of all wells whether producing or plugged, within a radius of 1,000 feet of the proposed injection well site.~~

(3) ~~Prior to injection into any well, the operator shall furnish the department with a certificate indicating that all requirements of this administrative regulation have been met. The certificate shall include the following:~~

- (a) ~~The identification of said well by permit number, operator's name, lease name, well number, Carter Coordinate location, elevation and county;~~
- (b) ~~The entire casing and cementing record, any packers and other special down hole equipment, and cement bond logs, if run;~~

~~(c) The anticipated maximum bottom hole pressure (psi) and volume in barrels or cubic feet, per day;~~

~~(d) The identification of the injection zone by geological name and depth (top and bottom of zone), the number of perforations if applicable, or the interval of open hole; and~~

~~(e) Certification by the operator that the mechanical integrity of the well has been tested.~~

~~Section 5. Exemptions for Preexisting Wells. Any injection well in existence prior to the effective date of this administrative regulation shall be exempt from the requirements of this administrative regulation until such time as in the opinion of the department, said well is leaking fluids to other zones, or to the surface; provided, however, that this exemption shall not apply unless within one (1) year from the effective date of this administrative regulation, the operator files an area plat, or plats, showing all of such operator's injection and associated production wells.~~

~~Section 6. Recordkeeping. The operator of an injection project shall monitor injection pressures and volumes at least monthly, and shall keep said records on file in his place of business for the life of the project, plus five (5) years. The director may require more frequent monitoring, if in his opinion, good reason therefor exists.]~~

Section 3. Material Incorporated by Reference. (1) "Recommended Practice for Field Testing Water-based Drilling Fluids" API RP 13B-1 Fourth Edition, March, 2009, is incorporated by reference;

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Prevailing Time.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

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 protects fresh water zones from contamination associated with the production of oil and gas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect freshwater zones.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.550 authorizes that the department shall have the authority to set forth the requirements for casing, operation and plugging of wells to prevent escape of oil or gas, and the detrimental intrusion of water. This administrative regulation sets forth requirements for the protection of freshwater zones.

(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 protecting freshwater zones.

(2) If 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 definitions that will then be inserted into a new definition administrative regulation for the chapter. It also updates material incorporated by reference and inserts necessary language for the merging of coalbed methane information into the administrative regulation. In response to a comment received during the public comment period the administrative regulation was updated to include "Eastern Prevailing Time" to clarify for individuals interested in obtaining

copies of material incorporated by reference that the Division's office hours are in Eastern Time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to place information related to coalbed methane wells into 805 KAR Chapter 1 as well as update forms and remove definitions. The amendment in response to comments was necessary to correctly interpret the time zone for the Division's office hours.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by inserting information related coalbed methane wells and the protection of freshwater zones. The amendment in response to comment conforms to the authorizing statute by clarifying the intent of the Division's office hours.

(d) How the amendment will assist in the effective administration of the statutes: KRS 353.550 authorizes that the department shall have the authority to set forth the requirements for casing, operation and plugging of wells to prevent escape of oil or gas, and the detrimental intrusion of water. These amendments assists in the effective administration of the statutes by providing information that protects freshwater zones for coalbed methane wells in the same location as all other oil or gas wells. The amendment made in response to comment assist in the effective administration of the statutes by clarifying the time zone for the Division's office hours.

(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 comply with the provisions of this administrative regulation for coalbed methane wells as well as the new document incorporated by reference. If the impacted entities are interested in making copies of the material incorporated by reference then they will need to use Eastern Prevailing Time when interpreting the Division's office hours.

(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 cost the regulated entity any additional funds. These requirements are currently in 805 KAR 9:010.

(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 to drilling a gas well in one location including coalbed methane.

(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 operate an oil or gas well in the Commonwealth will be required to meet the

same standards regarding protection of freshwater.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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, 353.550, and 353.560.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 Oil and Gas

(Amended After Comments)

805 KAR 1:050.[Surety] Bonds; requirements, cancellation.

RELATES TO: KRS 349.120, 353.590

STATUTORY AUTHORITY: KRS 349.115[Chapter—13A,] 353.540, 353.550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.590 and KRS 349.120 requires operators filing a permit application to provide proof of bonding and provides[Provide] for methods of giving notice to operators and sureties of noncompliance. This administrative regulation establishes[Establish] requirements for[ef] release, cancellation and forfeiture of bonds.

Section 1. Bonds Required. As part of the permit or transfer application, the applicant shall post a bond in an amount required by KRS 353.590(7) for oil or gas production wells or KRS 349.120 for coalbed methane wells.

Section 2. Surety Bonds. (1) An operator that chooses to post a surety bond to meet the requirements of Section 1 of this administrative regulation shall file with the division an Individual Surety Bond, OG-5 or a Blanket Surety Bond, OG-6.

(2) Cancellation of a Surety Bond. A blanket surety bond filed pursuant to KRS 353.590(12) for production wells or KRS 349.120(1) for coalbed methane wells may be cancelled by the surety by a communication in writing to division. Cancellation shall be effective only to relieve the surety from liability under the bond for wells which permits have not been issued at the time of the receipt of the notice by the division. Liability under the bond for wells which permits have been issued prior to the receipt by the division of the notice shall not be affected by the cancellation.

Section 3. Property Bonds. An operator that chooses to post a property bond to meet the requirements of Section 1 of this administrative regulation shall file with the division a completed and notarized Property Bond, Form OG-15 pursuant to KRS 353.590(17).

Section 4. Other Bonds. An operator that chooses to post any other bond available to meet the requirements of Section 1 of this administrative regulation shall file:

- (a) Irrevocable Letter of Credit, Form OG-16;
- (b) Verification of Certificate of Deposit, Form OG-20; or
- (c) A completed and notarized Individual Cash Bond, Form OG-45 or Blanket Cash Bond, Form OG-46.

Section 5 Notice of Noncompliance. (1) At any time the division causes a notice of noncompliance to be served upon an operator a duplicate notice shall be provided to the surety, the notice shall be sent by certified mail to the addresses[address] of record. Should the operator fail to comply within the timeframe provided for in KRS 350.590(24), the bond shall be ordered forfeited as provided in that section.

(2) For wells covered by a surety bond pursuant to Section 2 of this administrative regulation, the surety shall be afforded the opportunity to act on behalf of the operator within the time set forth in KRS 350.590(24) in regard to the proper plugging of the well or wells and submission of required records.

Section 6. Bond Release. A bond shall be released upon the proper plugging of the well and the filing with the division of all required records and fees or upon transfer of the well to a successor operator pursuant to KRS 353.590 for production wells or KRS 349.120 for coalbed methane wells. A bond shall not be released until a request has been made in writing by the operator or surety to the division.

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

- (a) "Individual Surety Bond", Form OG-5, June 2019;
- (b) "Blanket Surety Bond", Form OG-6, June 2019;
- (c) "Property Bond", Form OG-15, ~~October~~**June** 2019;
- (d) "Letter of Credit", Form OG-16, June 2019;
- (e) "Verification of Certificate of Deposit", Form OG-20, June 2019;
- (f) "Individual Cash Bond", Form OG-45, June 2019; and
- (g) "Blanket Cash Bond", Form OG-46, June 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., **Eastern Prevailing Time.** At any time the department causes a notice of noncompliance to be served upon an operator (principal) pursuant to KRS 353.590(7), copies of such notice shall be mailed by registered or certified mail to the surety company at the address provided to the Kentucky Office of Insurance for receipt of notices. The surety shall be afforded the opportunity to act in behalf of the operator (principal) within the time set forth in KRS 353.590(7) in regard to the proper plugging of the well or wells and submission of required well log and completion reports, electric logs, if run, and plugging affidavits. Should the operator (principal) and surety fail to comply within the time provided for in KRS 353.590(7) then and in that event only the bond shall be forfeited as provided in that section.

Section 2. An individual well bond shall be released upon the proper plugging of the well and the filing with the department of a plugging affidavit, well log and completion report and electric log, if run. A blanket bond shall be released upon the proper plugging of all wells of the operator (principal) covered by the bond, and the filing with the department of plugging affidavits, well logs and completion reports and electric logs, if run, for such wells.

Section 3. A blanket surety bond filed pursuant to KRS 353.590(5) may be cancelled by the surety by a communication in

writing delivered personally or by registered or certified mail to the office of the Division of Oil and Gas, Department for Natural Resources, provided such cancellation shall be effective only to relieve the surety from liability under the bond for wells which permits have not been issued at the time of the receipt of the notice by the department. Liability under the bond for wells which permits have been issued prior to the receipt by the department of the notice shall not be affected by the cancellation.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

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 of release, cancellation, and forfeiture of bonds.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide operators and sureties information related to bond release, cancellation, and forfeiture of bonds.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.590 and KRS 349.120 requires operators to provide proof of bonding as part of a permit application. This administrative regulation establishes requirements of release, cancellation, and forfeiture of bonds.

(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 requirements for the release, cancellation, and forfeiture of bonds.

(2) If 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 incorporate information related to bond release, cancellation, and forfeiture of coal bed methane wells into this administrative regulation. The amendment also adds statutorily authorized language related to bonding oil and gas wells and is no longer strictly related to surety bonds. This information was previously in 805 KAR 9:030. The amendments made in response to comments inserts language to clarify that the surety will receive a copy of any notice of noncompliance sent to an operator. The administrative regulation is also amended to insert "Eastern Prevailing Time" into the incorporation by reference section.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to bond release, cancellation, and forfeiture. The amendments made in response to comments were necessary to insert language clarifying the Division's current practice of sending the surety a copy of notices of noncompliance that are sent to an operator that has a well secured by a surety bond and also to clarify that the time for copying material incorporated by reference is "Eastern Prevailing Time".

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates bonding information required by KRS 353.590 and 349.120 into this administrative regulation. The amendments made in response to comments clarifies the Division's current practices.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related bonding oil and gas wells. The amendments will assist in the effective administration of the statutes by clarifying the Division's current practice when issuing notices of noncompliance and the Division's hours of operation.

(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 regulated entities identified in question (3) will meet the same bonding requirements. However, the information related to bond release, cancellation, and forfeiture for coal bed methane drilling will now be in this administrative regulation instead of 805 KAR 9:030. To comply with the amendments made in response to comments the regulated entity will need to be aware that a copy of the any notice of noncompliance issued to the operator will also be sent to the surety for wells covered by a surety bond. The entities will also need to be aware that the Division's listed hours of operation in the material incorporated by reference section are Eastern Prevailing Time.

(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 related to these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related to bonding for oil and gas drilling in one administrative regulation. The entity will have knowledge that copies of notices of noncompliance are also going to be provided to the surety for wells covered by a surety bond.

(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 oil and gas 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 almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.120 and 353.590.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the 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 Oil and Gas (Amended After Comments)

805 KAR 1:060. Plugging wells.

RELATES TO: KRS 211.892, 211.893, 353.120, 353.170, 353.180(1), 353.550, 353.990

STATUTORY AUTHORITY: KRS 353.560(1), 353.739

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.560(1) requires the department to promulgate administrative regulations to regulate the plugging of all wells. This administrative regulation establishes the minimum acceptable requirements to plug or temporarily abandon wells.

Section 1.[Definitions:

(1) "Abandoned" is defined by KRS 353.510(12).

(2) "Cement" is defined by KRS 353.010(4).

(3) "Pool" is defined by KRS 353.510(9).

(4) "TENORM" is defined by KRS 211.862(13), and is subject to the exemption established in KRS 211.863(5).

(5) "Unit" is defined by KRS 353.010(18).

(6) "Well" is defined by KRS 353.510(14).

Section 2.] Temporary Abandonment Permit. (1) An owner or operator shall not leave a well drilled for oil, gas, salt water disposal, or any other purpose in connection with the production of oil and gas unplugged after the well is no longer used for the purpose it was drilled or converted.

(2) An owner or operator who wants to temporarily abandon a well shall apply for a permit from the division on the Temporary Abandonment Permit form OG-12 [ED-42].

(3)(a) Nothing herein shall prevent the division, upon application and for good cause shown, from issuing a temporary abandonment permit[,] for a period not to exceed two (2) years. Nothing shall alter the provisions of KRS 353.170 relative to utilizing a well for the purpose of introducing air, gas, water, or other liquid pressure into or upon the producing strata for the purpose of recovering oil and gas. The temporary abandonment permit may be renewed on or before the expiration of the two (2) year period. To renew, the permittee shall reapply on the Temporary Abandonment Permit form OG-12 [ED-42].

(b) All wells on which a temporary abandonment permit has been issued shall be cased and capped prior to temporary abandonment in a manner to protect all potential oil, gas, and fresh water zones.

(4) Each oil and gas well drilled through coal bearing strata shall be cased and vented to prevent the accumulation of gas in the casing annulus or bore hole.

(5) Pursuant to KRS 353.739, the division shall order a well drilled through a workable coal bed to be plugged and abandoned

if:

- (a) The well's permit conditions cannot be satisfied by remediation; or
 - (b) The operator is not able to comply with the ordered remediation.
- (6) If a well is ordered plugged and abandoned pursuant to KRS 353.739, then a temporary abandonment permit shall not be granted.

Section 2[3]. Notice for Plugging an Oil or Gas Well. (1)(a) Before work is commenced to plug and abandon a well, the owner or operator shall give notice to the division of the intention to abandon the well.

(b) A representative of the division shall provide plugging and abandonment direction and may be present at the time of plugging the well.

(2) The notice for plugging a well[wells] shall include at a minimum:

- (a) The permit number of the well;
- (b) The location of the well; and
- (c) A fixed time when the work of plugging and filling will be commenced. The time shall not [te] be less than five (5) days after the day on which the notice is received by the division.

(3)(a) In addition to the requirements of subsection (2) of this section, an operator of a well drilled through a workable coal bed shall notify, by certified mail, the owners of record, lessee of record, and operators of the coal bed and the proper oil and gas inspector of the intention to plug and abandon the well.

(b) A representative of the coal operator or owner may be present at the plugging and filling of the well.

Section 3[4]. Plugging an Oil and Gas Well in Non-coal Bearing Strata. A well drilled through non-coal bearing strata shall be plugged as established in subsections (1) through (6) of this section.

(1) The bottom of the hole shall be filled to the top of each producing formation, or a bridge shall be placed at the top of each producing formation, and in either event a cement plug not less than fifteen (15) feet in length shall be placed immediately above each producing formation if possible.

(2) A cement plug not less than fifteen (15) feet in length shall be placed immediately below all fresh water bearing strata.

(3)(a) A surface cement plug not less than fifteen (15) feet in length shall be placed at the top of the well and cemented to surface.

(b) The casing shall be cut off three (3) feet below surface so as not to interfere with soil cultivation.

(4) An uncased rotary hole drilled with the aid of liquid shall be plugged with heavy mud, approved pursuant to 805 KAR 1:020, Section 1(1)(c)[805 KAR 1:020, Section 2(1)(c)], up to the base of the surface string at which point a plug of not less than fifteen (15) feet of cement shall be placed. The hole shall be capped similar to other abandoned holes.

(5) Any well in which casing has been cemented from surface to total depth and casing cannot be pulled may be plugged as established in paragraphs (a) and (b) of this subsection.

(a) The bottom of the hole shall be filled to the top of the producing formation and a cement plug not less than fifteen (15) feet in length shall be placed above this fill.

(b) A surface plug shall be placed as established in subsection (3) of this section. An intermediate plug shall not be required.

(6) The operator shall have the option as to the method of placing cement in the hole by:

- (a) Dump bailer;
- (b) Pumping through tubing; or
- (c) Other method approved by the director to accommodate unforeseen well conditions.

(7) Within thirty (30) days after the plugging of a well has been completed, the owner or operator shall file with the division a completed and notarized[an] Affidavit to Time and Manner of Plugging and Filling Well, Form OG-38[ED-38].

Section 4[5]. Plugging an Oil and Gas Well in Coal-bearing

Strata. Each well drilled through a workable coal bed, including for the extraction of coal bed methane, shall be plugged and abandoned as established in subsections (1) through (7) of this section. (1) A cement plug shall be placed to a point forty (40) feet below the lowest workable coal bed.

(a) The hole shall be filled with cement from the bottom to a point twenty (20) feet above the top of the lowest oil, gas, or water-bearing strata; or

(b) A permanent bridge shall be anchored thirty (30) feet below its lowest oil, gas, or water-bearing strata, and from the bridge it shall be filled with cement to a point twenty (20) feet above the strata.

(2) Following compliance with the requirements of subsection (1)(a) or (b) of this section a cement plug shall be used to completely seal the hole.

(3)(a) Between the sealing plug referenced in subsection (2) and a point twenty (20) feet above the next higher oil, gas, or water-bearing strata, the hole shall be plugged in accordance with subsections (1) and (2) of this section.

(b) Another cement plug shall be installed above this oil, gas, or water-bearing strata in accordance with subsection (2) of this section.

(4) In accordance with subsection (1) through (3) of this section, the hole shall be filled and plugged or bridged, filled, and plugged, in each of its oil, gas, or water-bearing strata. If these strata are not widely separated and are free from water, the strata may be grouped and treated as a single productive stratum.

(5) After plugging all strata, a final surface plug shall be anchored approximately ten (10) feet below the bottom of the largest casing in the well and from that point to the surface, the well shall be filled with cement.

(6) The operator shall place cement in the hole in one of the following ways:

- (a) Dump bailer;
- (b) Pumping through tubing; or
- (c) A method approved by the director to accommodate unforeseen well conditions.

(7) Within thirty (30) days after the plugging of a well has been completed, the owner or operator shall file with the division an Affidavit to Time and Manner of Plugging and Filling Well, Form OG-38 [ED-38].

(8) If any of the strata in the well have been completed or stimulated, creating cavities that cannot readily be filled in the manner established in subsections (1) through (7) of this section, the well operator shall follow either of the methods established in paragraphs (a) or (b) of this subsection.

(a) If the stratum that has been completed or stimulated is the lowest one in the well, there shall be placed, at the nearest suitable point but not less than twenty (20) feet above the stratum, a plug of cement or other suitable material that shall completely seal the hole; but if the completion or stimulation has been done above one (1) or more oil or gas-bearing strata in the well, plugging in the manner established shall be done at the nearest suitable point, but not less than twenty (20) feet below and above the stratum completed or stimulated.

(b) If the cavity is in the lowest oil or gas-bearing stratum in the well, a liner shall be placed that shall extend from below the stratum to a suitable point, but not less than twenty (20) feet above the stratum in which the completion or stimulation has been done; but if the completion or stimulation has been done above one (1) or more oil or gas-bearing strata in the well, the liner shall be placed so that it shall extend not less than twenty (20) feet above or less than twenty (20) feet below the stratum in which completion or stimulation has been done. After the liner is placed, it shall be compactly filled with cement, clay, or other nonporous sealing material.

(9)(a) Once a well drilled through coal-bearing strata has been filled and securely plugged to a point forty (40) feet below the lowest workable coal bed, and in the judgment of the well operator, the coal operator, and the division, a permanent outlet to the surface is required, the outlet shall be provided as established in subparagraphs 1. through 3. of this paragraph.

1. A plug of cement shall be placed in the well at a depth[;] not

less than ten (10) feet below the lowest workable coal bed. In this plug and passing through the center of it shall be securely fastened an open pipe, not less than two (2) inches in diameter, which shall extend to the surface.

2. At or above the surface, the pipe shall be provided with a device that shall permit the free passage of gas and prevent obstruction.

3. After the plug and pipe are set, the hole shall be filled with cement to a point ten (10) feet above the lowest workable coal bed.

(b)1. If there are additional overlying workable coal beds, they shall be treated similarly, if this treatment is necessary in the reasonable judgment of the well operator, the coal operator, and the division.

2. If the parties cannot agree, the decision of the division shall control.

Section 5[6]. Oil and Gas Wells used as Fresh Water Wells. (1) If a well drilled through noncoal-bearing strata is to be plugged and can safely be used as a fresh water well, and if the utilization is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water. A written authority for the use shall be secured from the landowner and filed with the division.

(2)(a) If the well to be plugged is drilled through coal-bearing strata and can safely be used for a fresh water well, and the utilization is desired by the landowner and is agreeable to the owner or operator of all coal-bearing strata beneath the location of the well, the well shall not be filled above the required sealing plug set below fresh water. A written authority for the use shall be secured from the landowner, and coal owner or operator, and filed with the division.

(b) In order for the operator to be released of any further plugging responsibility, the operator shall provide to the division evidence of compliance with the domestic water well construction requirements pursuant to 401 KAR 6:310 as administered by the Department for Environmental Protection.

Section 6[7]. Downhole Disposal of TENORM Contaminated Material. (1) On-site downhole disposal of tubular goods, sludge, and scale containing TENORM shall be allowed by the Division of Oil and Gas in combination with plugging and abandonment of an oil or gas production well if an inspector from the Division of Oil and Gas is present for the duration of the disposal and plugging activity and the standards established in paragraphs (a) through (g) of this subsection are met.

(a) The operator shall certify that the owner of the oil and gas rights covering the depths and formations where the TENORM waste is proposed to be disposed has consented, by lease or other document, to allow the on-site disposal of TENORM waste.

(b) The TENORM waste shall be limited to that generated at the lease, pool, or unit where disposal is proposed.

(c) The TENORM waste shall be placed in the well at a depth of at least 200 feet below the base of the deepest encountered underground source of drinking water with a total dissolved solids concentration of 10,000 ppm or less.

(d) The TENORM waste shall be placed in the well in a manner approved by the division to ensure proper placement and containment.

(e) A cement plug shall be placed below the TENORM waste, isolating the waste from any producing formation and preventing migration of TENORM waste below the disposal interval. The well shall be cemented from above the TENORM waste to the top of the well.

(f) The cement of the surface plug shall be color dyed with red iron oxide.

(g) A permanent marker that shows the three (3) bladed radiation symbol shall be placed at the top of the surface cement plug or welded to a steel plate at the top of the well casing at ground level.

(2) The operator shall apply to dispose of TENORM downhole, on Application for Authorization for Down-hole Disposal of TENORM Materials in Well Plugging and Abandonment Operations, form ED-39, which shall, at a minimum, contain:

- (a) A description of the type of TENORM waste disposed;
- (b) The approximate volume of each type of waste disposed;
- (c) Results of activity concentration analysis of combined Ra-226 and Ra-228 in picocuries per gram (pCi/g) or radiation exposure or dose rate measured through the use of portable radiation detector appropriate for the radiation being measured, calibrated at least annually, and reported in microrentgen per hour (µR/hr) or microrem per hour (µrem/hr);
- (d) The name, permit number, and GPS location of the well to be plugged in which TENORM waste is proposed to be disposed; and
- (e) The formation or formations from which the TENORM waste originated.

(3) A copy of the Application for Authorization for Down-hole Disposal of TENORM Materials in Well Plugging and Abandonment Operations, form ED-39 shall be provided to the Cabinet for Health and Family Services, Radiation Control Branch, the owner of the oil and gas rights covering the depths and formations where the TENORM waste is proposed to be disposed, and to the owner of the surface estate at the time of filing of the application with the division.

(4) The division shall review the Application for Authorization for Down-hole Disposal of TENORM Materials in Well Plugging and Abandonment Operations, form ED-39 for completeness and for compliance with the information in subsection (2) of this section in order to prevent migration of TENORM contaminated wastes from the borehole.

(5) The division shall provide written notice to the applicant of its approval or denial of the application. If the application is denied, the division shall notify the applicant in writing of the additional information necessary to satisfy the requirements of this section.

Section 7[8]. If a person fails to comply with this administrative regulation, any person lawfully in possession of land adjacent to or in the neighborhood of the well may enter on the land upon which the well is located and plug the well in the manner established in KRS 353.180(1) or this administrative regulation, and may maintain a civil action against the owner or person abandoning the well, jointly or severally, to recover the cost of plugging the well. This section shall not apply to persons owning the land on which the well is situated and drilled by other persons.

Section 8[9]. Well Plugging Prioritization. The prioritization for reclaiming abandoned storage tanks, properly plugging and abandoning eligible wells, and addressing imminent threats pursuant to KRS 353.562 shall be in accordance with the Kentucky Abandoned Storage Tank and Orphan Well Prioritization Schedule.

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

(a) "Affidavit to Time and Manner of Plugging and Filling Well", Form OG-38, June 2019;[ED-38, July 2017;]

(b) "Temporary Abandonment Permit", Form OG-12, June 2019;[ED-12, July 2017; and]

(c) "Application for Authorization for Down-Hole Disposal of TENORM Materials in Well Plugging and Abandonment Operations", Form ED-39, September 2017; and

(d) "Kentucky Abandoned Storage Tank and Orphan Well Prioritization Schedule", June 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., **Eastern Prevailing Time**

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

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 identifies the minimum acceptable requirements to plug or temporarily abandon wells.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish plugging requirements for oil and gas wells.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.560 requires the department to regulate the plugging of all wells. This administrative regulation conforms to the authorizing statutes by establishing plugging requirements for oil and gas wells.

(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 oil and gas operators the necessary information to meet the division's plugging requirements.

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

(a) How the amendment will change this existing administrative regulation: This amendment will incorporate by reference a document detailing the method the division intends to prioritize orphan wells and abandoned storage tanks for the Kentucky Abandoned Storage Tank and Orphan Well (KASTOW) fund. The amendment made in response to comment simply changes the term "wells" to "a well" in order to clarify that a notice must include, if more than one well is proposed for plugging, the permit number, location, and fixed time for commencement for each well. The administrative regulation is also amended to insert "Eastern Prevailing Time" into the incorporation by reference section.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate by reference the division's prioritization schedule for the KASTOW fund. The amendment in response to comment was necessary to ensure that it was clear that notices for plugging included the required information for each well if more than one well is proposed to be plugged and also to clarify that the time for copying material incorporated by reference is "Eastern Prevailing Time".

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.560 requires the department to regulate the plugging of all wells. This amendment will prioritize those orphan wells and abandoned storage tanks for the KASTOW fund. The amendment in response to comment conforms to the authorizing statute by clarifying the intent of the administrative regulation related to notices prior to plugging a well.

(d) How the amendment will assist in the effective administration of statutes: These amendments assist in the effective administration of KRS 353.560 by establishing a prioritization schedule that will rank the order in which the division will address orphan wells and abandoned storage tanks based on criteria in the document incorporated by reference. The amendment made in response to comment assists in the effective administration of the statutes by clarifying the plugging notice for plugging more than one well shall include the required information for each well and clarifying how the Division's office hours are to be interpreted.

(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 regulated entities identified in question (3) not be directly impacted by this amendment. The document will only address those wells and abandoned storage tanks that do not have a responsible party associated with them.

Therefore, no action is necessary on the part of the regulated entity. The amendment in response to comment will require the entities to provide the required notice information for each well when plugging is intended. The entities will also need to be aware that the Division's listed hours of operation in the material incorporated by reference section are Eastern Prevailing Time.

(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 the regulated entity for plugging orphan wells and abandoned storage tanks.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will benefit from the amendment by having an established cleanup program that will address these orphan wells and abandoned storage tanks. The entities will benefit from the amendments made in response to comment by having clear direction when providing notice when plugging multiple wells.

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

(a) Initially: The division may see a slight increase in the costs associated with running the KASTOW program. However, at this time is difficult to predict the actual cost.

(b) On a continuing basis: The division may see a slight increase in the costs for the 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: This program will be funded by the KASTOW fund. Any administrative costs that are associated with running the program are eligible to be charged to the 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. An increase in fees will not be required to implement this program. However, the department will be seeking additional funding for the KASTOW fund to address these sites in future budget requests.

(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? A tiering structure is used when determining which orphan well or abandoned storage tank will be addressed by the KASTOW program. The document incorporated by reference will clearly establish how this will occur.

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 Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 353.560, 353.562, 353.563, 353.564, and 353.739.

3. Estimate the effect of this administrative regulation on the 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 budget will receive a transfer of funds to accomplish the goals of the KASTOW program in the first year.

(d) How much will it cost to administer this program for

subsequent years? The cabinet's operating budget will continue to need budget appropriations in future budget cycles.

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 Oil and Gas
(Amended After Comments)

805 KAR 1:080. Gas storage reservoirs; drilling, plugging in vicinity.

RELATES TO: KRS 349.035, 353.500, 353.520, 353.540, 353.550, 353.560

STATUTORY AUTHORITY: KRS 349.115~~[13A.100]~~, 353.540, 353.670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 349.115 and 353.540 authorizes the Department for Natural Resources to promulgate administrative regulations to implement the Commonwealth's oil, gas, and coalbed methane programs. This administrative regulation establishes requirements~~[Provides]~~ for the protection of the integrity of gas storage reservoirs by requiring certain techniques of drilling, casing, operating and plugging be applied when operating in the vicinity of gas storage reservoirs.

Section 1. Purpose. ~~This administrative regulation is~~~~[Rules and administrative regulations set out herein are]~~ designed for the protection of gas storage reservoirs which are natural resources of the state, and no person, firm, or corporation shall cause physical damage to, or create a hazardous condition threatening the existence of, ~~[such]~~ a reservoir in any manner as to make any~~[such]~~ reservoir less susceptible for use for gas storage. Any well penetrating, drilled to a geologic stratum overlying, ~~or~~~~[and]~~ drilled in the vicinity of an underground gas storage reservoir shall be maintained at all times in ~~[such]~~ a manner as will both:

(1) Exclude the encroachment of oil, gas or water into such reservoir; and

(2) Protect such reservoir from a blowout or waste of gas during the drilling of and after completion ~~or~~~~[and/or]~~ plugging of ~~the~~~~[such]~~ well. In addition, this administrative regulation has as its purpose the equitable adjustment of correlative rights of gas storage owners and oil and gas operators and it shall be liberally construed to give effect to such public policy.

Section 2. ~~Definitions.~~ (1) "Gas storage reservoirs" are special geologic and geometric elements of underground strata which are or can be so arranged and situated as to be recognized as useful for the retention, injection, storage and recovery of gas therefrom on a commercial service level.

(2) "Underground gas storage" is the utilization of subsurface strata and associated facilities for storing and withdrawing gas held in place for the primary purposes of conservation, fuller utilization of pipeline facilities, and more effective and beneficial service of gas to the public.

(3) "Gas storage operator" is any corporation, partnership, or individual who is engaged in the work of preparing to inject, or who injects gas into, or who stores gas in, or removes gas from, a gas storage reservoir, and who owns the right to do so, including but not limited to those engaged in transporting and delivering such gas in public service.

(4) "Well operator" is any person who proposes to or does locate, drill, operate or abandon any well.

(5) "Well" is any borehole drilled or proposed to be drilled, deepened or reopened for which a permit is required by KRS 353.570(1).

~~Section 3.~~ Establishment of a Gas Storage Reservoir. (1) Before ~~an~~~~[any]~~ area may be declared to contain one (1) or more gas storage reservoirs for the purpose of this administrative regulation the gas storage operator shall file with the Director of Oil and Gas ~~for~~~~[Conservation as to]~~ each~~[such]~~ reservoir, a:

(a) Certificate of convenience, issued by the Federal Power Commission or its successor, if ~~[such is]~~ issued; ~~[, a]~~

(b) Certificate of convenience issued by the Kentucky Public Service Commission or its successor, if ~~[such is]~~ issued; ~~or~~~~[, or a]~~

(c) Declaration of intent, found by the department to be bona fide, prepared by the gas storage operator to develop a gas storage facility.

(2)(a) ~~The~~~~[above cited]~~ filing, established in subsection (1) of ~~this section~~, shall be accompanied by a map, prepared on the scale of one (1) inch equals 2,000 feet and using the appropriate seven and one-half (7 1/2) minute topographic map as the base, ~~which~~

(b) ~~The map shall~~ outline in detail the properties on which storage rights have been or are being obtained, whether by purchase or condemnation, and an outline of the storage reservoir protection zone as suggested by the storage operator.

(c) This protection zone shall ~~not be~~~~[ne]~~ wider than 2,000 feet from the nearest property on which gas storage rights have been or are being obtained, ~~[and]~~ The width shall be subject to the approval of the department based on the characteristics of the reservoir and the maximum anticipated storage pressure.

(3)~~[(2)]~~ The required map shall be refilled at any time that storage rights on additional acreage are acquired or at any time that acreage on which storage rights have been acquired is eliminated.

(4)~~[(3)]~~~~[No]~~ Gas shall ~~not~~ be moved and stored until the above cited filing is made with the director. This ~~shall~~~~[does]~~ not include moved and stored gas ~~that~~~~[which]~~ is to be used to determine whether or not underground gas storage is feasible.

(5)~~[(4)]~~ Any operator of an existing gas storage reservoir shall file the above cited certificate or declaration and map with the director within sixty (60) days of the date that this administrative regulation becomes effective.

Section 4. Application for Permit to Drill, Deepen or Reopen a Well on Property Where Gas Storage Rights are Acquired. (1) Before drilling, deepening or reopening a well on ~~a~~~~[any]~~ property where gas storage rights have been acquired the well operator shall, at the time of filing with the department, also forward to the gas storage operator by registered or certified mail, or by personal service a copy of the application and plat.

(2) On ~~a~~~~[any]~~ property where there is an outstanding oil and gas lease or on ~~a~~~~[any]~~ property on which producing wells are located, it shall be the responsibility of the gas storage operator to notify the well operator at the time storage rights are acquired of ~~the~~~~[such]~~ acquisition and that a copy of all future applications to drill, deepen, or reopen wells by the well operator shall be furnished to the gas storage operator.

Section 5. Application for Permit to Drill, Deepen, or Reopen a Well on Property Where Gas Storage Rights are Not Acquired but which Lies Within the Storage Reservoir Protection Zone. When ~~an~~~~[any]~~ application for permit to drill, deepen, or reopen a well is received by the department where the location of the proposed well will fall within the storage reservoir protection zone, the department shall notify the well operator and the gas storage operator of the receipt of the application by first class mail, postage prepaid.

Section 6. Objection and Hearing. (1) Applications to drill, deepen, or reopen a well on a property on which gas storage rights have been or are being acquired or upon any property that lies within the storage reservoir protection zone shall be held for five (5) days after receipt.

(2)(a) During the time established in subsection (1) of this section the gas storage operator may file with the division specific objections to the proposed well. If objections are filed, the gas storage operator shall notify the well operator by registered certified mail or by personal service.

(b) The department, in accordance with KRS 353.700, shall set a time and place for the hearing. The hearing time shall be no more than ten (10) days after the end of the five (5) day period.

(c) At the hearing, the division, well operator, and the gas storage operator shall consider the objections and agree to the drilling proposal as submitted or agree to changes in the drilling proposal that meets the approval of the division. Any agreed upon amendments to the drilling proposal shall be included on an amended drilling application and filed with the division.

(d) The division, upon receipt of the amended application, shall issue to the well operator a drilling permit approving the drilling of the well.

(e) If the gas storage operator and the well operator are unable to agree at the hearing, the division shall issue to the well operator a permit to drill the well either as originally proposed or with the amendments to the proposal as the division determines appropriate to protect the underground gas storage reservoir and prevent the loss of gas without unnecessarily restricting drilling operations. Upon receipt of an application to drill, deepen, or reopen a well on any property on which gas storage rights have been or are being acquired or upon any property which lies within the storage reservoir protection zone, the department shall hold the application for five (5) days. This will enable the gas storage operator to file with the department specific objections to the proposed well; and if the objections are so filed, the gas storage operator shall, at the same time, serve the same upon the well operator by registered or certified mail, or by personal service and the department shall fix a time and a place for a hearing, not more than ten (10) days after the end of the five (5) day period, at which hearing the objections shall be considered. At the hearing, the well operator and the gas storage operator or such of those as are present or represented, shall consider the objections and either agree upon the drilling of the well as proposed or make such change in the drilling program as to satisfy all objections and meet the approval of the department. All changes agreed upon in the drilling of such well shall be set out on an amended application for permit to drill by the well operator and filed with the department within a reasonable period of time after the hearing. The department, upon receipt of the amended application, shall issue to the well operator a drilling permit approving the drilling of such well. If the gas storage operator and the well operator are unable to agree at the hearing, the department shall, in view of the purpose and intent of KRS Chapter 353, issue to the well operator a permit to drill such well either as originally proposed or with such added or corrective program as the department deems appropriate to protect the underground gas storage reservoir and prevent the loss of gas therefrom without unnecessarily restricting drilling operations.]

(3)(2) If the gas storage operator and the well operator cannot agree on the proposal[program] under which the well is to be drilled, completed, and plugged, then the department shall in its order specify what costs, if any, in excess of costs normally expended in the drilling, completion, and plugging of the well shall be borne by the gas storage operator and shall specify when and in what manner payment for such costs shall be made.

(4)(a)(3) The gas storage operator may waive objections by letter, telegram, or telephone, provided the[such] telephone notice of waiver is followed by a written waiver, to the division[department] on:

1. Any one (1) well;[.]
2. Group of wells;[.]
3. All wells to be drilled by a well operator; or[.]
4. All wells to be drilled in a specific area or on a specific lease.

(b) If the[such] waiver or waivers are filed with the division[department], and the division[department] having determined that the public interest is being served, then the division[department] shall issue the permit[without delay].

Section 7. Notice to Well Operator. The gas storage operator shall give [to] the well operator a notice of intention to drill, deepen, or reopen a well in the manner provided for in Section 4 of this administrative regulation. Notice shall be required only to the well operator in possession at the time rights of storage are acquired or a [his] successor in interest if the latter notifies the gas storage

operator in writing of the[his] acquisition. The well operator shall have the same rights and obligations as[does] the gas storage operator with respect to objections and hearing as detailed in Section 6 of this administrative regulation.

Section 8. Notice of Intention to Plug Wells. (1)(a) Prior to plugging a well, a well operator shall notify the gas storage operator and the division of the intention to properly plug and abandon the well if the well is:

1. Drilled through or penetrates an underground gas storage reservoir; or
2. Drilled through or penetrates the same stratigraphic horizon as the gas storage reservoir in the storage reservoir protection zone.

(b) The notice shall be given in time for the representatives of the gas storage operator and the division to have the opportunity to be present at the plugging and filling of the well. If representatives do not appear, the well operator may proceed, at the time fixed in the notice, to plug and fill the well. [Prior to the abandonment of a well drilled through or which penetrates an underground gas storage reservoir, or which is drilled through or which penetrates the same stratigraphic horizon as the gas storage reservoir in the storage reservoir protection zone, the well operator shall notify the gas storage operator and the department of their intention to plug and abandon the well. The notice shall be timely and reasonable in order that representatives of the gas storage operator and the department will have the opportunity to be present at the plugging and filling of the well. Whether or not such representatives appear, the well operator may proceed, at the time fixed in his notice, to plug and fill the well.]

(2)(a) Upon receipt of notice of intention to properly plug and abandon the gas well, the gas storage operator may, and after determining from the well operator the physical condition of the well, elect to only properly plug and abandon the well or bear the entire cost of proper plugging and abandonment.

(b) If the gas storage operator elects to properly plug and abandon the well or bear the entire cost of proper plugging and abandonment, the gas storage operator shall provide notice in writing to the gas well operator and the division.

(c) Upon receipt of the notice from the gas storage operator, the gas well operator shall advise in writing both the gas storage operator and the division of the condition of the well, of any equipment or pipe that may be in the well and the existence and type of any equipment or materials that have been lost in the hole.

(d) Upon receipt by the division of the notice required of the gas storage operator in paragraph (a) of this subsection and the advice required of the well operator in paragraph (c) of this subsection, the division shall cause the well operator's bond to be released and the well shall be placed under the bond of the gas storage operator. [Upon receipt of notice of intention to plug, the gas storage operator may, at his option, and after determining from the well operator the physical condition of the well, elect to plug the well or bear the entire cost of plugging. The option may be exercised only for the purpose of plugging the well. If the option is exercised, the gas storage operator shall notify in writing both the well operator and the department of his election. The well operator shall then advise in writing both the gas storage operator and the department the condition of the well, any equipment or pipe that may be in the well and the existence and type of any equipment or materials that have been lost in the hole. Upon receipt by the department of the notice required of the gas storage operator and the advice required of the well operator, the department shall cause the well operator's bond to be released and the well shall be placed under the bond of the gas storage operator.]

(3) When the plugging and filling have been completed by either the gas well operator or the gas storage operator, an affidavit setting forth the time and manner in which the well was plugged shall be made by the operator[two (2) experienced men who participated in the work]. The affidavit shall be made on the Affidavit to Time and Manner of Plugging and Filling Well, Form OG-38, incorporated by reference in 805 KAR 1:060[forms furnished by the department]. One (1) copy of the affidavit shall be retained by the person that caused the well to be properly plugged

and abandoned, one (1) mailed to the gas storage operator or the well operator and one (1) to the department.

Section 9. Drilling Against High Reservoir Pressures. Whenever possible, the drilling into or through storage reservoirs shall be conducted when the reservoir pressure is equal to or less than the original formation pressure and the original formation pressure shall be provided by the gas storage operator.

Section 10. Nothing in this administrative regulation shall be construed to prohibit a well operator or a gas storage operator from drilling a well that they would otherwise have the right to drill. CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

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 for the protection of the integrity of gas storage reservoirs by requiring certain techniques of drilling, casing, operating and plugging be applied when operating in the vicinity of gas storage reservoirs.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for the protection of the integrity of gas storage reservoirs by requiring certain techniques of drilling, casing, operating and plugging be applied when operating in the vicinity of gas storage reservoirs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.540 and KRS 349.115 authorize the division to promulgate administrative regulations in order to implement the oil and gas programs within the Commonwealth. This administrative regulation conforms to the authorizing statutes by establishing criteria for wells drilled through or near a gas storage reservoir.

(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 requirements for wells drilled through gas storage reservoirs.

(2) If 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 delete the definitions in the administrative regulation and incorporates information related to coal bed methane wells drilled through gas storage reservoirs into this administrative regulation. This information was previously in 805 KAR 9:050. The amendment made in response to comment simply inserts the statutory citation where the authorizing language can be found related to setting the time and place for a hearing.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to drilling wells through gas storage reservoirs. The amendment is necessary to clarify that the department will set a time and place for hearings if objections are filed on permits to drill, deepen, or reopen a well on a property on which gas storage rights have been or are being acquired or upon any property that lies within the storage reservoir protection zone.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates gas storage reservoir information as authorized by KRS 349.115 and 353.540 into this administrative regulation. The amendment made in response to comment simply clarifies the department's statutory authority to set the time and place for a hearing.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two

administrative regulations related to wells drilled through gas storage reservoirs. The amendment made in response to comment simply clarifies the department's statutory authority to set the time and place for a hearing.

(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 regulated entities identified in question (3) will meet the same requirements related to wells drilled through gas storage reservoirs. However, the information related to wells drilled through gas storage reservoirs for coalbed methane drilling will now be in this administrative regulation instead of 805 KAR 9:050. The entities in questions (3) will not have any new requirements related to the amendment made in response to comment. The amendment simply inserts a reference that clarifies the Department's statutory authority to set the time and place for hearings for objections made pursuant to Section 6 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 will be no additional costs related to these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related to wells drilled through gas storage reservoirs in one administrative regulation.

(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 oil and gas 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 almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.115, 353.540, and 353.670.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the 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 Oil and Gas
(Amended After Comments)**

805 KAR 1:110. Underground injection control.

RELATES TO: KRS 353.180(3), 353.510, 353.520, 353.550, 353.570(1), (2), 353.590, 353.992, 40 C.F.R. 146.6, 42 U.S.C. 300j-6

STATUTORY AUTHORITY: KRS 353.540, 353.550, 353.560, 353.592

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the Department for Natural Resources to administer and enforce the provisions of KRS 353.500 to 353.720. The waste of oil and gas is prohibited by KRS 353.520, which provides that prohibited waste includes the unreasonable damage to underground fresh or mineral water supply, workable coal seams, or other mineral deposits in the operations for the discovery, development, production, or handling of oil and gas; the unnecessary or excessive surface loss or destruction of oil or gas or their constituents; and the drowning with water of any stratum or part thereof capable of providing oil or gas in paying quantities, except for secondary recovery or disposal purposes, or in hydraulic fracturing or other completion practices. KRS 353.592 authorizes the department to develop a regulatory program for the purpose of accepting primary responsibility for the administration of the Underground Injection Control Program. This administrative regulation establishes requirements for the drilling, casing, operation, plugging, construction, conversion, and maintenance of Class II wells and the protection of fresh water zones from contamination associated with the production of oil and gas.

Section 1. Definitions. The definitions contained in KRS 353.510 and the following additional definitions shall apply to this administrative regulation:

(1) "Administrator" means the regional administrator for Region IV of U.S. EPA.

(2) "Aquifer" means an underground geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(3) "Area of review" means that area within not less than a fixed radius of one-fourth (1/4) mile around an injection well, except that at the request[option] of the permit applicant and approval of the director, the area of review may be deemed to be the zone of endangering influence calculated in accordance with 40 C.F.R. 146.6.

(4) "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and prevent the walls from caving, to prevent loss of drilling mud or fluids into

porous ground or to prevent water, gas, or other fluid from entering or leaving the hole.

(5) "Cementing" means the operation in which a cement slurry is displaced around the casing's annulus using approved engineering methods.

(6) "Class II well" means a well which injects fluids:

(a) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste when injected;

(b) For enhanced recovery of oil or natural gas; [or]

(c) For permanent disposal of produced brine water; or

(d) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(7) "Commercially producible" means a well which may be used commercially for the production of oil and gas or for Class II injection.

(8) "Confining zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

(9) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(10) "Date of primacy" means the effective date of the Administrator's approval of Kentucky's Underground Injection Control (UIC) Program made pursuant to Section 1425 of the Safe Drinking Water Act as codified in 42 U.S.C. 300h-4.

(11) "Division" means the Kentucky Division of Oil and Gas[Conservation].

(12) "Endangerment" means that an injection operation may result in the presence of a contaminant in ground water, which supplies or may reasonably be expected to supply any public water system, and [that] the presence of that contaminant, or any contaminant, may result in violation of any national primary drinking water regulation or may otherwise adversely affect the health of persons.

(13) "EPA" means the United States Environmental Protection Agency.

(14) "Flow rate" means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, or turbine or passes along a conduit or channel.

(15) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or other form or state.

(16) "Formation breakdown pressure" means indicated values from data recorded prior to and during squeeze cementing, acidizing, or hydraulic fracturing treatments performed by appropriate service companies. These breakdown pressure values are frequently reported as the surface gauge pressure which shall, through appropriate engineering calculations, be modified to reflect the pressure at which an exposed formation fractures and allows fluid to be injected into the formation.

(17) ~~"Freshwater" means an underground source of drinking water.~~

(48) "Freshwater zone" means an underground source of drinking water.

(18) ~~(19)~~ "Ground water" means water below the land surface in an aquifer's zone of saturation.

(19) ~~(20)~~ "Injection well" means a well into which fluids are being injected.

(20) ~~(24)~~ "Injection zone" means a geological formation, group of formations, or part of formation receiving fluids through a well.

(21) ~~(22)~~ "Mechanical integrity" means a condition of injection wells which exists if there is not leakage in the well's casing, tubing, or packer and if there is not fluid movement into an underground source of drinking water through vertical channels adjacent to the well bore.

(22) ~~(23)~~ "Owner or operator" means the company or person having secured a permit for:

(a) A new or converted well; or

(b) A rule authorized well in operation prior to the effective date or primacy, as defined in subsection (10) of this section.

(23) ~~(24)~~ "Packer" means a device lowered into a well to

produce a fluid-tight seal.

~~(24)~~~~(25)~~ "Plugging" means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation by the placement of cement plugs in the wellbore.

~~(25)~~~~(26)~~ "Project" means a group of wells in a single operation.

~~(26)~~~~(27)~~ "Public water system" means a system for the provision to the public of piped water for human consumption, if the system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals.

~~(27)~~~~(28)~~ "Underground source of drinking water or "USDW" means an aquifer or its portion, which is not an exempted aquifer and which:

(a) supplies any public water system; or

(b) contains a sufficient quantity of groundwater to supply a public system; and

1. Currently supplies drinking water for human consumption; or
2. Contains less than 10,000 mg/l total dissolved solids.

~~(28)~~~~(29)~~ "Well" means a borehole drilled, or proposed to be drilled, for the purpose of:

(a) Producing natural gas or petroleum, or one through which natural gas or petroleum is being produced; or

(b) Injecting water, gas, or other fluid or one into which water, gas, or other fluid is being produced.

Section 2. General. (1) A person shall not drill a Class II well without first obtaining a permit to drill pursuant to KRS 353.570(1) and (2).

(2) A person shall not inject fluids to the subsurface through a Class II well without the authorization of the division in the form of a permit issued pursuant to Section 11 of this administrative regulation.

(3) The owner or operator of a Class II well shall maintain financial responsibility and resources to close, plug, and abandon the underground injection operation pursuant to the requirements in Section 8 of this administrative regulation.

(4) The fee requirements for an application to drill a new Class II injection well pursuant to KRS 353.590(2)(a) and a fifty (50) dollar fee pursuant to KRS 353.590(2)(b) shall suffice for and be applicable to the permit to inject.

(5) The permit to operate any Class II well may be transferred to a successor only after notice is given to the division on the Well Transfer for UIC Wells, Form ~~OG[ED]-26~~, and shall include at least the following:

(a) The original operator's company name and address;

(b) The successor's company name and address;

(c) The permit number of the well;

(d) The Carter Coordinate location;

(e) The farm name and well number;

(f) Signatures of the original operator and the successor or that of their official representatives; and

(g) A statement that the successor assumes all responsibility for the well and provides financial responsibility pursuant to Section 8 of this administrative regulation.

(6) A Class II well with an outstanding noncompliance shall not be transferred, unless the successor is willing to correct deficiencies and submit a corrective action plan which is approved by the division pursuant to subsection (11) of this section.

(7) A Class II well shall be plugged in the manner established in 805 KAR 1:060~~and 805 KAR 1:070, whichever is applicable~~.

(8) An injection permit shall not be issued unless the applicant demonstrates that the Class II well will not cause the endangerment of a USDW.

(9)(a) If the casing and cementing of a Class II well is inadequate and movement of fluids cause the endangerment of a USDW, the division shall require the owner or operator of a well to take necessary corrective action.

(b) Corrective action shall be completed within ninety (90) days of notification from the division to the owner or operator.

(c) Injection shall not be authorized until the corrective action has been completed and mechanical integrity has been demonstrated.

(10)(a) In administering and applying this administrative regulation, the division shall, as practicable, take into account the varying geologic, hydrological, and historical conditions in different areas within the state.

(b) The division may, if consistent with other provisions of this section, upon submittal of the Class II Well Permit Application for Underground Injection Control, Form ~~OG[ED]-14~~ and after notice and hearing, grant a variance from any requirement established in subsection (8) of this section upon a demonstration that alternate prudent engineering practices will protect a USDW.

(11) The division may modify, suspend, or revoke a Class II well permit if the injection operation is altered in a way that does not adequately protect the USDW or if a mechanical integrity failure or downhole condition compromises the injection system.

Section 3. Exempted Aquifers. An aquifer or a portion thereof which meets the criteria established in this section for a USDW may be determined by the division to be an "exempted aquifer" if it meets the following criteria:

(1) It does not currently serve as a source of drinking water; and

(2) It cannot now and will not in the future serve as a source of drinking water because:

(a) It is mineral, hydrocarbon, or geothermal energy producing, or may be demonstrated to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible;

(b) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;

(c) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

(d) The total dissolved solids content of the groundwater is more than 3,000 mg/l, and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

Section 4. Requirements Applicable to Class II Well Permits. Authorization to inject fluids through a Class II well shall be conditioned upon compliance with the following requirements:

(1)(a) The owner or operator shall promptly notify the director in writing of any modification in the manner in which the injection operation is conducted or of any mechanical failure or downhole problem encountered in the operation of the Class II well or upon recognition of a failure in an injection system.

(b) The well or wells which appear to be leaking shall be shut down immediately and correction procedures shall be initiated within fifteen (15) days, or the permit to inject may be revoked under appropriate conditions.

(c) The prescribed notice to the director shall describe all proposed modifications or corrective actions and shall be subject to the approval of the director.

(2) The owner or operator shall afford the director, or his authorized representative(s) upon proper presentation of credentials, access to Class II wells and related facilities for the purpose of conducting inspections, witnessing mechanical integrity tests, implementing corrective action operations and plugging procedures, and testing samples of injected fluids.

(3)(a) The owner or operator shall regulate the injection pressure in a manner so that the pressure in the injection zone does not initiate new fractures or propagate existing fractures in the confining zone that would cause the movement of injected fluids into a USDW.

(b) The division may, if necessary to ensure compliance with this requirement, establish limitations on the wellhead pressure at which a Class II well may be operated.

(c) Any limitation shall be included as a permit condition or through an order issued after notice and opportunity for hearing.

(4)(a) The owner or operator shall provide for the mechanical integrity of the well by operating without leaks in the casing, tubing, or packer and without fluid movement into a USDW through vertical channels adjacent to the well bore.

(b) The owner or operator shall, upon request of the division,

conduct tests of the mechanical integrity of the Class II well, utilizing a method approved by the division as required in Section 6 of this administrative regulation.

(c) Each Class II well shall be tested for mechanical integrity at least every five (5) years pursuant to Section 6(6) of this administrative regulation.

(d) An alternative mechanical integrity test authorized by the division shall be approved by the administrator.

(5)(a) The owner or operator shall monitor and record injection pressures rates and volumes at least monthly and shall submit on a completed and notarized[the] Annual Disposal or Injection Well Monitoring Report, Form OG[ED]-18 provided by the division, an annual report of the results of monitoring to the division.

(b) The owner or operator shall retain all these records on file for a period of five (5) years.

(c) The owner or operator of hydrocarbon storage or enhanced recovery wells may monitor them by manifold monitoring on a field or project basis rather than on an individual well basis if the facilities consist of more than one (1) injection well, operated with a common manifold, and provided the owner or operator demonstrates to the division that manifold monitoring is equivalent to individual well monitoring.

Section 5. Construction Requirements for Class II Wells. (1)(a) A class II injection well proposed to be constructed after the effective date of primacy shall be constructed in accordance with applicable provisions of KRS 353.570(1) and (2) and 805 KAR 1:020 in a manner that shall prevent injected fluids from escaping to a USDW.

(b) Existing Class II wells authorized by EPA are exempt from this requirement unless the division determines that corrective action is necessary to prevent injected fluids from escaping to a USDW.

(c)1. A freshwater string of casing shall extend fifty (50) feet below the freshwater depth stated on the permit or the base of the deepest fresh water, whichever is greater.

2. All freshwater casing strings shall have cement circulated to fill the annular space of the casing.

3. This casing shall be cemented, using approved engineering methods to assure the circulation of the cement to the surface.

4. The long string of casing shall extend at least from the surface to immediately above the injection interval, and shall have a minimum of 300 feet of cement behind the lowermost 300 feet of casing.

5. If the fresh water is not protected by a separate string of casing, then the long string shall be cemented with circulation of cement back to surface.

(d) Tubing shall be installed in the casing with a packer set at a depth not to exceed fifty (50) feet above the injection zone.

(e) The owner or operator shall provide a detailed description of the casing plan on the Casing and Cementing Plan for UIC Wells, Form ED-25, and submitted with the Class II Well Permit Application for Underground Injection Control, Form OG[ED]-14 for permit to inject.

(f) The casing plan shall be approved by the director and shall include a listing of the casing size, type, grade, depth of each casing string, and the class and volume of the cement to be used.

(2)(a) An active oil and gas well or an abandoned or plugged well reopened for the purpose of conversion to a Class II injection well[;] shall satisfy the requirements for cementing of a Class II well.

(b) If perforation of existing casing is required to satisfy the cementing requirements during the conversion of the well to a Class II well, a tubing and packer shall be installed in the existing casing to the area immediately above the injection interval, not to exceed fifty (50) feet above the injection interval.

(3) A Class II disposal well shall be designed to ensure that disposal zones are hydraulically isolated from USDW.

(4) The owner or operator shall provide the division with all required geophysical logs and results of tests conducted during the drilling and completion of a Class II well that specifically relate to the USDW, the confining zone adjacent to it, and the injection and adjacent formations, and shall include the following:

(a) A geophysical log marked to indicate all fresh water zones, the confining zone and the injection interval;

(b) A geologic description of the confining and injection zone that shall include the lithologic description, geologic name, and thickness; and

(c)1. A report describing the nature of fluids and formation pressure in the injection zone.

2. This information may be obtained from geophysical logs, physical examinations of samples and cores, and chemical analysis, and shall be prepared by a professional geologist registered in the state of Kentucky.

3. The owner or operator may substitute information from nearby wells if comparable to the injection well, and in the case of an area permit, if sufficient information is available from wells within the field to adequately describe the whole field.

Section 6. Mechanical Integrity Requirements for Class II Injection Wells. (1)(a) Operators shall demonstrate mechanical integrity of new and existing Class II injection wells.

(b) The owner or operator shall submit a plan to demonstrate mechanical integrity with the application for permit to inject.

(2) An injection well is determined to have mechanical integrity if:

(a) There are not leaks in the casing, tubing, or packer; and
(b) There is not fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

(3) One (1) of the following methods shall be used to evaluate the absence of significant leaks under subsection (2)(a) of this section:

(a) Following an initial pressure test, performed with liquid or gas, monitoring of the tubing and casing annulus pressure with sufficient frequency to be representative, as determined by the division, while maintaining an annulus pressure different from atmospheric pressure measured at the surface;

[~~(b) A pressure test shall be performed with liquid or gas;~~] or

[~~(b)[(e)]~~] Records of monitoring demonstrating the absence of significant changes in the relationship between injection pressure and injection flow rate for the following Class II enhanced recovery wells:

1. Existing wells completed without a packer provided that a pressure test has been performed and the data is available and provided further than one (1) pressure test shall be performed at a time when the well is shut down and if the running of the test does not cause further loss of significant amounts of oil or gas; or

2. Existing wells constructed without a long string casing but with surface casing, which terminates at the base of fresh water, provided that local geological and hydrological features allow this construction and provided further that the annular space shall be visually inspected. For these wells, the division shall prescribe a monitoring program, which shall verify the absence of significant fluid movement from the injection zone into an USDW.

(4) One (1) of the following methods shall be used to confirm the absence of fluid movement under subsection (2)(b) of this section:

(a) The results of a temperature log, [or] noise log, or cement bond log;

(b) Cementing records demonstrating the presence of adequate cement to prevent a migration; or

(c) other methods approved by the director [~~administrator~~].

(5)(a) The mechanical integrity test shall be performed on the annulus of the tubing and casing.

(b) A minimum pressure of 300 psi shall be applied to the annulus of the tubing and casing.

(c) The well is considered to have mechanical integrity if, at the end of thirty (30) minutes, there is no more than a plus or minus of three (3) percent change of the test pressure on the gauge.

(d) A mechanical integrity test shall be witnessed and approved by a division field inspector.

(e) The division may require higher test pressures to be used when the anticipated injection pressure will be high.

(f) In the event a mechanical integrity test failure occurs, the owner or operator shall initiate corrective measures within thirty

(30) days of the initial failure and perform a follow-up test within thirty (30) days after the completion of corrective measures. Should the corrective measures require removal of the packer from the wellbore, the owner or operator shall submit a completed and notarized Class II Well Re-Work Report, Form OG-4 documenting the work performed.

(g) The test results shall be filed on the Certification[Certificate] of Mechanical Integrity, Form OG[ED]-22.

(6)(a) The owner or operator of a Class II well shall schedule at five (5) year intervals or less, a mechanical integrity test as described in subsection (5) of this section.

(b) The owner or operator shall certify the test results to the division in writing within fifteen (15) days of completion of the test.

(7)(a) The owner or operator shall not perform a mechanical integrity test of a Class II well without giving written notice to the division on the Application for Class II Internal Mechanical Integrity Test, Form OG-44 within fifteen (15) calendar days prior to the proposed test date.

(b) The division shall then notify the owner or operator of the earliest possible date available to test the well.

Section 7. Area of Review for Class II Wells. The owner or operator shall supply the following information if applying for a permit to inject pursuant to Section 11 of this administrative regulation:

(1) A description of the area of review which shall be determined by:

(a) A fixed radius of one-fourth (1/4) mile around the injection well, or one-fourth (1/4) mile around the permit area boundary; or

(b) The zone of endangering influence calculated in accordance with 40 C.F.R. 146.6 for an area of review less than one-fourth (1/4) mile.

(2) A map showing the following information within the area of review:

(a) Existing producing wells, injection wells, abandoned wells, dry holes, and water wells;

(b) Surface and subsurface mines, quarries and other pertinent surface features including residences, roads, and faults; and

(c) The distribution manifold applying injection fluid to all wells in the area of review including all system monitoring points, for those injection wells, if operating from a common manifold;

(3) The following data for wells within the area of review:

(a) A tabulation of data, reasonably available from public records or otherwise known to the applicant, including a description of well type, construction, date drilled, location, depth, record of plugging or completion, and applicable additional information; and

(b) The record of completion and plugging for each well which penetrates the injection zone, and any other wells within the area of review wells which would be affected by any proposed increase in pressure if the injection well is to be operated over the fracture pressure of the injection formation; and

(4)(a) For wells in the area of review which are improperly sealed, completed, or abandoned, a corrective action plan which consists of steps or modifications as necessary to prevent movement of fluid into underground sources of drinking water.

(b) The division shall consider the following criteria and factors during evaluation of the corrective action plan:

1. Nature and volume of injected fluids;
2. Nature of native fluids or by-products of injection;
3. Potentially affected population;
4. Geology;
5. Hydrology;
6. History of injection operations;
7. Completion and plugging records;
8. Plugging procedures upon abandonment; and
9. Hydraulic connections with underground sources of drinking water.

Section 8. Financial Responsibility. (1) The owner or operator of a[all] Class II well[wells] shall demonstrate financial responsibility to plug and abandon a well based on projected plugging cost estimates on the Class II Plugging and Abandonment Plan, Form OG-41. The form shall be reviewed for completeness

and adequacy to protect the USDW as determined by the division.

(a) Financial responsibility of existing Class II wells prior to the date of primacy shall be submitted to the division pursuant to Section 9 of this administrative regulation.

(b) The owner or operator of a Class II well authorized by a permit to inject pursuant to this administrative regulation shall, upon application, demonstrate financial responsibility and submit the plugging abandonment plan in accordance with 805 KAR 1:060 [~~or 805 KAR 1:070~~].

~~(2)(a) [The owner or operator shall provide financial coverage to adequately plug the well pursuant to the individual well bond requirements of KRS 353.590(5).~~

~~(b)1.] If the division issues a letter of violation, forfeits the individual bond, and subsequently plugs the well, the owner or operator shall be responsible for any additional costs expended by the division for plugging the well which exceeds the bond amount.~~

~~(b)2.] These costs, if not paid, shall be recovered by civil suit pursuant to KRS 353.180(3).~~

~~(c)3.] In addition to the recovery of costs, the owner or operator shall be subject to penalties as prescribed in KRS 353.992.~~

Section 9. Transitional Requirements for Owner or Operators of Class II Wells. (1)(a) The division shall accept a Class II well permit, including rule authorized wells, issued under the authority of the EPA administered program. Rule authorized wells shall be deemed permitted by the division, provided the owner or operator satisfies the requirements this section.

(b) The division shall:

1. Accept records from EPA of all authorized wells; and
2. Create an inventory of approved existing wells.

(c) The financial responsibility demonstration required in Section 8 of this administrative regulation and the submission of the plugging and abandonment plan in Section 10 of this administrative regulation shall be completed within ninety (90) days following the effective date of primacy.

(d) If the existing bond posted with EPA meets the requirements of Section 8 of this administrative regulation and is transferable to the division, the transfer of the bond shall be accepted by the division.

(2)(a) The owner or operator of a Class II well having a mechanical integrity test approved by EPA shall remain on the same schedule of mechanical integrity tests[~~;~~] upon the effective date of primacy.

(b) A copy of all documents showing approval by EPA of the well's mechanical integrity and a copy of all forms, test data, and logs required by and submitted to EPA shall be submitted to the division within ninety (90) days of the effective date of primacy.

(3) The owner or operator with a pending application submitted for Class II wells under the EPA program may transfer a pending application to the division and shall satisfy the permitting requirements in Section 11 of this administrative regulation upon the effective date of primacy.

Section 10. Plugging and Abandonment of Class II Wells. (1) A Class II well shall be plugged in accordance with 805 KAR 1:060[~~or 805 KAR 1:070, whichever is applicable~~].

(2) The owner or operator shall provide a detailed description of the proposed plugging procedure and costs on the Class II Plugging and Abandonment Plan, Form OG-41, and submitted for approval with a completed and notarized Class II Well Permit Application for Underground Injection Control, Form OG-14 for permit to inject.

(3) The owner or operator shall notify the division in writing thirty (30) days prior to plugging and shall schedule with the division inspector a time and date for performing the plugging procedure.

(4) [(3)] The inspector shall schedule the earliest date available.

(5) [(4)] Upon completion of the plugging, the owner or operator shall file a plugging affidavit on "Affidavit to Time and Manner of Plugging and Filling Well" Form OG-38, incorporated by reference in 805 KAR 1:060 [Form ED-38].

(6) [(5)] After cessation of operations of two (2) years, the

owner or operator shall plug and abandon the well in accordance with the plan, unless a notice is sent to the division describing actions or procedures that the owner or operator shall take to ensure that the well will not cause the endangerment of a USDW during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the division.

Section 11. Requirements for a Permit to Inject into a Class II Well. All persons seeking a permit to inject into a Class II well shall, after the effective date of primacy, comply with the requirements of this section. (1) A person shall not inject fluids into the subsurface through a Class II well without obtaining a permit to inject.

(2) An application for a permit to inject shall be submitted on form OG[ED]-14 and shall include:

(a) A statement by the owner or operator as to whether the well will be used for enhanced recovery, hydrocarbon storage, or for disposal purposes;

(b) The approximate depth of the deepest known freshwater zone.

(c) In accordance with 805 KAR 1:030, a location plat for a permit to inject into a Class II injection well.

(d) An area of review map prepared on a 7.5 minute quadrangle topographic map and including:

1. The location of all known freshwater wells;
2. The location and completion or plugging record of all wells, whether producing or plugged;
3. The location of hazardous waste treatment or disposal facilities;
4. The location of rivers or streams;
5. The location of quarries and surface and subsurface mines;
6. The location of faults; and
7. The location of permanent residences;

(e) A schematic diagram of the well showing the following:

1. The total depth of the plugback of the well;
2. The depth of the injection or disposal interval;
3. The geological name of the injection or disposal zone;
4. The geological name, thickness, and description of the confining zone;

5. The vertical distance separating the uppermost extremity of the injection zone from the base of the lowest USDW;

6. The depth of the top and the bottom of the casing and the cement;

7. The size of the casing and tubing and the depth of the packer; and

8. The depth to the base of the lowermost underground source of drinking water;

(f) For the conversion of an existing well, a copy of the completion report and any available geophysical log of the well;

(g) Proposed operating data as follows:

1. The geological name, depth, and location of the source of the injection fluid;

2. A standard laboratory analysis of a representative sample of the fluid to be injected under the proposed Class II permit, with the following parameters, as contained in 40 C.F.R. 136.3 and 40 C.F.R. Part 261 Appendix III:

- a. Barium if sulfate is less than 500 mg/l;
- b. Calcium;
- c. Total Iron;
- d. Magnesium;
- e. Sodium;
- f. Bicarbonate;
- g. pH;
- h. Specific Gravity;
- i. Carbon Dioxide;
- j. Total Dissolved Solids; and
- k. Hydrogen Sulfide if H₂S odor is detected.

3. A material safety data sheet for inhibitors if added to the injection fluid for control of scaling, corrosion, or bacterial growth;

4.a. The nature of the annulus fluid to be used in the annulus between the tubing and casing.

b. This description shall include the type of fluid to be used and

the corrosivity of the annulus fluid.

c. The amount of inhibitor to be added shall be listed;

5. The proposed maximum injection rate and pressure. The owner or operator shall limit injection pressure to either a value:

a. That does not exceed a maximum injection pressure at the wellhead calculated to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to an underground source of drinking water and will not cause the movement or injection of fluids into an underground source of drinking water; or

b. For wellhead pressure calculated by using the following formula: $P_{max} = (0.733 \text{ psi/ft} - (.433 \text{ psi/ft} (S_g)))d$, Where: P_{max} = Maximum injection pressure (psia) at the wellhead; S_g = Specific gravity of the injected fluid; and d = Depth to the top of the injection zone in feet;

c. Alternate maximum injection pressures calculations may be utilized using instantaneous shut-in pressures recorded after stimulation treatments in adjacent wells in the same formation as the proposed injection zone;

(h) The location and description of each underground source of drinking water through which the well would penetrate;

(i) A description of the current or proposed casing program on the Casing and Cementing Plan for UIC Wells, Form ED-25, including the following:

1. Casing size, weight, and type;
2. Cement volume and type; and
3. Packer type;

(j) A description of all proposed stimulation programs;

(k) A description of proposed plans to cope with all shut-ins or well failures, so as to prevent migration of fluids into any underground source of drinking water;

(l) If a manifold monitoring program is utilized, a description of the program and a demonstration equivalence to individual well monitoring.

(m) A corrective action plan, which shall be submitted for all wells within the area of review as required in Section 7(4) of this administrative regulation;

(n) A demonstration of financial responsibility as required in Section 8(2) of this administrative regulation and a plugging and abandonment plan as required in Section 10 of this administrative regulation; and

(o) The plan by the owner or operator of mechanical integrity. Each well shall be tested for mechanical integrity using the method as described in Section 6(5) of this administrative regulation.

(3) An application for permit shall be signed by the owner or operator of the injection well, including corporate officers, general partners, sole proprietors, or other persons authorized to execute documents on behalf of the applicant.

(4) With respect to an application, a Class II Well Permit Application for Underground Injection Control, Form OG[ED]-14, for a Class II well, an applicant shall personally or by certified mail submit a written notification describing the proposed well to each of the following persons, if the described property is located within one-quarter (1/4) mile of the proposed well:

(a) The owner or operator of each well for oil and gas purposes, including a well having temporary abandonment status under this administrative regulation or not yet in production;

(b) The permittee of an underground mine permitted under KRS Chapter 350; and

(c) Each owner of rights to surface or subsurface property that the well penetrates.

(5)(a)1. The notification required under this subsection shall specify that a person who wishes to object to issuance of the permit shall, within thirty (30) days of receipt of the notification, submit written comments or request a hearing.

2. The notification shall include the address to which written comments or the hearing request shall be forwarded and where additional information may be obtained.

(b)1. In addition to the notification required under this subsection, the applicant shall cause a notice of a permit application to be placed in a newspaper of general circulation in the county where the proposed well is located.

2. Individual and publication notices shall include:

- a. The name and address of the applicant;
- b. The location of the proposed well;
- c. The geological name and depth of the injection zone;
- d. The maximum injection pressure; and
- e. The maximum rate of barrels each day.

3. The notice shall specify that a person who wishes to object to issuance of the permit may, within thirty (30) days of publication of the notification, submit written comments or request a hearing.

4. The notification shall include the address to which the written comments or hearing requests shall be forwarded, how a person may receive written notice of the proceedings, and where additional information concerning the proposed permit may be obtained.

5. Proof of service of the notification required in this subsection shall be delivered to the division before a permit for a Class II well shall be issued.

(6)(a) The owner or operator shall verbally notify field inspectors five (5) days before all mechanical integrity tests are performed.

(b) A written notice shall be given to the division fifteen (15) days before the tests are performed as required in Section 6(7) of this administrative regulation.

(7)(a) The permit to inject into a Class II injection well shall remain valid for the life of the well or project.

(b) The permit may be terminated if the well or project is in violation of this administrative regulation and applicable provisions of KRS Chapter 353.

(c) The owner or operator shall comply with the requirements of all applicable administrative regulations.

Section 12. Completion and Monitoring Reports. (1) The owner or operator shall upon completion of construction of a Class II well file with the division a completed and notarized Certificate of Completion for an Injection Well, Form ED-23, within ninety (90) days of final construction.

(2)(a) The owner or operator shall file an annual report of monthly monitoring of injection fluid volumes, injection pressure, and casing annulus pressure on Annual Disposal or Injection Well Monitoring Report, Form OG[ED]-18, on the twenty-eighth day of January for the previous twelve (12) months.

(b) The owner or operator shall retain all records on file for a period of five (5) years.

(c) The owner or operator of a liquid hydrocarbon storage or enhanced recovery well may monitor them by manifold monitoring on a field or project basis rather than on an individual well basis if the facilities:

1. Consist of more than one (1) injection well;
2. Operate with a common manifold; and

3. Provided the owner or operator demonstrates to the director that manifold monitoring is equivalent to individual monitoring.

(3) The owner or operator[permittee] of a Class II injection well shall notify the director in writing within thirty (30) days of the termination of operations at which time the permit to inject shall expire.

Section 13. Workover of Class II Wells. (1) The owner or operator shall notify the division within ninety (90) days of a well workover, logging, or testing that may reveal downhole conditions.

(2) The owner or operator shall submit a Well Rework Report, Form OG[ED]-4, documenting the activity within thirty (30) days following the completion of the rework.

(3) If the packer unseats during the workover, a mechanical integrity test shall be conducted under the provisions of Section 6 of this administrative regulation.

(4) Injection shall not be allowed until an approved mechanical integrity test has been performed.

Section 14. Procedures for Public Participation in Enforcement Actions. Upon receiving a complaint from the public, interested parties or others, the division shall:

(1) Investigate and provide written response to all citizen complaints submitted regarding any concerns for the endangerment of an underground source of drinking water;

(2) Not oppose intervention by any citizen when permissive intervention is authorized pursuant to KRS 353.180(3).

(3) Publish notice of and provide at least thirty (30) days for public comment on any proposed settlement of a division enforcement action beyond the forfeiture of a bond for a Class II well.

Section 15. Confidentiality of Information. (1) Information submitted to the division pursuant to this administrative regulation may be claimed as confidential by the submitter. A claim of confidentiality shall be asserted upon submission in the manner prescribed on the application form or instructions. Other submissions shall be stamped with the words "confidential business information" on each page containing confidential information. If a claim is not made at the time of submission, the division may make the information available to the public without further notice.

(2) Claims of confidentiality shall not apply to:

(a) The name and address of any permit applicant or permittee;

(b) Information regarding the existence, absence, or level of contaminants in drinking water; and

(c) Records directly by statute to be disclosed or published.

Section 16. Penalties. An owner or operator in violation of the requirements of this administrative regulation shall be subject to the penalties established in KRS 353.992.

Section 17. Primacy. The provisions of this administrative regulation shall become effective upon the date of primacy, on or after which a Class II well shall be subject to the requirements of this administrative regulation and shall be exempt from Sections 4, 5, and 6 of 805 KAR 1:020.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Class II Well Rework Report," Form OG-4, June 2019[ED-4, August 2007];

(b) "Class II Well Permit Application for Underground Injection Control," Form OG-14, June 2019[ED-14 August 2007];

(c) "Annual Disposal or Injection Well Monitoring Report," Form OG-18, June 2019[ED-18, August 2007];

(d) "Certification of Mechanical Integrity," Form OG-22, June 2019[ED-22, August 2007];

(e) "Certificate of Completion for an Injection Well," Form OG-23, June 2019[ED-23, October 2007];

(f) "Casing and Cementing Plan for UIC Wells," Form OG-25, June 2019[ED-25, October 2007];

(g) "Well Transfer for UIC Wells," Form OG-26, June 2019[ED-26, October 2007; and]

(h) ["Affidavit to Time and Manner of Plugging and Filling Well," Form ED-38, October 2007.] "Class II Plugging and Abandonment Plan", Form OG-41, June 2019; and

(i) "Application for Class II Internal Mechanical Integrity Test, Form OG-44, June 2019.

(2) These forms may be inspected, copied, and obtained, subject to applicable copyright law, at the Division of Oil and Gas[Conservation], 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Prevailing Time

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

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 for the drilling, casing, operation, plugging, construction, conversion, and maintenance of Class II wells and the protection of fresh water zones from contamination associated with the production of oil and gas.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for Class II wells.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.592 authorizes the department to develop a regulatory program for the purpose of accepting primary responsibility for the administration of the Underground Injection Control Program (UIC). This administrative regulation conforms to the authorizing statutes by providing details related to the UIC 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 providing the necessary information for a complete regulatory program for an UIC program.

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

(a) How the amendment will change this existing administrative regulation: This amendment provides information on what happens if a mechanical integrity test (MIT) results in a failure, provides that an UIC operator shall provide full cost bonding as required by the US EPA, and incorporates new forms. In response to a comment received during the public comment period the administrative regulation was updated to include "Eastern Prevailing Time" to clarify for individuals interested in obtaining copies of material incorporated by reference that the Division's office hours are in Eastern Time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make needed updates to the UIC program related to MIT tests. The amendment in response to comments was necessary to correctly interpret the time zone for the Division's office hours.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes by updating information required for the UIC program as authorized by KRS 353.592. The amendment in response to comment conforms to the authorizing statute by clarifying the intent of the Division's office hours.

(d) How the amendment will assist in the effective administration of statutes: These amendments assist in the effective administration of the statutes by making corrections to the administrative regulation and updating information related to MITs. The amendment made in response to comment assist in the effective administration of the statutes by clarifying the time zone for the Division's office hours.

(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. Any of these operators could drill a Class II injection well. Currently there are approximately 350 UIC 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 regulated entities identified in question (3) will be required to use a new form for reporting as well as a form for requesting MITs. If the impacted entities are interested in making copies of the material incorporated by reference then they will need to use Eastern Prevailing Time when interpreting the Division's office hours.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendments to this administrative regulation will not increase the cost to the regulated entities.

(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 new form for reporting proposed plugging procedures and the associated cost. Also, the information related to a MIT failure is established in the administrative regulation.

(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. The division is already monitoring MITs.

(b) On a continuing basis: The division will not incur any additional costs for the implementation of this administrative regulation. The division is already monitoring MITs.

(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. This administrative regulation does not increase any fees.

(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.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas operators who own or operate Class II injection wells.

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 almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 353.540, 353.550, 353.560, and 353.592.

3. Estimate the effect of this administrative regulation on the 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? There are no additional costs associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs associated with the amendments to this administrative regulation.

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 Oil and Gas (Amended After Comments)

805 KAR 1:140. Directional and horizontal wells.

RELATES TO: KRS 349.015, 349.035, 349.040(3), 349.075,

VOLUME 46, NUMBER 5— NOVEMBER 1, 2019

349.120, 349.155, 353.050, 353.060, 353.180, 353.510, 353.520, 353.561 – 353.564, 353.590, 353.5901, 353.592, 353.610, 353.651, 353.652, 353.6601 – 353.6606, 353.730, 353.737, 353.991, Chapter 424

STATUTORY AUTHORITY: KRS 349.115, 353.540, 353.550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. KRS 353.550 authorizes the department to regulate the drilling and casing of all wells and filing of all downhole surveys. KRS 349.110 authorizes the department to exercise supervision over the drilling, casing, plugging, and filling of all coalbed methane wells. This administrative regulation establishes the requirements for permitting directional and horizontal wells for the purpose of oil, ~~gas,~~ gas, or coalbed methane extraction.

Section 1. [Definitions. (1) "Blow-out preventer" or "BOP" means a device installed on the surface casing, which is the first and largest diameter casing installed in a well with the primary use to make the bore hole stand up and to protect a fresh water zone layer of strata capable of producing or receiving fluids, or installed on the intermediate casing, which is one (1) or more strings of pipes installed in a well in addition to the surface casing in which each string is smaller in diameter than the previous. The device is used to prevent the escape of pressure either in the annulus, which is the space between two (2) strings of casing or between a string of casing and the bore hole wall, between casing and drill pipe, or in the open hole without drill pipe, and that is used during drilling operations.

(2) "Casing" is defined by KRS 353.010(3).

(3) "Deep well" is defined by KRS 353.510(16).

(4) "Directional survey" is defined by KRS 353.010(8).

(5) "Intersection length" means the horizontal distance between the point at which the well penetrates the top of the intended formation and the end point within that formation.

(6) "True vertical depth" means the depth of the well from any point in the well being measured to the surface of the ground above the point being measured.

Section 2. [Information Submittal. (1) Prior to drilling a directional or horizontal well, the operator shall submit:

(a) 1. A completed Application for Permit, Form OG-1, incorporated by reference in 805 KAR 1:010 for oil or gas well; and

2. [An Application for Permit, ED-1, for a permit to drill the well, with] A cover letter from the operator making a request for drilling the horizontal or directional well;

(b) Three (3) copies of a location plat satisfying the requirements of 805 KAR 1:030 (plan view), in addition to:

1. The surface location and proposed target formation with their respective Carter Coordinates;

2. The proposed path of the wellbore ~~[course of the well]~~; and

3. The identification of the intersection length of the proposed well and the proposed producing formation. To avoid any conflicts with the spacing requirements, a dashed line shall be drawn around the intersection length in feet with regard to the spacing requirements in:

a. KRS 353.610 for an oil or gas well;

b. KRS 349.075 for a coal bed methane well; or, [for deep wells,]

c. 805 KAR 1:100 and KRS 353.651 and 353.652 for deep wells [This distance shall be clearly shown in feet];

(c) A bond as required in KRS 353.590(7) for oil or gas wells or KRS 349.120 for coalbed methane wells; and

(d) An application fee pursuant to the requirements in 805 KAR 1:010 ~~[of \$300].~~

(2)(a) In addition to the plan view required in this section, the operator shall submit three (3) copies of a plat that shows a vertical cross-section view of the area to be drilled by the well.

(b) This cross-section shall be prepared from the proposed "predrill hole" directional survey compiled by the contractor responsible for the directional drilling of the proposed wellbore ~~[control mechanism and certified as required by 805 KAR 1:030, Sections 2 and 7(1)(k)].~~

(c) The cross-section shall include the area from the well site to the target made through the proposed course of the well.

(d) The surface shall be located as zero in reference to the depth and the lateral distance from the well site and true vertical depths shall be shown for:

1. The kick-off point or selected depth at which the deviation is started;

2. The known coal seams to be intersected;

3. The producing interval;

4. The proposed producing formation; and

5. The proposed target.

(3) Upon permit issuance, the operator shall provide verbal or written notice to the department field inspector at least forty-eight (48) hours in advance of the commencement of drilling operations.

(4) Once the well has been drilled and completed, the following shall be submitted within thirty (30) days from the date of completion:

(a) Three (3) copies of an amended plan view of the well location plat required in subsection (1)(b)1. through 3. of this section, with the actual course drilled, the kick-off point, and the actual target superimposed on the proposed well location plat. A correction in the target Carter Coordinates, if necessary, shall then be issued by the department;

(b) Three (3) copies of the side or cross-sectional view plat required in subsection (2)(d)1 through 5 of this section ~~[of this section]~~ shall be amended for the actual path of the wellbore ~~[well]~~, showing the actual formation, coal seams, target formation, and kick-off point; and

(c) Copies of all directional surveys certified by the operator and the contractor responsible for the directional survey.

1. This survey shall be submitted for the entire well bore, and the operator shall be able to identify the path or depth of the well bore at any given time during and after the drilling of the directional or horizontal well.

2. The survey points shall be made at a maximum of 200 foot ~~[feet]~~ intervals or at any intervals more frequent.

(5) The operator shall satisfy spacing requirements for offset mineral boundary lines and between wells for the actual drilled path of the wellbore and its end point and the intersection of the wellbore and the producing formations in accordance with:

(a) KRS 353.610 for oil or gas wells;

(b) KRS 349.075 for coalbed methane wells; or

(c) [or, for deep wells,] 805 KAR 1:100 and KRS 353.651 and 353.652 for deep wells ~~[of offset mineral boundary lines and between wells for the actual drilled course of the well and its end point and the intersection of the well bore and the producing formations].~~

(6) A coal operator or owner affected by the drilling of a directional or a horizontal well shall be provided a copy of the predrill plat and cross-section plat established in subsections (1)(b) and (2)(b) of this section ~~[of this section]~~ as required by KRS 353.050 and 353.060 for oil and gas wells or KRS 349.015 for coalbed methane wells. Within ten (10) days after the well is drilled, the operator shall submit to the coal operator or owner the revised plats and deviation survey log required in subsection (4) of this section.

(7) The requirements for a deep directional or horizontal well shall satisfy those requirements established in 805 KAR 1:100 and KRS 353.651 and 353.652 regarding the application process and spacing units. Prior to the deep directional or horizontal well being drilled, a hearing shall be held pursuant to KRS Chapter 13B and 805 KAR 1:100 before the Kentucky Oil and Gas Conservation Commission.

Section 3. If an application for a directional or horizontal permit is submitted to the department, the operator shall prepare a detailed drilling and casing plan on Casing and Cementing Plan, Form OG-7 ~~[ED-7]~~, for the review by and the approval or denial of the department. The items requested in 805 KAR 1:130, Section 3(1), (2), and (3) shall be submitted with this plan.

Section 4. The operator shall install a blow-out preventer with a minimum ~~[blow-out prevention device capable of withstanding a]~~

working pressure of 1,500 psi and a test pressure of 3,000 psi or a minimum working pressure greater than the maximum anticipated surface pressure, whichever is greater. (1) A description of this device and its installation shall be included with the drilling and casing plan required in Section 3 of this administrative regulation.

(2) This BOP equipment shall be tested at intervals necessary to maintain its ability to operate at rated capacity. The results of these tests shall be kept at the drill site and made available to department personnel at their request.

Section 5. The requirements of 805 KAR 1:130, Sections 5, 6, and 7 shall also apply to this administrative regulation.

Section 6. An operator in noncompliance with the requirements of this administrative regulation shall be subject to penalties pursuant to KRS 353.991 for oil and gas wells or KRS 349.155 for coalbed methane wells.

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

(a) "Application for Permit", ED-1, June 2004; and

(b) "Casing and Cementing Plan", OG-7, June 2019,~~ED-7, March 2015~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas [Conservation], 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Prevailing Time.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

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 permitting directional and horizontal wells for the purpose of oil or gas extraction.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for permitting directional and horizontal wells for the purpose of oil or gas extraction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. This administrative regulation conforms to the authorizing statutes by establishing requirements for permitting directional and horizontal wells for the purpose of oil or gas extraction.

(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 requirements for permitting directional and horizontal wells for the purpose of oil or gas extraction.

(2) If 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 incorporate information related to permitting directional and horizontal wells for the purpose of coalbed methane extraction. This information was previously in 805 KAR 9:070. The amendment in response to comments simply inserted the phrase "Eastern Prevailing Time".

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to permitting directional and horizontal wells for the purpose of oil, gas, or coalbed methane extraction. The amendment in response

comment was necessary to insert language to clarify the timeframe for material to be copied or viewed is eastern prevailing time.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates permitting information for directional and horizontal wells from 805 KAR Chapter 9 into this administrative regulation. The amendment in response comment conforms to the authorizing statute by clarifying when the material incorporated by reference can be viewed or copied.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related to permitting directional and horizontal wells. The amendment in response to comment will assist in the effective administration of statutes by clarifying when the material incorporated by reference can be viewed or copied.

(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 regulated entities identified in question (3) will meet the same requirements related to directional and horizontal wells. However, the information as it relates to coalbed methane drilling will now be in this administrative regulation instead of 805 KAR 9:070. The entities will be required to view and copy material incorporated by reference in Eastern Prevailing Time.

(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 related to these amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related to directional and horizontal wells in one administrative regulation. The entities will have clarity in when to view and copy the material incorporated by reference.

(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 oil and gas 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 almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.115, 353.540, and 353.670.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the 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 Oil and Gas
(Amended After Comments)**

805 KAR 1:170. Content of the operations and reclamation plan.

RELATES TO: KRS 349.015, 349.105, 349.120, 349.155, 353.180, 353.510, 353.520, 353.561 – 353.564, 353.590, 353.5901, 353.592, 353.595, 353.597, 353.651, 353.652, 353.6601 – 353.6606, 353.730, 353.737, 353.991

STATUTORY AUTHORITY: KRS 349.130, 353.540, 353.550, 353.5901, 353.670

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.5901(1) requires an oil or gas[a] well operator to submit to the Department for Natural Resources an operations and reclamation plan. KRS 349.130 requires an applicant for a coal bed methane well permit to submit to the Department for Natural Resources an operations and reclamation proposal when applying for a permit. This administrative regulation establishes the content of the operations and reclamation plan, establishes the form on which that plan is to be filed, and establishes the form on which well transfers are indicated.

Section 1.[Definitions. (1) "Best management practices" or "BMPs" is defined by KRS 353.510(28).

(2) "Final reclamation" means the date on which the operator has completed drilling operations at the well site, has plugged the well, and has performed all obligations described in the operations and reclamation plan.

(3) "Well-site boundary" means the area of disturbance by an operator, excluding access roads, to drill an oil or gas well.

Section 2. (1) The operations and reclamation plan shall be filed on a completed and notarized Operations and Reclamation Plan, Form OG[ED]-10.

(2) In addition to the requirements set out in KRS 353.5901 and KRS 349.130, the following information shall be submitted on Form OG[ED]-10:

(a)1. The operator's and surface owner's names, addresses,

and telephone numbers;

2. The county in which the well is proposed to be drilled; and

3. The well number;

(b)1. A listing or description of fertilizers and soil amendments to be used and seed mixes or trees to be planted as established in the table in this subparagraph.

RECOMMENDED HERBACEOUS MIXTURES FOR REVEGETATION	
Note: A species enclosed in parenthesis may be substituted for the species to the left. Its seeding rate is enclosed in parentheses.	
Species Mixture	Seeding Rate (Pounds/acre PLS)
Spring - February 15 to May 15	
1. Orchardgrass	10
White or Ladino clover	2
Red clover	6
2. Orchardgrass	10
White or Ladino clover	1
Red clover	4
Kobe lespedeza	10
3. Orchardgrass	10
Birdsfoot trefoil (Alfalfa)	8 (15)
Red clover	6
4. 31 Tall fescue	20
5. Wheat (Spring oats)	25 (32)
Switchgrass	10
Indiangrass	10
Big bluestem	5
Little bluestem	5
Birdsfoot trefoil	6
Except for mixture 5, add one (1) of the following quick cover species to the selected permanent spring seeding mixture:	
Wheat (before April 15)	30
Spring oats (before April 15)	32
Balbo rye (before April 15)	30
Perennial ryegrass	10
Annual ryegrass	5
Weeping lovegrass (after April 1)	2
Summer - May 15 to August 1	
Orchardgrass	10
Kobe lespedeza	15
Red clover	4
White clover (Birdsfoot trefoil)	1 (6)
Alfalfa	12
Add one (1) of the following quick cover species to the permanent summer seeding mixture:	
Sorghum	20
Foxtail (German) millet	12
Japanese millet	15
Soybeans	40
Cowpeas	40
Pearl millet	10
31 Tall fescue	20
Fall - August 1 to October 1	
1. Orchardgrass	10
White or Ladino clover	2
Red clover	6
2. Orchardgrass	10
Alfalfa (Birdsfoot trefoil)	15 (8)
Red clover	6
3. 31 Tall fescue	20
4. Deertongue	12
Birdsfoot trefoil	8
Red clover	6
Add one (1) of the following quick cover species to the selected permanent fall seeding mixture:	
Winter wheat	30
Balbo rye or Winter rye	30
Winter oats	32
Perennial ryegrass	10

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Annual ryegrass	5
Mixtures for Wet or Poorly Drained Areas and Pond Borders	
Spring - February 15 to May 15	
Japanese millet	10
Redtop (Reed canarygrass)	3 (15)
Alsike clover	4
31 Tall fescue	20
Common annual lespedeza (quick cover species)	10
Fall - August 1 to October 1	
Redtop	3
Reed canarygrass	15
Alsike clover	6
31 Tall fescue	20
Common annual lespedeza (quick cover species)	10
Mixture for Areas to be Stocked With Woody Plants	
Spring or Fall Seeding	
Redtop	3
Perennial ryegrass	5
Birdsfoot trefoil (Appalow lespedeza)	10 (20)
Foxtail millet (quick cover species)	5
If both Appalow lespedeza and birdsfoot trefoil are used, cut their seeding rates in half.	

2. The requirements in subparagraph 1. of this paragraph shall apply for each affected area requiring revegetation treatment; and

(c) A detailed map of the road, well location, and proposed area of disturbance, which shall be in sufficient detail to allow ready identification of surface features and which shall satisfy the requirements established in subparagraphs 1. through 4. of this paragraph.

1.a. The surface owner's tract shall be identified on the map, with the name of the surface owner if not listed on the legend.

b. The map shall indicate the acreage to be disturbed.

2. The map may be made over an enlarged section of the United States Geological Survey (USGS) 1:24000 topographic map, or an equivalent format, and shall be:

a. Enlarged to 1"=400'; and

b. Submitted on a minimum of an eight and one-half (8 1/2) inch by fourteen (14) inches sheet, using the symbols established on Form OG[ED]-10.

3. The map shall have a legend with the operator's and surface owner's names not listed on the map, the scale of the map, the well name and number, and the lease name. Within 500 feet of the permitted wellsite boundary and 100 feet of the well site access road centerline, the map shall show:

a. The location of all features listed on the legend of form OG[ED]-10;

b. All water bodies; and

c. If reasonably ascertainable, public utility infrastructure.

4. The map shall 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 operation.

(3) A signature of the surface owner shall be obtained in instances of a complete severance of the ownership of the oil, [and] gas, or coalbed methane from the ownership of the surface to be disturbed. Signatory sections for the operator and surface owner shall be completed on Form OG[ED]-10 pursuant to paragraphs (a) and (b) of this subsection.

(a) The name and title, if any, of the operator shall be indicated and his or her signature notarized.

1.a. The signature shall be either that of an officer of the company or of a person who holds a duly recorded power of attorney to execute documents.

b. A copy of the power of attorney shall be filed with the division.

2. If the prospective operator is an individual, the signatory shall be in the same name as the applicant's. If someone other

than the applicant signs the form, the signatory shall hold a duly recorded power of attorney.

(b) The surface owner's name shall be indicated and his or her signature notarized if he or she approves of the operations and reclamation plan, together with any attachments submitted with it.

Section 2. Unsigned Reclamation Forms. If the owner of the surface of the severed minerals tract is unwilling or for some other reason has failed to sign [submit] Form OG[ED]-10, the operator shall file:

(1) A written petition for mediation; and

(2) The items established in paragraphs (a) and (b) of this subsection.

(a) A copy of the certified mail receipt verifying that the operations and reclamation plan, the statement required in KRS 353.5901(4)(b), and the plat were mailed to and received by the surface owner or, if not received, the original or a copy of the unclaimed envelope. A copy of the operations and reclamation plan and the attachments enclosed in the envelope mailed to the surface owner shall also be included.

(b) If the surface owner cannot be reached at his last known address of record and certified mail is returned as undeliverable or unknown, the operator shall publish a notice of intended activity, together with a request for information on the whereabouts of the surface owner.

1. The publication shall be made two (2) consecutive times in a local newspaper in the county where the proposed well is located and once in a newspaper of general circulation.

2. A copy of the notice of intended activity and request for surface owner information shall be included with the operator's application for permit and shall include:

a. The name and address of the operator;

b. A brief description of the intended activity as established in the operations and reclamation plan; and

c. A statement of where interested persons may obtain additional information as to the operator's intended activity.

3. The surface owner shall respond to the notice established in this paragraph.

Section 3. Mediation of Dispute. (1) The surface owner may file with the division a request for mediation after receiving from the operator the proposed operations and reclamation plan, but only after the operator has filed his request for mediation and not later than the time set forth in the Notice of Request for Mediation provided by the department and mailed to the surface owner. The surface owner's request to participate in mediation shall include the mediation fee, in accordance with KRS 353.5901(6), or a request for waiver of the fee.

(2) Contents of a request for fee waiver. The request for waiver of the mediation fee shall include:

(a) A brief statement of facts underlying the request for a determination that the individual is financially unable to pay the mediation fee required by KRS 353.5901(6); and

(b)1. Documentation that the individual is receiving or has been deemed eligible to receive public assistance; or

2. An affidavit, subject to penalties for perjury, establishing:

a. The applicant's individual income;

b. The applicant's household income;

c. Property owned;

d. Outstanding obligations;

e. The number and age of dependents; and

f. A copy of his or her most recent Kentucky and federal income tax returns.

(3) Waiver determination.

(a) Within thirty (30) days of filing of the petition, the mediator shall issue a determination accepting or denying the request for fee waiver. If the fee waiver is denied, the applicant shall be informed in writing and the applicant shall be given thirty (30) days from the mailing of the mediator's waiver denial to submit the mediation fee to the department, or the surface owner shall be deemed to have failed to satisfy the statutory requirements applicable to mediation and a report shall be issued pursuant to subsection (4) of this section.

(b) The mediator's waiver determination shall not be subject to appeal.

(c) In considering the request for fee waiver, the mediator shall consider the statement and affidavit submitted by the surface owner and consult the Federal Poverty Guidelines in effect upon the date the request is mailed.

(d) The mediator shall waive the mediation fee for any surface owner whose household income is at or below 100 percent of the Federal Poverty Guidelines.

(e) The mediator shall waive the mediation fee for any surface owner whose household income exceeds 100 percent of the Federal Poverty Guidelines if the mediator determines that the surface owner has demonstrated financial inability to pay the fee.

(f) It shall be presumed that the surface owner has the financial ability to pay the mediation fee if that person:

1. Is not receiving, or is not eligible to receive, public assistance payments upon the date the affidavit is submitted; or
2. Owns more than one (1) motor vehicle.

(4) If the surface owner does not file the mediation fee within the time and in the manner required in the Notice of Request for Mediation, the surface owner shall be deemed to have failed to satisfy the statutory requirements applicable to mediation. The mediator shall file a report noting the failure and recommend the acceptance of the operator's operations and reclamation plan.

(5)(a) The mediator shall not settle damage claims or make any determinations regarding damage claims in the report.

(b) Information presented by the operator or surface owner as to costs incurred by either party as a result of the projected drilling and the loss of minerals or surface damage may be utilized by the mediator in recommending the placement of roads, pits, or other construction and reclamation activities in a manner that has the least adverse surface impact.

(6) If the operator withdraws his or her application for a permit to drill, deepen, or reopen a well after receipt by the division of the surface owner's mediation fee, that fee shall be refunded to the surface owner.

Section 4. Construction, Reclamation, and Maintenance. (1) Pre-construction planning shall be performed to design access roads, wellsite, and pits along existing topography to minimize erosion and identify locations for sediment control practices and devices in accordance with the operations and reclamation plan.

(2) Construction activities shall incorporate BMPs for erosion and sedimentation control on all disturbed areas.

(a) All cuts and fills shall have side slopes that are stable for the soil or fill material utilized.

(b) A wellsite shall be constructed on a stable base.

~~(c) [If practicable,]~~ Pits shall comply with the construction requirements in subparagraphs 1. through 7. of this paragraph [be constructed in solid ground on the cut or highwall side of the wellsites], and in accordance with 401 KAR 5:090, Section 9(5)(a).

1. Pits shall be constructed on the cut or highwall side of well sites in non-fill areas.

2. Pits shall be located above the 100-year floodplain in order to maximize the distance from surface waters of the Commonwealth.

3. Pits shall be of sufficient size and shape to contain all drilling fluids, cuttings, well completion, and treatment fluids from the well.

4. Pits shall be lined with an impermeable synthetic material having a minimum thickness of twelve (12) mils to prevent movement of pit fluids into the subsurface.

5. Diversion ditches shall be constructed up slope of the pit to divert surface runoff so that the pit has no additional drainage area.

6. Pits shall be constructed to maintain a continuous freeboard of at least two (2) feet above ground level to prevent overflow.

7. A steel tank, of sufficient size and shape to contain all drilling fluids, cuttings, well completion, and treatment fluids, may be used in lieu of an excavated pit.

(d) A disturbed area shall be graded and stabilized so that soil

erosion, surface disturbances, and stream sedimentation is minimized utilizing best management practices, in accordance with the approved operations and reclamation plan.

(e)[2-] If practicable, all topsoil present in the area to be disturbed shall be removed and segregated for redistribution during reclamation.

(f)[3-] Temporary erosion control measures shall be implemented during construction of the road to minimize sedimentation and erosion until permanent control measures including seeded and mulched road ditches can be established.

(3) If the well produces and the site is kept open for long-term use for well servicing and for oil and gas removal, the operator shall:

(a) Maintain access roads in a manner as to:

1. Allow access by the operator without causing unreasonable settlement of the roadbed or slides of the cut slopes; and
2. Provide that maintenance shall be in accordance with the operations and reclamation plan;

(b)[4-] Establish drainage;

1. To adequately accept runoff from access roads, the well site, and other areas in a manner that shall prevent unreasonable interference with the surface owner's property, roads, farming operations, and buildings; and

2.[Establish drainage] In accordance with the operations and reclamation plan;[and]

(c)1. Repair access roads, the well site area, and pits damaged by events as floods, landslides, or excessive settlement of the embankment as soon as practicable after the damage has occurred.

2. The operator shall not be responsible for damage attributable to another party's use of the access road not relating to the drilling, construction, or operation of the well by the operator;and[.]

(d) Maintain and operate pits in accordance with subparagraphs 1. through 6. of this paragraph.

1.a. Pits shall not remain open for more than thirty (30) days after drilling or well completion, unless an extension is requested and approved by the director.

b. A multi-well pad shall be closed within thirty (30) days after drilling or well completion of the last well on the well site.

c. Upon written request, the director may, with good cause, extend the allowable life of the pit to a maximum ninety (90) days after drilling or well completion.

2. Pits shall not be used to dispose of garbage.

3. The pit and applicable portion of the well site not utilized for production purposes shall be closed in accordance with Section 6(1)(b).

4. Discharge from a pit or any activity associated with the drilling or completion of a well to any surface or ground waters or in a location where it is likely to cause pollution to any surface or groundwater shall be prohibited.

5.a. Water-based drilling mud and pit fluid may be land applied onsite or transported offsite and injected into a Class II injection well permitted pursuant to 805 KAR 1:110. If the water-based drilling mud and pit fluid is land applied then it shall be in accordance with the applicable requirements in Section 1 of 401 KAR 45:060.

b. Land application of produced brine water shall be prohibited

6. Pits shall be monitored for integrity and slope stability until closure of the pit.

Section 5. Site closure. (1) The department shall consider a wellsite closed after:

(a) All surface production facilities have been removed;

(b) Pits have been closed in accordance with subparagraphs 1. through 4. of this paragraph.

1. All standing fluids in the pit shall be removed and disposed of in accordance Section 5(d)5. of this administrative regulation.

2. The operator shall ensure solidification of drill cuttings by mixing earthen material within the pit.

3. Pit solids shall be encapsulated in the liner and buried

prior to surface restoration and reclamation.

4. The pit shall be back-filled with earthen material to establish natural grade with the surrounding wellsite.

The well has been plugged under direction of the department;

(c) Written notice has been provided by the operator to the division that final reclamation and site closure has been completed[and the reclamation work] pursuant to the operations and reclamation plan; and

(d) The cabinet has verified that the reclamation work complies with the operations and reclamation plan in the approved permit package.

(2) The bond required in KRS 353.590(7), (8), [and] (9) or KRS 349.120 shall not be released until a division inspector has:

(a) Made an inspection of the well site one (1) year after the date of the letter of notification from the operator of final reclamation and plugging; and

(b) Filed a report to the director documenting that the following have occurred:

1. All areas disturbed by the operator have been secured in a manner to prevent runoff, sedimentation, [or] settlement of the roadway, or sliding of cut slopes or any fill material;

2. A diverse and effective permanent vegetative cover has been established; and

3. Any matters relating to settlement, inadequate vegetative cover, or erosion have been corrected.

Section 6. Transfer of Wells having Existing Reclamation Plans. (1) Prior to transferring a well for which an approved operations and reclamation plan is on file with the division, the operator shall:

(a) Provide the successor operator a copy of the approved reclamation forms and attachments on file with the division before signing Well Transfer Form OG[ED]-13;

(b) Advise the successor operator of any reclamation responsibility the transferring operator had with regard to the well and related surface disturbance;

(c) Secure from the successor operator a letter indicating that the operator has received from the transferring operator a copy of Form OG[ED]-10 and that he or she is willing to accept responsibility for the reclamation of the well site and other surface disturbances related to the operation of the well;

(d) Submit to the division the completed and notarized Well Transfer, Form OG[ED]-13, applicable fee, and the letter of the successor operator's agreement to accept responsibility for reclamation in the manner established on Form OG[ED]-10; and

(e) Provide the surface owner of record with a copy of form OG[ED]-13 upon submission to the division.

(2) The division shall not transfer the well until the requirements of this section are satisfied and shall advise the transferring and successor operators in writing upon transfer of the well.

(3)(a) The transferee of a well shall assume all obligations in accordance with the terms of the permit[and] this section, and KRS 353.590(23) upon transfer[regardless of whether the transferor commenced the activity and regardless of whether the transferor failed to properly perform the transferor's obligations in accordance with the permit and this chapter. The transfer of the permit shall relieve the transferor of any future obligations under the terms of the permit or 805 KAR Chapter 1, but shall not relieve the transferor of any civil penalties that arose from violations occurring prior to the transfer].

Section 7. (1) If a well is to be drilled and completed on federal lands, the director shall accept a copy of a surface use reclamation agreement between the well operator and the federal agency in lieu of the operations and reclamation plan.

(2) If the operator elects to submit this agreement, it shall be submitted with the application for permit to drill a well.

Section 8. (1) If a field inspection indicates there is noncompliance with the approved operations and reclamation plan or the requirements of Section 6 of this administrative regulation, a written notice of violation describing the noncompliance shall be

given to the operator, together with a statement of the action required to correct the noncompliance.

(2) The written notice of violation shall allow the operator up to forty-five (45) days to correct the violation.

(3) An operator may file for an extension of time to correct a violation. A request for an extension of time shall be submitted via a letter to the director describing the need for that extension. If the director concludes that the reasons for the request are beyond the operator's control and that an extension of time will not violate the requirements of this administrative regulation or applicable statutes, the director shall grant the request for extension of time.

(4) The operator's bond shall be forfeited to the department's oil and gas well plugging fund, pursuant to KRS 353.590(27)[KRS 353.590(40)], if the operator fails to make required corrections.

(5) An operator who, after a hearing, is determined by the department to be in noncompliance with any section of this administrative regulation, or who fails to abate any noncompliance of the approved operations and reclamation plan, shall be subject to the penalties described in KRS 353.991.

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

(a) "Operations and Reclamation Plan", OG-10, October[June] 2019[ED-10, April 2015]; and

(b)[Form ED-13,] "Well Transfer", OG-13, June 2019[April 16, 1990 edition, Division of Oil and Gas].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Prevailing Time.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

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 content of the operations and reclamation plan, establishes the form on which that plan is to be filed, and establishes the form on which well transfers are indicated.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the content of the operations and reclamation plan, establishes the form on which that plan is to be filed, and establishes the form on which well transfers are indicated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.5901 authorizes the department to require an operations and reclamation plan. This administrative regulation establishes the requirements for an operations and reclamation plan. KRS 353.590 authorizes the department to review and approve transfer of wells. This administrative regulation establishes the form on which well transfers are submitted.

(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 reclaiming oil and gas sites as well as information related to transferring wells.

(2) If 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 incorporate information related to reclaiming coalbed methane wells and transferring coalbed methane wells. This information was previously in 805 KAR 9:080. The amendments in response to comments inserted language regarding pits used during the drilling and operation of oil and gas

wells. The amendments also inserts "Eastern Prevailing Time" in the material incorporated by reference section.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to reclaiming wells and transferring wells. The amendments in response to comments were necessary to not only insert construction, operation, and closure requirements of pits but to also to insert language to clarify the time for viewing and copying material incorporated by reference is in Eastern Prevailing Time.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates reclamation and transfer information related to coalbed methane wells from 805 KAR Chapter 9 into this administrative regulation. The amendments in response to comments conforms to the authorizing statutes by inserting necessary information into the administrative regulation related to the appropriate regulation of pits. The amendments also inserts "Eastern Prevailing Time" in the material incorporated by reference section.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related to reclaiming well sites and transferring wells. The amendments in response to comments will assist in the effective administration of the statutes by establishing requirements for pits.

(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 regulated entities identified in question (3) will meet the same requirements related to reclamation of oil, gas, and coalbed methane wells. However, the information as it relates to coalbed methane reclamation will now be in this administrative regulation instead of 805 KAR 9:080. The entities will be required to meet the construction, operation, and closure requirements for oil and gas pits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs related to these amendments. There will be no additional costs associated with these requirements. Oil and gas operators already have pits related to the drilling and operation of there well sites. The requirements inserted in this administrative regulation in response to comments are similar to requirements in 401 KAR 5:090 which is planned to be repealed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related reclaiming and transferring wells in one administrative regulation. Also the entities will no longer need to refer to 401 KAR 5:090 to find information related to pits. That information will now be located in this administrative regulation.

(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 oil and gas 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 almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.130, 353.540, 353.550, 353.5901, 353.670.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the 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 Oil and Gas (Amended After Comments)

805 KAR 1:180. Production reporting.

RELATES TO: KRS 353.550(1)

STATUTORY AUTHORITY: KRS 349.115, 353.540, 353.550(4), 353.670(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.550(1) and KRS 349.115 authorizes the department to promulgate administrative regulations requiring an operator of oil and gas properties in the Commonwealth to identify producing leases. This administrative regulation is necessary to specify the requirement of annual reporting, the content of the report, and the form on which the report shall be made.

~~Section 1. Definitions. In addition to the definitions set out in KRS 353.540, the following definitions shall apply to this administrative regulation:~~

~~(1) "GPS" means a global positioning satellite, which:~~

~~(a) Receives radio frequencies from more than one (1) satellite; and~~

~~(b) Is able to locate a point on the earth.~~

(2) "Mcf" means 1,000 cubic feet of natural gas.

(3) "Net gas sales" means the amount of metered or prorated gas sold into the line of first purchase and may be different from produced gas, due to line loss and compressor usage.

(4) "Produced gas" means the amount of produced gas metered or prorated at the well head on a monthly basis.

(5) "Purchaser or lease number" means the number assigned by the purchasing company to the lease or well for accounting and payment purposes.

(6) "Topographic spot" means the act of locating a well on a United States Geological Survey 1:24,000 Topographic Map and scaling that well location on the map to determine its Carter Coordinate location.

Section 2.] Annual Report of Monthly Production. (1) An oil or gas operator shall:

(a) Compile and retain records of the monthly production of natural gas and crude oil; and

(b) For the preceding year, file the production information with the Division by April 15.

(2) The information may be submitted to the division:

(a) On Form OG-17[ED-47], "Annual Report of Monthly Production for Natural Gas and/or Crude Oil"; or

(b) By using:

1. Common personal computer spread sheet or database software;

2. An electronic mail attachment.

(3) An operator shall be permitted to submit the information in accordance with subsection (2)(b) of this section, subject to the division being able to process the production data electronically.

(4) The following shall be included in the information submitted by the operator:

(a) Operator name and address;

(b) Production year;

(c) Permit number issued by the Division of Oil and Gas;

(d) Purchaser number;

(e) Number of wells on the lease for which the report is being filed;

(f) Farm name, complete with the individual well name and well number;

(g) County of production;

(h) Producing formation or, if production is commingled from multiple wells which are not metered separately, the identification of the wells as "commingled" and the pertinent formations from which production was made;**[and]**

(i) **The location of the tank battery affiliated with the well; and**

(j) Well status, identified as producing or shut-in.

(5) Production from a gas well shall be reported in Mcf of net gas sales by well. In addition to reporting net gas sales, produced gas may also be reported at the option of the operator.

(6) Monthly oil production shall be reported in barrels by individual well or by lease; if by lease, the operator shall attach to Form OG-17[ED-47] a list identifying the purchaser number and division permit number of all wells producing on that lease.

(7) For a well drilled prior to the date upon which a permit for the drilling and production of a well was statutorily required, the operator shall provide a Carter Coordinate location for each well not having a location on file with the division; that location may be estimated by a topographic spot, a GPS locator, or by survey.

(8) Production information reported pursuant to this administrative regulation shall be organized into a standard format and shall be made available for public release no earlier than January 1 nor later than March 1 of the following year.

Section 2[3]. Penalties. If an operator does not file his production data on Form OG-17[ED-47] by April 15 after each production year, the division shall notify the operator[him] in writing of the[his] noncompliance. If the operator[he] does not submit all required production information within forty-five (45) days after being notified of the[his] noncompliance, the operator[he] shall be subject to denial of permits in accordance with KRS 353.570 or KRS 349.040 for coalbed methane wells and the penalties

established in KRS 353.991(2), (3) and (4) or KRS 349.155 for coalbed methane wells.

Section 4. Incorporation by Reference. (1) "Annual Report of Monthly Production for Natural Gas and/or Crude Oil", OG-17, October[June] 2019 [(November 12, 1997 edition), Division of Oil and Gas.] is incorporated by reference.

(2) This form may be obtained, examined, or copied at the Kentucky Department for Natural Resources, Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., **Eastern Prevailing Time.**

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email michael.mullins@ky.gov.

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 is necessary to specify the requirement of annual reporting, the content of the report, and the form for the report.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for production reporting.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.550(1) authorizes the department to promulgate administrative regulations requiring an operator of oil and gas properties in the Commonwealth to identify producing leases. This administrative regulation conforms to the authorizing statutes by establishing the procedures under which oil and gas operators are to submit production reporting information.

(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 production reporting from producing oil and gas wells.

(2) If 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 incorporate information related to production reporting for coalbed methane wells. This information was previously in 805 KAR 9:090. The amendment made in response to comment inserts a requirement for operators to include tank battery locations on their annual production report. The administrative regulation is also amended to insert "Eastern Prevailing Time" into the incorporation by reference section.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to consolidate two administrative regulations into one administrative regulation related to production reporting. The amendments made in response to comments was necessary to capture information related to tank battery location and also to clarify that the time for copying material incorporated by reference is "Eastern Prevailing Time".

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consolidates production reporting information related to coalbed methane wells from 805 KAR Chapter 9 into this administrative regulation. The amendment made in response to comment inserts a requirement to include tank battery locations.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by consolidating two administrative regulations related to production reporting. The amendment conforms to the authorizing statutes by requiring operators to include tank battery locations associated with the reported well and by clarifying the Division's hours of operation.

(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 regulated entities identified in question (3) will meet the same requirements related to production reporting for wells. However, the information as it relates to coalbed methane well production reporting will now be in this administrative regulation instead of 805 KAR 9:090. The amendments made in response to comments will require the entities to provide tank battery locations to the Division of Oil and Gas as part of their annual production reporting form. The entities will also need to be aware that the Division's listed hours of operation in the material incorporated by reference section are Eastern Prevailing Time.

(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 related to these amendments. The amendments made in response to comments will not result in a cost to the entities listed in question #3. The operator of a well will be required to report the location of a tank battery that is associated with a well that is already being required to have production reported. This is a simple addition to a form already used by operators and that will be required to provide GPS coordinates.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find all information related production reporting in one administrative regulation. The operator will have a much simpler reporting requirement than what is already required for tank battery reporting in 401 KAR 5:090. 401 KAR 5:090 required operators to register their tanks which required an associated fee. This new approach does not require a formal registration process nor does it require a fee. It simply asks the operators to provide GPS locations for their tanks on a form that is already required to be provided by all operators each year.

(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 oil and gas 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 almost entirely to the Division of Oil and Gas.

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

regulation. KRS 349.130, 353.540, 353.550, 353.5901, 353.670.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the 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 Oil and Gas (Amended After Comments)

805 KAR 1:190. Gathering lines.

RELATES TO: KRS 353.160, 353.500(2), 353.590, 353.745, 353.991, 353.5901(1), 40 C.F.R. Part 112, 49 C.F.R. Parts 191, 192, 194, 195

STATUTORY AUTHORITY: KRS 353.500(2), 353.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. KRS 353.500(2) requires the department to promulgate administrative regulations pertaining to gathering lines, in order to minimize their potential effects on the citizens and the environment of the Commonwealth. KRS 349.115 authorizes the department to promulgate administrative regulations to implement the coalbed methane program.[EO—2009-538, effective June 12, 2009, abolishes the Environmental and Public Protection Cabinet and establishes the new Energy and Environmental Cabinet.] This administrative regulation establishes provisions for the installation of gathering lines, reclamation of disturbed areas, and safety requirements of gathering lines as they pertain to oil and gas production operations.

Section 1.[Definitions.

—(1) "Division" means the Division of Oil and Gas.

—(2) "Environmentally sensitive feature" means a stream, spring, sinkhole, wetland, state or national park, wilderness area, or wildlife refuge.

—(3) "Existing gathering line" means any gathering line installed and not abandoned or taken out of service prior to March 18, 2004.

—(4) "Gas production flow line" means:

—(a) The segment of a gathering line running from a well to the point of interconnection with another gathering line or production compressor; or

—(b) If a well produces both oil and gas, the line from a well.

—(5) "Gathering line" means any pipeline that is installed or used for the purpose of transporting crude oil or natural gas from a well or production facility to the point of interconnection with another gathering line, an existing storage facility or a transmission or main line, including all lines between interconnections, except those

lines or portions thereof subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195.

—(6) "GPS" means the collection method of acquiring location data using the Global Positioning System that is:

—(a) 1. Reported as latitude and longitude in degrees and decimal degrees;

—2. Captured in three (3) meter accuracy for stationary location data, such as line markers; and

—3. Submitted as waypoints and track logs for the gathering line location;

—(b) Recorded in the datum of WGS84; and

—(c) Submitted as ArcView shape file or as an ASCII file is submitted electronically.

—(7) "Oil production flow line" means:

—(a) A gathering line running from a well or wells to a tank battery for production treatment and storage; or

—(b) If an injection well, the line from the tank battery to the well.

—(8) "Production compressor" means a compressor installed on a gathering line and used to increase produced gas pressure to enhance delivery.

—(9) "Transmission line" means a pipeline that is subject to the exclusive jurisdiction of the United States Department of Transportation under 49 C.F.R. Parts 191, 192, 194 and 195.

—Section 2.] Applicability. This administrative regulation shall apply to gathering lines installed under permits issued after March 18, 2004 and shall not apply to existing gathering lines unless these lines are identified as being subject to the requirements of Section 4 of this administrative regulation.

Section 2[3]. License. (1) The operator of any gathering line, including an existing gathering line, shall obtain a gathering line operator's license from the division to operate any and all oil or gas gathering lines operated by him, upon the effective date of this administrative regulation. The operator in physical control of any gathering line shall maintain a current license even if the gathering line is shut in or idle. All gathering lines operated by the same operator shall be subject to a single gathering line operator's license. An operator of an existing gathering line shall make application for license within ninety (90) days of the effective date of this administrative regulation.

(2) Each licensee shall annually submit a completed and notarized license renewal form using the "Application ~~for~~ Gathering Line Operator's License", Form OG[ED]-2, on or before the expiration date of his current license. Annual renewal of the gathering line operator's license shall be made on January 1 and due no later than February 15. If there are no substantive changes to the operator information provided in the initial application for license, the license shall be renewed upon receipt of the license fee. ~~[A licensee may also submit the license renewal information and payment through the division's on-line application when the on-line application becomes available.]~~ To qualify for a license or license renewal, the applicant shall be in compliance with applicable laws and shall submit the following items to the division:

(a) An application satisfying the requirements of subsection (3) of this section; and

(b) 1. A \$100 license fee; or

2. A fee of twenty-five (25) dollars for each dwelling, if the application is for a license to operate a gathering line for a gas well used strictly for the purpose of heating a residential dwelling.

(3) Application. The application for a license or a license renewal shall be:

(a) Notarized or meet the requirements for electronic signature if electronically submitted pursuant to KRS Chapter 369;

(b) Filed with the division; and

(c) Contain the following information:

1. The full name under which the operator transacts or intends to transact business under the license and the operator's correct mailing address. The application shall include the name and address of the principal officers of the partnership, limited liability company, or corporation, including the agent for process;

2. All other information required by the "Gathering for Line

Operator's License Application", Form OG[ED]-2, ~~[October 2003]~~; and

3. Each application for a license shall be signed or submitted with electronic signature as previously described by the operator if the operator is a natural person, by a principal officer if the operator is a partnership, limited liability company, or corporation.

Section 3[4]. Maps of Existing Gathering Lines. Within eighteen (18) months of the effective date of this administrative regulation, each operator of any existing gathering line shall file with the division a map, which outlines the approximate location of the existing gathering line. The gathering line may be noted over an enlarged section of a United States Geological Survey (USGS) 1:24000 topographic map, which may be enlarged to approximately 1"= 400' and be submitted on an 8 1/2 in. x 14 in. sheet. Additional maps may be provided if necessary to fully document the total length of the gathering line. This requirement for the filing of maps may also be satisfied by electronic submission of the maps subject to the division being able to import and view the map files.

Section 4[5]. Permit. Prior to the installation of a gathering line, the operator shall submit a permit application to the division for the installation and operation of the gathering line in the following manner:

(1) Permit by rule for an oil production flow line. An oil production flow line shall be deemed to have a permit by rule upon the issuance of the well drilling permit if the operator satisfies the following conditions:

(a) Notifies the division in the manner prescribed in Section 7 of this administrative regulation upon the successful completion of the well and prior to the installation or disturbance of any surface upon which the oil production flow line shall be installed;

(b) Complies with Sections 9, 10, 11(1), (2), (3), (4), 12 and 14 of this administrative regulation; and

(c) Pays a fee of \$100, in addition to the well permit fee required by KRS 353.590(2) and an additional fifty (50) dollar fee required by KRS 353.745(4) and 805 KAR 1:010~~[805 KAR 1:200]~~.

(2) Permit by rule for a gas production flow line. A gas production flow line shall be deemed to have a permit by rule upon the issuance of the well drilling permit if the operator satisfies the following conditions:

(a) Notifies the division in the manner prescribed in Section 7 of this administrative regulation upon successful completion of the well and prior to the installation or disturbance of any surface upon which that gathering line shall be installed; and

(b) Pays a fee of \$200, in addition to the well permit fee required by KRS 353.590(2) and an additional fifty (50) dollar fee required by KRS 353.745(4) and 805 KAR 1:010~~[805 KAR 1:200]~~.

(3) Permit for a gathering line other than an oil production or gas production flow line. The division may issue a permit for the installation and operation of a gathering line other than an oil production or gas production flow line if the operator satisfies the following conditions:

(a) Files an application with the division for a permit for the installation, reclamation, and operation of a gathering line in the manner prescribed by Section 7 of this administrative regulation prior to the installation or disturbance of any surface upon which ~~the~~that gathering line shall be installed; and

(b) Pays a fee of \$500.

Section 5[6]. Transfer of Ownership of a Gathering Line. A successor operator of a gathering line shall notify the division in advance of commencing use or operation of a gathering line. The successor shall assume the obligations of this administrative regulation and relieve the original permittee of responsibility under this administrative regulation with respect to the gathering line. It shall be the responsibility of the selling operator to require the successor operator to notify the division before use or operation is commenced by the successor and relief of responsibility under this administrative regulation is granted to the original permittee. If an oil production or gas production flow line is involved, the successor shall be deemed to have provided notice to the division upon the

successful completion of the well transfer, as required under KRS 353.590(23) [~~KRS 353.590(6)~~], for the oil production or gas production flow line applicable to the corresponding well.

Section 6[7]. Permit Requirements. (1) The notification or application for permit for the installation and operation of a gathering line shall be submitted to the division on a completed and notarized[~~using the~~] "Notification/Application for a Gathering Line Permit: Installation, Reclamation and Operation Plan", Form OG[ED]-11, along with an attached topographical map depicting the location of the proposed line which shall be in sufficient detail to allow ready identification of adjacent surface features. An operator may also submit the notification or application, map and payment through the division's on-line application subject to the provisions of KRS Chapter 369. The map shall have a legend with:

- (a) The names of the gathering line owner and operator and any owners of surface tracts upon which the gathering line is to be installed not otherwise listed on the map;
- (b) The scale of the map;
- (c) The well name and number, if applicable; and
- (d) The lease name, if applicable; and shall depict the following:

- 1. The approximate locations of property lines, dwellings, environmentally sensitive features and road and stream crossings along the path of the gathering line;

- 2. The names of the owners of surface tracts upon which the gathering line is to be installed, as identified as the party assessed for the purposes of property taxation in the records of the property valuation administrator of the county in which the land is located, unless listed in the legend;and

- 3. The location of all tank batteries associated with the gathering lines to be permitted by this application; and

- 4. The approximate acreage to be disturbed along the path of the proposed gathering line.

- (e) Subparagraphs 1. through 3. of paragraph (d) shall be noted clearly and legibly on an enlarged section of a U.S. Geological Survey (USGS) 1:24000 topographic map, which may be enlarged to approximately one (1) inch equals 400 feet and be submitted on an eight (8) and one-half (1/2) by fourteen (14) inch sheet. This requirement for the filing of maps may also be satisfied by electronic submission of the maps subject to the division being able to import and view the map files.

(2) In filing the application for the installation and operation of a gathering line with the division, the operator shall state that he has the authority necessary to install and operate the gathering line upon the property which the gathering line will traverse and that he maintains general liability insurance coverage for the[~~his~~] gathering line operations. The operator shall include the division as a "certificate holder" on the[~~his~~] policy so that the division shall receive advance notice of any cancellation of the operator's general liability insurance.

(3) The operations and reclamation plan required by KRS 353.5901, filed in conjunction with the application for a permit for a well,~~[located on a tract on which there is a severance of the ownership of the surface and mineral estates,]~~ shall satisfy this administrative regulation's requirements for an operations and reclamation plan applicable to the property upon which the well is drilled.

(4) If the operations and reclamation plan is not subject to KRS 353.5901, the operator shall file a plan which includes a short narrative indicating the following:

- (a) Location of all areas to be disturbed in connection with the installation of the gathering line and the proposal to prevent erosion and sedimentation on those areas;

- (b) A revegetation plan which includes a listing or description of fertilizers and soil amendments and seed or trees to be planted for each affected area requiring revegetation treatment and the types and amounts per acre of seed or trees to be planted; and

- (c) A proposed plan for the timely reclamation of all disturbed areas.

Section 7[8]. Right-of-Way Agreements. (1) Prior to submitting an application for a permit or prior to any installation or operations

on any surface on which a gathering line is proposed other than the property upon which the well is located, the operator shall have obtained the necessary authority, right-of-way or lease agreement from an owner of the property on which the gathering line is to be installed.

(2) Prior to the issuance of a permit for the installation and operation of a gathering line on which the operator has an existing right-of-way, lease or deed, or on land that requires a new right-of-way by the operator, the operator shall certify in the application for the permit that he has met and conferred with, or offered to meet and confer with, the surface owner as to any activity that may disturb the surface.

Section 8[9]. Meeting with Bonded Permittee. Prior to the issuance of a permit for the installation and operation of a gathering line on land which is permitted or bonded under the provisions of KRS Chapter 350, the operator of the gathering shall certify in the application for a permit that the operator has met and conferred with, or offered to meet and confer with, the bonded permittee as to any activity that may disturb the permitted area.

Section 9[40]. Reclamation Plans. Reclamation of all disturbed areas shall be conducted in accordance with the operations and reclamation plan on file with the division. Any amendments to the operations and reclamation plan shall be submitted to and approved by the division prior to commencement of installation or as soon as practical after discovery that reclamation shall be conducted in a manner other than that described in the operations and reclamation plan on file with the division. If the surface is disturbed incidental to the repair of a gathering line after reclamation has occurred under the operations and reclamation plan, the reclamation of the area so disturbed shall be commenced within thirty (30) days of completion of the repair operation, if practical. The operator shall satisfy the following standards for excavation, backfilling and reclamation:

- (1) If a gathering line crosses agricultural lands, the operator shall segregate topsoil while trenching, and trenches shall be backfilled so that the soils are returned to their original relative positions and contour, unless waived by the surface owner. This requirement to segregate and backfill topsoil shall not apply to trenches that are twelve (12) inches or less in width.

- (2) On agricultural lands and nonagricultural lands, gathering line trenches shall be maintained in order to correct trench subsidence and reasonably minimize erosion. Interim and final reclamation, including revegetation, shall be performed in accordance with the reclamation plan.

Section 10[44]. General Requirements. (1) Burial of a gathering line. The operator shall bury a gathering line or portion thereof that crosses agricultural land or that would otherwise interfere with the use of a preexisting private roadway, if requested to do so by the owner of the surface of the agricultural land or of other land to which access would be affected, prior to the installation of the gathering line to protect it from damage. The gathering line shall be buried to a minimum depth of twenty-four (24) inches, except where solid rock is encountered, in which case the minimum depth of burial shall be twelve (12) inches, if practical. If an underground structure or other geologic or economic condition prevents a gathering line from being buried in accordance with the standards set out above, or if there is an agreement between the surface owner and the operator whereby the minimum standard is waived, the line may be installed at less than the minimum depth or above ground.

(2) A gathering line constructed of plastic pipe shall be installed below ground level, unless otherwise permitted by subsection (3) of this section, and in accordance with the following:

- (a) The operator shall undertake efforts to minimize shear and tensile stresses; and

- (b) A tracer line, location device, or suitable conductive wire shall be placed in the trench to facilitate the detection of the gathering line.

(3) A gathering line constructed of plastic pipe may be temporarily installed above ground if:

(a) The operator demonstrates that the cumulative per period of above-ground exposure of the pipe does not exceed the manufacturer's recommended maximum period of exposure or two (2) years, whichever is less;

(b) The pipe either is located so as to minimize the possibility of damage by external forces or is otherwise protected against damage;

(c) The pipe adequately resists exposure to ultraviolet light and high and low temperature; and

(d) The pipe is being used during a production test period not to exceed ninety (90) days.

(4) Line burial at road crossing. Notwithstanding any other provision of this administrative regulation, a gathering line crossing a road shall be buried in accordance with the requirements of the agency having jurisdiction over the road.

(5) Line markers. The operator shall install and maintain line markers over an active buried gathering line in accordance with the [following] standards in paragraphs (a) through (e).[:]

(a) At intervals of no greater than 500 feet, corresponding to the 500 foot GPS data requirements described in subsection (8) of this section, except that this requirement shall not apply to lines crossing agricultural lands;

(b) With respect to lines installed after June 25, 2009, on slopes greater than twenty (20) degrees, markers shall be placed at intervals not to exceed 250 feet;

(c) At points where the line changes direction, so that the line location is accurately known;

(d) At both sides of each public or private road crossing and at each railroad crossing; and

(e) Each marker shall contain the word "Warning", "Caution", or "Danger", followed by the words "Petroleum Pipeline" or "Gas Pipeline", whichever is appropriate, in letters at least one (1) inch high with one-quarter (1/4) inch stroke and the name of the operator with a twenty-four (24) hour emergency response telephone number.

(6) Testing of a gathering line. Before placing a gathering line in operation, it shall be tested to ensure that it is capable of maintaining 110 percent of the maximum anticipated operating pressure. The test pressure shall be held a minimum of thirty (30) minutes and a permanent record of the test shall be kept on file by the operator. In conducting the test, the operator shall ensure that reasonable precautions are taken to protect the[his] employees of the operator and the general public. The testing may be conducted using natural gas, compressed air, inert gas or water. Production flow lines operating at less than fifteen (15) psig are exempt from pressure testing requirements.

(7) Patrolling, maintenance and repair. All gathering lines shall be maintained in good operating condition at all times and the operator shall take reasonable precautions to prevent failures, leakage and corrosion by performing the[following] procedures in paragraphs (a) through (c).[:]

(a) Perform on-site inspections of a permitted gathering line at least once each calendar year, at intervals not to exceed eighteen (18) months. If an operator discovers any condition that could adversely affect the safe and proper operation of a gathering line, the operator shall correct it within a reasonable time and in accordance with KRS 353.160. However, if the condition presents an immediate hazard to persons or property, the operator shall not operate the affected part of the system until the unsafe condition has been corrected.[:]

(b) In repairing the gathering line, the operator shall take appropriate action to conduct the repair in a safe manner so as to prevent injury to persons and damage to property.[:and]

(c) Maintain records of gathering line tests, inspections and leak repair for division inspection, if requested, for at least three (3) years.

(8) As-built requirement. The as-built location of the gathering line shall be depicted with GPS data points spaced every 500 feet, if practical, at points where the gathering line changes direction and at the beginning and termination points of the gathering line. All information regarding the as-built location of gathering lines and tanks shall be submitted to the division within twelve months of completion of the gathering line.

(9) Compressor station requirements. All wellhead and field compressors shall be installed and maintained according to the following requirements:

(a) The operator shall maintain a positive suction pressure at all times;

(b) The operator shall install safety devices to ensure the downstream pressure does not exceed the test pressure of the gathering line; and

(c) The operator shall record a GPS location of all compressor station sites and submit that location data to the division.

Section 11[42]. Reporting of Incidents. (1) An operator shall give notice by telephone to the division inspector responsible for the county or area in which a gathering line is installed when a discovery is made that an incident has occurred regarding the installation, reclamation or operation of a gathering line. Reportable incidents shall include:[As soon as reasonably practicable following discovery of an incident regarding the installation, reclamation or operation of a gathering line, the operator shall give notice by telephone to the division inspector responsible for the county in which the line is installed or to the division inspector supervisor for the area, of any the following:]

(a) Personal injury requiring hospitalization or a fatality;

(b) Either fire or explosion not intentionally set by the operator for purposes of routine maintenance or construction;

(c) The release of a significant volume of gas that would require a protective action being taken by the general public; or

(d) The pollution of any stream, river, lake or reservoir, or other similar body of water, in violation of applicable water quality standards.

(2) The[This] requirement for the reporting of incidents shall not release the operator from making any notice required by any other state or federal agency.

(3) Notice made under this section shall include[the following information]:

(a) Name and address of the operator;

(b) Name and telephone number of the person making the report;

(c) Location of the incident;

(d) Date and time of the incident;

(e) A brief description of the incident;

(f) Number of, and information regarding, personal injuries or fatalities, if any; and

(g) Any other significant facts known by the operator that are relevant to the cause of the incident or extent of the damages.

Section 12[43]. Emergency Response Plans. The operator shall prepare a manual of written procedures for[the making of] an emergency response, available to the division upon request, and shall keep the[that] manual in a location accessible to employees whose responsibilities include implementation of an emergency response. The operator shall provide training to [these] employees and, in the event of an emergency, review their performance following the[an] emergency to determine whether applicable procedures were effectively followed[in that emergency]. The manual shall be reviewed at least once each calendar year and[appropriate] changes made as necessary to ensure that the manual is an effective emergency response tool. The manual shall address the items in subsections (1) through (7) of this section[include procedures for the following] in order to facilitate safety if an emergency condition occurs.[:]

(1) Receiving, identifying, and classifying notices of events which require immediate response by the operator or notice to fire, police, or other appropriate emergency response entities and communicating this information to appropriate operational personnel for corrective action.

(2) Providing prompt and effective response to each type of emergency, including oil or brine spill, gas release, fire, explosion or natural disaster near or involving a building or adjacent facility.

(3) Dispatching personnel, equipment, and instruments, as needed, to the scene of the emergency.

(4) Taking necessary action, such as emergency shutdown or pressure reduction, to minimize the amount of release from the

gathering line in the event of a failure.

(5) Minimizing public exposure to injury and probability of accidental ignition by assisting with evacuation of residents and assisting with the control of traffic on roads and railroads in the affected area, or by taking other appropriate action necessary to protect public safety.

(6) Notifying fire, police, and other appropriate emergency response entities of a gathering line incident or emergency and coordinating with them in devising responses to be made during an emergency. Methods to accomplish this shall include the following:

(a) Including in the emergency response manual a listing of appropriate fire, police, and other health and safety entities, along with their officials' names and emergency telephone numbers;

(b) Establishing and maintaining liaison with fire, police, and other appropriate emergency response entities to determine the responsibility and resources of each government organization that may respond to a gathering line emergency;

(c) Apprising fire, police and other appropriate emergency response entities of the operator's ability to respond to a gathering line emergency;

(d) Identifying the types of gathering line emergencies about which the operator notifies fire, police and other appropriate emergency response entities; and

(e) Determining the manner in which the operator and fire, police and other appropriate emergency response entities can engage in mutual assistance to minimize hazards to life or property; and

(f) Providing a copy of the emergency response manual to fire, police and other appropriate emergency response entities.

(7) An operator may incorporate the applicable spill prevention, control, and countermeasures (SPCC) plan into the emergency response manual.

Section 13[14]. Abandonment. (1) Each gathering line abandoned in place, unless otherwise agreed to be removed under a right-of-way or lease agreement, shall be:

(a) Disconnected from all sources and supplies of natural gas and petroleum;

(b) Purged of liquid hydrocarbons;

(c) Depleted to atmospheric pressure; and

(d) Cut off three (3) feet below ground surface, or at the depth of the gathering line, whichever is less, and sealed at the ends.

(2) Prior to abandonment, the operator shall contact the division inspector and request a site scanning for naturally occurring radioactive materials to be conducted by the division inspector.

Section 14[15]. Inspections. ~~The commissioner of the department may, by written order or by other means appropriate under the circumstances, designate and authorize representatives to perform duties pursuant to the administrative regulations contained in 805 KAR Chapter 1. Unless the commissioner has made a written order contrary to the terms of this section, personnel authorized by the director shall be the authorized representatives of the department for the purposes of this administrative regulation as follows:~~ (1) General. In accordance with the provisions of this administrative regulation, the division shall conduct inspections, studies, investigations or make other determinations as it deems reasonable and necessary to obtain information and evidence which shall ensure that the installation, reclamation and operation of gathering lines are conducted in accordance with the provisions of all applicable statutes and administration regulations, and all terms and conditions of the gathering line permit.

(2) Right of entry and access. Authorized employees of the division shall have unrestricted right of entry to all portions of the gathering line for any purpose associated with their duties pursuant to this administrative regulation, including but not limited to making inspections and delivering documents or information of any kind to persons responsible for or otherwise associated with the gathering line.

(3) Timing and frequency of inspections.

(a) The division shall determine the frequency of its inspections

of gathering lines.

(b) Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night, on weekends or on holidays if the division deems these inspections necessary to properly monitor compliance with all applicable statutes and administrative regulations and the terms and conditions of the gathering line permit.

(c) The division shall have no obligation to give prior notice that an inspection shall be conducted or to obtain a warrant to do so.

(4) Citizen's request for inspection of a gathering line.

(a) Any citizen may request that the division conduct an inspection of a gathering line by furnishing to the division a signed statement or an oral report followed by a signed statement in which circumstances are set out which give the division reason to believe that a violation, condition or practice in violation of this administrative regulation or a permit condition exists, and setting forth a telephone number and address at which the person making the request can be contacted.

(b) The identity of any person supplying information to the division relating to a possible violation, condition or practice in violation of this administrative regulation or permit condition shall remain confidential with the division if requested by that person, unless disclosure is required by law.

(c) Within a reasonable time, the division shall advise the person making the request for inspection or providing information to the division of the items in subparagraphs 1. and 2. of this paragraph. following:

1. If no inspection was conducted, an explanation of the reasons for which no inspection was conducted.

2. If an inspection was conducted, a description of the enforcement action taken, if any, or an explanation of why no enforcement action was taken.

(5) Notice of noncompliance. Any authorized representative of the division may issue to the operator a notice of noncompliance and order for remedial measures if, on the basis of an inspection, he finds a violation of this administrative regulation, any permit condition, or any other applicable requirement. The notice of noncompliance shall contain the following:

(a) The nature of the violation; and

(b) The provision of a period of forty-five (45) days from the date of issuance of the notice for the taking of corrective action or making of an agreement with the division, which may include a schedule for the accomplishment of interim corrective procedures, if appropriate. The director or his authorized representative may extend the time established for the taking of corrective action or for accomplishment of an interim remedial requirement for good cause shown.

Section 15[16]. Order of Cessation and Immediate Compliance. (1) Issuance.

(a) If the operator to whom a notice of noncompliance is issued fails to comply with the terms of the notice within the time for the taking of corrective action established in the notice of noncompliance or agreement made regarding corrective measures as subsequently extended, the director may issue to the operator an order for cessation and immediate compliance.

(b) The director may issue an order for cessation and immediate compliance if the director ~~he~~ finds, on the basis of an inspection performed by any authorized representative, any condition or practice, any violation of this administrative regulation or any violation of a term or condition of the applicable permit that ~~which~~:

1. Is creating or can reasonably be expected to create an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) The director may issue an order for the cessation of installation and immediate compliance if he finds, on the basis of an inspection performed by any authorized representative, that gathering line installation is being conducted without a valid gathering line permit in accordance with this administrative regulation.

(2) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of the operation of the gathering line or portion thereof that is the subject of the notice of noncompliance. The order shall also require the operator to whom it is issued to undertake any procedure reasonably deemed necessary to abate the violation, condition, or practice in the most expeditious manner possible, including but not limited to the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the violation, condition, or practice has been abated and until the order is vacated, modified, or terminated in writing by the director.

(c) The operator shall continue to perform reclamation operations and other activities intended to protect public health, safety and the environment during the period of any cessation order unless the order requires that the reclamation operations and other activities cease.

(3) Modification, extension, and termination.

(a) The director may, by written notice, modify or terminate an order for cessation and immediate compliance issued under this section for good cause and may extend the time for abatement if the failure to abate within the period initially established was not caused by lack of diligence on the part of the operator to whom it was issued.

(b) The director may terminate an order for cessation and immediate compliance, by written notice to the operator to whom the order was issued, if the director determines that all violations, conditions, and practices noted in the notice of noncompliance have been abated. Termination of the order of cessation and immediate compliance shall not affect the right of the division to impose any other applicable sanction authorized by law.

Section 16[47]. Penalties. An operator in noncompliance with the requirements of this administrative regulation is subject to the penalties established in KRS 353.991.

Section 17[48]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for [---]Gathering Line Operator's License", Form OG-2, June 2019[ED-2, December 2003]; and

(b) "Notification/Application for Gathering Line Permit: Installation, Reclamation and Operation Plan", Form OG-11, October[June] 2019[ED-11, December 2003].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Prevailing Time.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone: (502) 782-6720, fax: (502) 564-4245, email michael.mullins@ky.gov.

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 the installation of gathering lines, reclamation of disturbed areas, and safety requirements of gathering lines as they pertain to oil and gas production operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements related to gathering lines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.500(2) requires the department to promulgate administrative regulations pertaining to gathering lines, in order to minimize their potential effects on the citizens and the environment of the Commonwealth. This administrative regulation establishes provisions for the installation

of gathering lines, reclamation of disturbed areas, and safety requirements of gathering lines as they pertain to oil and gas production operations.

(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 requirements for the installation, reclamation, and safety requirements for gathering lines.

(2) If 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 the definition section and corrects citations in the administrative regulation. The amendment also restructures some of the sections in the administrative regulation. The amendment made in response to comments inserts a requirement to include the location of a tank battery associated with a gathering line on the map required as part of the permit application. The amendment in response to comment also clarifies that the material incorporated by reference is to be viewed and copied by observing eastern prevailing time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct information and restructure other sections. The amendment also amends two forms that are incorporated by reference. The amendments made in response to comments were necessary to require the location of tank batteries associated with gathering lines as part of the permit application and to clarify the Division's office hours for viewing and copying material incorporated by reference is eastern time.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. The amendment conforms to the authorizing statutes by correcting citations and moving the definitions to the definition administrative regulation. The amendments made in response to comment conforms to the authorizing statutes by including the location of tank batteries on the map that is required in the application for a gathering line permit.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by correcting citations and moving the definitions from this administrative regulation into the newly created definition administrative regulation, 805 KAR 1:001. The amendments made in response to comments assist in the effective administration of the statutes by requiring the location of tank batteries on the map that is required as part of a gathering line permit application.

(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 regulated entities identified in question (3) will meet the same requirements related to gathering lines. The amendments made in response to comments require the entities listed in question (3) to provide the location of any tank batteries associated gathering lines in the gathering line permit application. This location is included on the map that is a required part of the 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 related to these amendments. The amendment made in response to comment should not result in a significant cost increase to the operator applying for a gathering line permit.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to have all of the definitions in one location and will also have correct regulatory and statutory citations. The entities will

benefit by having a correct location for tank batteries associated with their gathering lines on file with the Division.

(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 oil and gas 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 almost entirely to the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 353.500(2) and 353.540.

3. Estimate the effect of this administrative regulation on the 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 Oil and Gas (Amended After Comments)

805 KAR 1:200.[Administrative fees and] General information associated with oil and gas permits.

RELATES TO: KRS 349.120 353.550, 353.735-353.747

STATUTORY AUTHORITY: KRS 349.040, 353.540, 353.570, 353.590, 353.745

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. KRS 353.570 requires a person to obtain a permit prior to drilling, deepening, or reopening a well. KRS 353.590 requires a bond be posted with a permit application. KRS 349.040 requires a person to obtain a permit prior to drilling, deepening, converting, or reopening a well. KRS 349.120 requires a bond be posted with a permit application for coalbed methane wells. KRS 353.745 authorizes the Division of Oil and Gas [Conservation] to charge a fee, not to exceed fifty (50) dollars, to provide funds to meet the requirements of KRS 353.735 to 353.747. This administrative regulation provides general information concerning[the timeframes associated with] the submittal of permit application, bond submittal, directional and inclination surveys, and establishes the fee and details to whom the fee applies and the appropriate time for submittal.

Section 1. (1) General Permit Application Requirements. A person shall not drill, deepen, or reopen an oil or gas well without first obtaining a permit from the division pursuant to KRS 353.570 or KRS 349.040. Each person who intends to engage in oil and gas operations shall file with the division a complete, accurate, and notarized Application for Permit, Form OG-1.

(2) Application Review.

(a) The Department shall review the Application for Permit, Form OG-1 for administrative and technical completeness and compliance with:

1. 805 KAR Chapter 1 for all wells; and
2. KRS Chapter 353 for production wells; or
3. KRS Chapter 349 for coalbed methane wells.

(b) If the application is administratively or technically incomplete, the division shall notify the applicant after review of the application of the deficiencies that render the application incomplete.

(c) The applicant shall submit supplemental information to correct the identified deficiencies within thirty (30) days after notification of the deficiencies.

(d) If, after thirty (30) days, the application is still incomplete, the division may return the incomplete application to the applicant with written notification of the reasons for the determination.

(3) Review of violations.

(a) After the application has been determined to be administratively and technically complete, the division shall perform a compliance review of the application and the applicant pursuant to KRS 353.572. The division shall not approve an application for permit if the application or the applicant is not in complete compliance with KRS 353.572.

(b) During the compliance review, the division shall review the readily available compliance information related to the application and the applicant.

(c) The division shall notify the applicant in writing if the application is not approved.

(4) Final Determination. Once the division determines that the application is administratively and technically complete and has not found compliance violations, a permit authorization shall be issued.

(5) Bonding Requirements.

(a) As part of the permit application required by subsection (1) of this section, the applicant shall submit a bond in an amount required by KRS 353.590(7) for production wells or KRS 349.120 for coalbed methane wells.

(b) Operators that secure a surety bond to satisfy the requirements of this subsection shall comply with the requirements of 805 KAR 1:050.

Section 2. Directional and Inclination Surveys. The operator of a well drilled in an active mining area or through a workable coal bed that is not in an active mining area shall submit to the division the results of the directional or inclination survey required by KRS 353.739(1) within thirty (30) days from the drilling of the well.

Section 3[2]. Fee Submittal. (1) Each application for an oil or

gas permit shall be accompanied by a fee of fifty (50) dollars for each application for an oil or gas permit in addition to the fee required in KRS 353.590(2) or KRS 349.040(3) [any other fee required for these applications].

(2) All required fees shall be submitted to the division [fees required shall accompany the application for wells proposed to be drilled pursuant to the provisions of KRS 353.735 to 353.747] in the form of a personal check, 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.

(3) All fees shall be for the sole use of the Division of Oil and Gas [Conservation] in the administration of its programs and shall be in addition to money appropriated by the General Assembly for the use of the division [cabinet].

Section 4. Recordkeeping. Within ninety (90) days of completion of the drilling of a well, the operator shall file the "Affidavit of Well Log and Completion Report, form OG-3.

Section 5. Testing Permits. (1) An owner or operator may investigate an abandoned oil or gas production well for the purposes of testing after having submitted:

(a) A completed and notarized application "Testing Permit Application" Form OG-42; and

(b) A twenty-five (25) dollar fee pursuant to KRS 353.730.

(2) The division shall approve a testing permit for a period of up to sixty (60) days. If the well is not tested within the testing period, a new application and fee shall be submitted.

(3) At the conclusion of the testing period, the operator shall submit a completed and notarized "Report of Investigation for Testing Permit" Form OG-43 to the division.

(a) If the operator wishes to assume ownership for the well, a bond shall be filed in accordance with KRS 353.590(7); or

(b) If the applicant does not wish to assume ownership of the well, then the well shall be closed at the surface with a valve or swedge assembly installed on the casing head.

(4) All fees shall be for the sole use of the Division of Oil and Gas in the administration of its programs and shall be in addition to money appropriated by the General Assembly for the use of the cabinet.

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

(a) "Application for Permit", Form OG-1, June 2019;

(b) "Well log and Completion Report", Form OG-3, **October** [June] 2019;

(c) "Testing Permit Application", Form OG-42, June 2019; and

(d) "Report of Investigation for Testing Permit", Form OG-43, June 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Oil and Gas, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., **Eastern Prevailing Time.**

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

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 general information concerning the submittal of permit application, bond submittal, directional and inclination surveys, and establishes the fee and details to whom the fee applies and the appropriate time for submittal.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide general permitting information.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 353.570 requires an entity to obtain permit before conducting oil or gas drilling operations. This administrative regulation is necessary to establish general permitting information.

(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 general permitting information for oil and gas operators.

(2) If 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 introduce general permitting, bonding, and fee information. The amendment also includes information related to testing permits and recordkeeping. The administrative regulation is amended to insert "Eastern Prevailing Time" into the incorporation by reference section.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide general information related to obtaining a permit that was previously not in administrative regulation. The amendment was also necessary to incorporate by reference forms that weren't previously incorporated. The amendment made in response to comment is necessary to clarify the time to copy or review material incorporated by reference is Eastern Prevailing Time.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment provides general information related to obtaining a permit which is required by KRS 353.570. The amendment made in response to comment is necessary to clarify the time to copy or review material incorporated by reference is Eastern Prevailing Time.

(d) How the amendment will assist in the effective administration of statutes: These amendments will assist in the effective administration of the statutes by providing general information related to permits, bonds, recordkeeping, and testing permits. The amendment made in response to comment assists in the effective administration of the statutes by clarifying the time to copy or review material incorporated by reference is Eastern Prevailing Time.

(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 regulated entities identified in question (3) will meet the same requirements related to permitting information, testing permits, and recordkeeping. This amendment doesn't include new requirements. It simply reorganizes the information into one administrative regulation and provides appropriate statutory references. The entities will also need to be aware that the Division's listed hours of operation in the material incorporated by reference section are Eastern Prevailing Time.

(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 for related to these amendments or the amendment made in response to comment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, entities will be able to find general permitting, recordkeeping, and testing permit information in one administrative regulation. The amendments made in response to comment will benefit the entities in question (3) by clarifying the Division's hours of operation are to be interpreted as Eastern Time.

(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 continued 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. The inclusion of the \$25 testing permit fee was already established in statute but was included in the administrative regulation for convenience of the oil or gas operator seeking a testing permit.

(9) TIERING: Is tiering applied? No, tiering was not used. The provisions in this administrative regulation will apply equally to all oil and gas 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 impact the Division of Oil and Gas.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 349.040, 353.540, 353.570, 353.590, and 353.745.

3. Estimate the effect of this administrative regulation on the 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.

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Health Care (Amended After Comments)

902 KAR 20:370. Operations and services; private duty nursing agencies.

RELATES TO: KRS 2.015, 216B.020, [216B.040, 216B.045, 216B.040, 216B.042, 216B.045-216B.055, 216B.075, 216B.105-216B.131, 216B.990, 311.560(4), 314.011(8),] 314.041, 314.051,

45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2 - 1320d-8

STATUTORY AUTHORITY: KRS 216B.042(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 216B.042(1) requires the [Kentucky] Cabinet for Health and Family Services to promulgate administrative[administration] regulations necessary for the proper administration of the licensure function and establish licensure standards to ensure safe, adequate, and efficient [regulate] health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of[,] and[nursing] services provided by[,] private duty nursing agencies.

Section 1. Definitions. (1) "Agency" means a private duty nursing agency.

(2) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(3) "License" means an authorization issued by the cabinet for the purpose of operating a private duty nursing agency.

(4) "Licensed practical nurse" or "LPN" means a person licensed pursuant to KRS 314.051.

(5) "Private duty nursing agency" means a public or private organization, including any partnership, corporation, or other legal entity, that provides or arranges for the provision of private duty nursing services.

(2) "Private duty nursing services" means the delivery of skilled nursing services as defined by subsection (3) of this section [to a patient who has a medically predictable, recurring need for services on a continuous basis rather than part-time or short-term intermittent nursing care].

(3) "Skilled nursing services" means the delivery of nursing care to a patient of a private duty nursing agency that:

(a) Exceeds the level of routine health monitoring;

(b) Is clinically appropriate;

(c) Is provided on a continuous basis or as part-time or short-term nursing care;

(d) Is subject to:

1. A nursing reassessment no less than every ninety (90) days;

and

2. Frequent changes in the plan of treatment;

(e)[(d)] Is based on the expectation that the service will improve, restore, or maintain function, or slow the patient's decline of the disease or functional ability; and

(f)[(e)] Includes skilled interventions provided directly by a licensed nurse. Examples of skilled interventions may include:

1. Bowel and bladder care;

2. Administering medications or oxygen;

3. **Furnishing infusion therapy services;**

4. **Medication setups;**

5. Treating decubitus ulcers, **skin breakdown**, or other types of wound care; or

6.[4.] Ventilation care.[an entity in the business of providing licensed nursing care to a patient in his or her home for a continuous block of time, in increments of at least four (4) hours, in which the private duty nursing agency supervises nursing care provided by agency personnel. It shall not include a registered nurse providing nursing services as an independent practitioner.

(6) "Registered nurse" or "RN" means a person licensed pursuant to KRS 314.041.]

Section 2. Scope. (1) Private duty nursing services shall be:

(a) Ordered and directed by the treating, **licensed** practitioner or specialist after a face-to-face evaluation of the patient, **which may be provided as a telehealth encounter;**

(b) Provided by:

1. A registered nurse (RN) licensed in accordance with KRS 314.041; or

2. A licensed practical nurse (LPN) licensed in accordance with KRS 314.051; and

(c) Provided to a patient in his or her temporary or permanent place of residence or other community-based setting, including:

1. The patient's home; or

2. Outside of the patient's home, as necessitated by normal life activities.

(2) A private duty nursing agency shall not include:

(a) A registered nurse who provides nursing services as an independent practitioner; or

(b) An entity that seeks certification under Title XVIII of the Social Security Act.

Section 3. Administration. (1) The licensee shall be legally responsible for:

(a) The operation of the private duty nursing agency; and

(b) Have legal responsibility for the service and for Compliance with [relevant] federal, state, and local laws and administrative regulations pertaining to the operation of the agency.

(2) The licensee shall:

(a) [law; (b)] Establish lines of authority;

(b) [and (c)] Designate an administrator who shall be responsible for the daily operation of the agency;

(c) [-(2) Policies. The licensee shall] Establish and implement [enforce] written administrative policies covering all aspects of operation, including:

1. [(a)] A description of the agency's organizational structure, staffing, and allocation of responsibility and accountability;

2. [(b)] A description of linkages with inpatient facilities and other providers; (c)] Policies and procedures for the evaluation [guidance and control] of personnel performance; and

3. [(d)] A narrative describing in detail:

a. [1.] The services offered by the agency; and

b. [2.] Methods and protocols for service delivery; and

3.] Qualifications of personnel involved in the delivery of services [the service];

(d) Establish [(e) A description of the administrative and patient care records and reports; (f)] procedures for [to be followed in] the handling and administration of drugs and biologicals; and

(e) Maintain policies regarding the delivery and supervision of [(g)] patient care that shall:

1. Be [policies] developed by [with the advice of] a group of professional health providers, including at least one (1) [or more] physician or [and] one (1) [or more] registered nurse; and

2. [, and shall] Include the following:

a. [1.] A description of the services provided;

b. [2.] A requirement for a written [nursing care] plan of treatment for each [a] patient who receives private duty nursing services;

c. [3.] Guidelines to ensure coordination of treatment with other [licensed] health facilities and practitioners that deliver services to patients of the agency [care providers servicing a patient];

d. [4.] Guidelines for the medical management of health problems, including [a. the] conditions that require [requiring] medical consultation or patient referral;

e. [and b. Maintenance of health records; 5.] Procedures for the annual review and evaluation of the services provided;

f. [6.] Guidelines for patient and environment assessment; and

g. [7.] Guidelines to ensure that a patient is receiving adequate services for assistance with daily living activities.

Section 4. [(3)] Personnel. (1) Each private duty nursing agency [(a) Medical director. The agency] shall have:

(a) A clinical [medical] director who is [shall be:]

1. A Kentucky-licensed physician or advanced practice registered nurse with specialized training and experience in the range of [medical] services provided by the agency; and

2. Responsible for overseeing the clinical activities of [medical aspects of medical services provided by] the agency; and [.]

(b) [The agency shall provide] Adequate staffing to provide for effective patient care[.] in accordance with the terms and conditions of the contract with the patient.

(2) Each private duty nursing agency's [(c) The licensee shall provide] written personnel policies [which] shall be:

(a) [1.] Available to each employee;

(b) [2.] Reviewed on an annual basis; and

(c) [3.] Revised as necessary.

(3) [(d)] There shall be a written job description for each position that [which] shall be reviewed and revised as necessary.

(4) [(e)] There shall be an employee health and infection control program, including tuberculosis screening and [with provisions for tuberculin] testing in accordance with 902 KAR 20:205 [and titers necessary to the nursing service to be performed].

(5) [(f)] The private duty nursing agency [licensee] shall maintain a current personnel record for each employee, including:

(a) [.] Data maintained shall include:

1. Name, address and Social Security number;

2.] Evidence of each employee's current registration, certification, or licensure, if applicable;

(b) Documentation of the employee's [3.] Records of] training and experience;

(c) Evidence of an annual [4.] Records of] performance evaluation;

(d) Documentation of compliance with the agency's health and infection control program;

(e) A [5.] Current negative tuberculin skin test or chest x-ray for an employee having direct contact with a patient; and 6.] preemployment background check in which the agency shall not employ an individual in a position that involves providing direct services if the individual:

1. Is listed on the:

a. Nurse aide or home health aide abuse registry pursuant to 906 KAR 1:100; or

b. Caregiver misconduct registry pursuant to 922 KAR 5:120;

or
2. Has a conviction of, or a plea of guilty, an Alford plea, or a plea of nolo contendere to:

a. A felony offense [offense] that is related to:

(i) Theft;

(ii) Abuse, possession, or sale of illegal drugs;

(iii) Abuse, neglect, or exploitation of a child or an adult; or

(iv) A sexual crime; or

b. A misdemeanor offense related to abuse, neglect, or exploitation of an adult; and

(f) Evidence of orientation and, if needed, on-the-job training related to the employee's job responsibilities [criminal conviction information for private duty nursing agency personnel who provide nursing care to a patient in his or her home].

(6) [(g)] An employee with [of the program who has] direct patient care responsibilities shall have current cardiopulmonary resuscitation (CPR) certification from [either] the American Heart Association, [or the] American Red Cross, or equivalent.

(7) Each licensed nurse of a private duty nursing agency shall provide services that:

(a) Are commensurate with the nurse's educational preparation and clinical competence;

(b) Address the nursing needs of the patient; and

(c) Are delivered in accordance with the patient's plan of treatment.

Section 5. Patient Records. (1) Each private duty nursing agency shall maintain a clinical record for each patient that includes:

(a) Pertinent past and current [(h) In-service training. An employee shall participate in ongoing in-service training programs relating to the employee's job activities.

(4) Medical records.

(a) The service shall maintain a medical record for each patient, to include the following:

4.] medical, nursing, and social history [relevant to the service provided], including information obtained [data obtainable] from other providers;

(b) [2.] Name of the referring physician, or other ordering practitioner, if any, acting within the statutory scope of practice;

(c) [3.] Orders of the referring physician, or other ordering practitioner, if any, acting within the statutory scope of practice;

(d) [4.] Description of each contact, including the:

1. [a.] Condition or reason necessitating contact;

2. [b.] Assessment;

- 3.[e.] Service provided;
- 4.[d.] Medication and treatment prescribed; and
- 5.[e.] Disposition made; and
- (e)[5.] Documentation of referrals made, including:
 - 1.[a.] Reason for referral;
 - 2.[b.] To whom the patient was referred; and
 - 3. [e.] Information obtained from a referral source.

(2) Ownership.

(a) Medical records shall be the property of the private duty nursing 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.

(3) 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 private duty nursing 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) A private duty nursing 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. (b) Confidentiality of patient records shall be maintained at all times.

(e) Transfer of records. If the patient moves to another source of care, the agency shall:

1. Establish systematic procedures to assist in continuity of care; and

2. Transfer medical records if requested and upon the agency receiving a release signed by the patient or the patient's agent.]

(d) Retention of records.[4.] After a patient's[the] death or discharge[of an adult patient], the completed medical record shall be placed in an inactive file and:

1. Retained for six (6)[five (5)] years; or

2. [After the death or discharge of a minor patient, the record shall be placed in an inactive file and retained for five (5) years from the date of the event, or] Three (3) years after the patient reaches the age of majority in accordance with KRS 2.015, whichever is longer.

(4)[(e)] The agency shall:

(a) Designate a specific location for the maintenance and storage of the agency's medical records;

(b)[, (f) The agency shall] Have provisions for storage of medical records in the event the agency ceases to operate; and

(c)[, (g) The licensee shall] Safeguard the record and its content against loss, defacement, or tampering.

Section 6. Private Duty[3.] Nursing Services [Provided by Private Duty Nursing Agencies]. (1) A private duty nursing agency shall develop[Nursing services provided by a private duty nursing agency, if ordered by a physician or other ordering practitioner acting within the statutory scope of practice, shall be provided in accordance with] a plan of treatment for each patient receiving private duty nursing services.

(2)[(a)] The plan of treatment shall be developed in consultation with the:

(a) Prescribing practitioner;

(b)[,] Agency personnel;[,] and

(c)[the] Patient, patient's family[, family] member, or patient's responsible party.

(3)[(b)] The plan of treatment shall be reviewed:

(a) By the ordering practitioner in consultation with:

1. Agency personnel; and

2. The patient, patient's family member, or patient's responsible party; and[.]

(b) At[such] intervals as the severity of the patient's illness

requires[.] or at least once every two (2) months.

(4) Services[(2) Each private duty nursing agency service] shall be nonabusive and provided in a manner that[which] ensures the greatest amount of safety and security for the patient.

(5)[(3)] Private duty nursing agency personnel shall ensure that medical waste generated as a result of a service shall be removed from a patient's home and disposed of properly.

Section 7. Licensure. Within ninety (90) days from the **most recent** effective date of this administrative regulation, the cabinet shall:

(1) Convert any licensed home health agency that is not certified under Title XVIII of the Social Security Act to a licensed private duty nursing agency;**[and]**

(2) Not require approval of a new certificate of need to convert an existing home health agency license to a private duty nursing license; **and**

(3) Require a home health agency that converts its license to a private duty nursing license to comply with the accreditation requirements of Section 8(1)(b) of this administrative regulation.

Section 8. Accreditation. (1) A private duty nursing agency shall be accredited by the Joint Commission, Community Health Accreditation Program, Accreditation Commission for Health Care, or an accrediting body with equivalent standards within one (1) year from the date of:

(a) Initial, provisional licensure; or

(b) The most recent effective date of this administrative regulation.

(2)(a) If a private duty nursing agency has not obtained accreditation in accordance with subsection (1) of this section, 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:

a. Date of the licensee's first annual renewal; or

b. One (1) year anniversary from the most effective date of this administrative regulation;

2. Include evidence that the agency:

a. Has initiated the process of becoming accredited within sixty (60) days of the:

(i) Date of provisional licensure; or

(ii) Most recent effective date of this administrative regulation; and

b. 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:

a. Date of provisional licensure; or

b. Most recent effective date of this administrative regulation.

(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) Yearly at the time of annual renewal.

(5) If a private duty nursing 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 subsection (1) of this section took effect.

(6) The cabinet shall revoke a license if a private duty nursing agency fails to meet one (1) of the following requirements:

(a) Become accredited in accordance with subsection (1) of this section;

(b) Request an extension in accordance with subsection (2) of this section;

(c) Achieve accreditation within two (2) years from the:

1. Date of provisional licensure, if a request for extension is submitted; or

2. Most recent effective date of this administrative regulation, if a request for extension is submitted; or

(d) Maintain accreditation. [Section 4. Licensing Procedures.

(1) Initial licensure.

(a) A private duty nursing agency applying for a license to operate shall return a completed L&R 144 to the Office of Inspector General along with the initial licensing fee of \$134.

(a) The Office of the Inspector General shall conduct an initial licensing inspection pursuant to 902 KAR 20:008.

(2) Relicensure. Prior to the date that the license to operate expires, a private duty nursing agency shall send a completed L&R 144 to the Office of the Inspector General along with the annual relicensure fee of \$134.

Section 5. Incorporation by Reference. (1) "Form L&R 144, Application for a License to Operate a Health Facility or Service, January 2001 edition" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General 275 East Main Street, Fifth Floor East, 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: October 14, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services, 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 minimum licensure requirements for the operation of and services provided by private duty nursing agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.042, which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, including licensure standards and procedures to ensure safe, adequate, and efficient health services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042 by establishing standards for licensed private duty nursing agencies.

(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 private duty nursing agencies.

(2) If 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 "Amended After Comments" version of 902 KAR 20:370 changes the existing administrative regulation as follows:

In response to the receipt of written public comments, updates the proposed definition of "private duty nursing services" and "skilled nursing services" so that in addition to continuous care, patients who are in need of part-time or short-term skilled nursing services may receive such services in the home by a private duty nursing agency;

In response to the receipt of written public comments, clarifies that skilled nursing services may include home infusion therapy,

medication setups, or treating skin breakdown in addition to the other examples of skilled interventions listed under Section 1(3)(f);

Retains the original amendment's proposal to eliminate the requirement for private duty nursing services to be provided to patients in a continuous block of time, no less than four (4) hours per visit;

Retains the original amendment's proposal to require private duty nursing services to be ordered and directed by the treating practitioner or specialist after a face-to-face evaluation of the patient;

In response to the receipt of written public comments, replaces "medical director" with "clinical director" to allow for either a physician or an advanced practice registered nurse to serve as the PDN agency's clinical director, and clarifies that the clinical director is responsible for overseeing the clinical activities of the agency;

Retains the original amendment's requirement for private duty nursing agencies to provide services to a patient only in community-based settings such as the patient's temporary or permanent place of residence, including the patient's home or outside the patient's home, as necessitated by normal life activities;

Retains the original amendment's prohibition against seeking Medicare-certification for private duty nursing agencies;

Retains the original amendment's elimination of the requirement for a description of linkages with inpatient facilities and other providers;

Retains the original amendment's elimination of the requirement for a description of the agency's methods and protocols for service delivery because such is unnecessary as the Kentucky Board of Nursing establishes nursing guidelines;

In response to the receipt of written public comments, clarifies that policies regarding the delivery and supervision of patient care must be developed by a group of professional health providers to include at least one (1) physician or one (1) registered nurse instead of being developed by a group of providers that includes both a physician and a registered nurse;

Retains the original amendment's prohibition against employment if a prospective employee is found on the nurse aide or home health aide abuse registry or caregiver misconduct registry, or has certain criminal convictions;

In response to the receipt of written public comments, requires each licensed nurse to provide services that are commensurate with the nurse's educational preparation and clinical competence, address the nursing needs of the patient, and are delivered in accordance with the patient's plan of treatment;

Retains the original amendment's requirement for compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

Retains the original amendment's requirement for currently licensed home health agencies that are not Medicare-certified to convert to licensure as a private duty nursing agency within ninety (90) days of the effective date of this administrative regulation, thereby ensuring compliance with the definition of "home health agency" pursuant to KRS 216.935(2), which requires licensed home health agencies to be Medicare-certified;

In response to the receipt of written public comments, adds a new Section 8 to require all new private duty nursing agencies to become accredited within one (1) year from the date of provisional licensure, and all currently licensed private duty nursing agencies to become accredited within one (1) year from the effective date of this administrative regulation, if the agency is not already accredited. An extension will be allowed to achieve accreditation, if needed, and agencies that fail to become accredited in a timely manner will be subject to licensure revocation; and

Makes technical changes for compliance with KRS Chapter 13A to improve clarity and flow.

(b) The necessity of the amendment to this administrative regulation: Because home health agencies have historically been designed as a model of care for elderly Medicare beneficiaries and other patients who need only part-time or intermittent nursing care, the home health agency model is not well-suited for the kind of ongoing care required by adults and children with disabilities. This amendment is therefore necessary to ensure adequate access to

skilled nursing services for patients with disabilities who need these services to continue living at home. Moreover, this amendment is needed to help ensure sufficient access to nursing care for patients who need services such as bowel and bladder care, home infusion therapy, and other types of skilled interventions that may or may not be needed on a continuous basis. Private duty nursing agencies are distinguishable from home health agencies as follows:

Private duty nursing agencies are prohibited from obtaining Federal certification under Title XVIII of the Social Security Act while home health agencies are required by state law to be Medicare-certified pursuant to KRS 216.935(2); and

The delivery of skilled nursing services by private duty nursing agencies must be subject to nursing reassessments no less than every ninety (90) days as well as subject to frequent changes in the plan of treatment.

(c) How the amendment conforms to the content of the authorizing statutes: This Amended After Comments version of 902 KAR 20:370 conforms to the content of KRS 216B.042 by establishing standards for licensed private duty nursing agencies.

(d) How the amendment will assist in the effective administration of the statutes: This Amended After Comments version will assist in the effective administration of the statutes by establishing standards for licensed private duty nursing agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts private duty nursing agencies. There are currently fourteen (14) licensed private duty nursing agencies in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed private duty nursing agencies:

Will no longer be required to provide services for at least four (4) hours per visit;

Must ensure that the care delivered to patients is skilled nursing care as ordered and directed by the treating practitioner or specialist;

Must conduct a nursing reassessment no less than every ninety (90) days;

Must have an administrator responsible for the daily operation of the agency and a clinical director, who shall be a Kentucky-licensed physician or an advanced practice registered nurse, responsible for overseeing the clinical activities of the agency;

Must establish and implement written administrative policies covering all aspects of operation;

Must have adequate staffing to provide for effective patient care;

Must ensure that employees with direct patient care responsibilities have current cardiopulmonary resuscitation certification;

Must ensure that licensed nurses provide services that are commensurate with the nurse's educational preparation and clinical competence, address the nursing needs of the patient, and are delivered in accordance with the patient's plan of treatment;

Must comply with the preemployment screening requirements;

Must maintain patient records as established by this administrative regulation;

Must develop a plan of treatment for each patient in consultation with the prescribing practitioner, agency personnel, and patient, patient's family member, or patient's responsible party; and

Must obtain accreditation by the Joint Commission, Community Health Accreditation Program, Accreditation Commission for Health Care, or an accrediting body with equivalent standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this administrative regulation, except that private duty nursing agencies that are not currently accredited will be required to obtain

accreditation within one (1) year from the effective date of this administrative regulation. Agencies may request an extension if additional time is necessary to achieve full accreditation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The licensure of private duty nursing agencies helps ensure that there is adequate access to skilled nursing services provided to people with disabilities as well as other individuals who have a need for in-home nursing care.

(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 are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts private duty nursing agencies 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)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 additional revenue.

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

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amended After Comments)

902 KAR 20:430. Facilities specifications, operation and services; behavioral health services organizations for mental health treatment.

RELATES TO: KRS 17.500, 198B.260, 200.503(2), 205.510, 210.005(2), (3), 216B.050, 216B.105, [309.080,] 309.130, 311.860, 314.042, 319.050, 319.056, 319.064, 319C.010, 335.080, 335.100, 335.300, 335.500, 439.3401, [42 C.F.R. Part 2,] 45 C.F.R. Parts 160, 164, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 1320d-2 – 1320d-8 [, 42 U.S.C. 290ee-3]

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of behavioral health services organizations (BHSEO) that[which] provide behavioral health services necessary to treat, support, and encourage individuals with ~~a~~[a substance use disorder,] mental health disorder or co-occurring mental health and secondary substance use disorder (SUD), ~~or co-occurring disorder~~ to achieve and maintain the highest possible level of health and self-sufficiency.

Section 1. Definitions. (1) "Adult peer support specialist" means an individual who meets the requirements for an adult peer support specialist established by 908 KAR 2:220.

(2) "Behavioral health professional" means:

(a) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc. or the American Osteopathic Board of Neurology and Psychiatry;

(b) A physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571;

(c) A psychologist licensed and practicing in accordance with KRS 319.050;

(d) A certified psychologist with autonomous functioning or licensed psychological practitioner practicing in accordance with KRS 319.056;

(e) A clinical social worker licensed and practicing in accordance with KRS 335.100;

(f) An advanced practice registered nurse licensed and practicing in accordance with KRS 314.042;

(g) A physician assistant licensed under KRS 311.840 to 311.862;

(h) A licensed marriage and family therapist as defined by[licensed and practicing in accordance with] KRS 335.300;

(i) A licensed professional clinical counselor as defined by[licensed and practicing in accordance with] KRS 335.500;[or]

(j) A licensed professional art therapist as defined by KRS 309.130(2); or

(k) A licensed behavior analyst as defined by KRS 319C.010(6).

(3)[(2)] "Behavioral health professional under clinical supervision" means a:

(a) Psychologist certified and practicing in accordance with KRS 319.056;

(b) Licensed psychological associate licensed and practicing in accordance with KRS 319.064;

(c) Marriage and family therapist associate as defined by KRS 335.300(3);

(d) Social worker certified and practicing in accordance with KRS 335.080;

(e) Licensed professional counselor associate as defined by

KRS 335.500(4); [or]

(f) Licensed professional art therapist associate as defined by KRS 309.130(3); or

(g) Registered behavior technician under the supervision of a licensed behavior analyst[Licensed assistant behavioral analyst defined by KRS 319C.010(7)].

(4)[(3)] "Behavioral health services organization" means an entity licensed under this administrative regulation to provide behavioral health services as described in Section 5[6] of this administrative regulation.

(5)[(4)] "Cabinet" means the Cabinet for Health and Family Services. [(5) "Certified alcohol and drug counselor" is defined by KRS 309.080(2).]

(6) "Child with a serious[severe] emotional disability" is defined by KRS 200.503(3).

(7) "Community support associate" means a paraprofessional who meets the application, training, and supervision requirements of 908 KAR 2:250.

(8) "Family peer support specialist" means an individual who meets the requirements for a family peer support specialist established by 908 KAR 2:230.

(9)["Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

(9) "Licensed behavior analyst" is defined by KRS 319C.010(6).

(10) "Peer support specialist" means a paraprofessional who:

(a) Meets the application, training, examination, and supervision requirements of 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; and

(b) Works under the supervision of one (1) of the following:

1. Physician;
2. Psychiatrist;
3. Licensed psychologist;
4. Licensed psychological practitioner;
5. Licensed psychological associate;
6. Licensed clinical social worker;
7. Licensed marriage and family therapist;
8. Licensed professional clinical counselor;
9. Certified social worker;
10. Licensed marriage and family therapist associate;
11. Licensed professional counselor associate;
12. Licensed professional art therapist;
13. Licensed professional art therapist associate;
14. Advanced practice registered nurse;
15. Physician assistant; or
16. Certified alcohol and drug counselor.

(14)] "Severe mental illness" means the conditions defined by KRS 210.005(2) and (3).

(10) "Targeted case manager" means an individual who meets the requirements for a targeted case manager established by 908 KAR 2:260[is defined by 908 KAR 2:260, Section 1(16)].

(11) "Telehealth" is defined by KRS 205.510(15).

(12) "Youth peer support specialist" means an individual who meets the requirements for a youth peer support specialist established by 908 KAR 2:240.

[(12) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms resulting from use of a substance which the individual continues to take despite experiencing substance-related problems as a result, including:

- (a) Intoxication;
- (b) Withdrawal; or
- (c) A substance-induced mental health disorder.]

Section 2. Licensure Application and Fees. (1) An applicant for initial licensure as a behavioral health services organization shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An accompanying initial licensure fee in the amount of \$750, made payable to the Kentucky State Treasurer.

(2) At least sixty (60) calendar days prior to the date of annual renewal, a behavioral health services organization shall submit to

the Office of Inspector General:

(a) A completed Application for License to Operate a Behavioral Health Services Organization; and

(b) An annual renewal fee of \$500, made payable to the Kentucky State Treasurer.

(3) A behavioral health services organization:

(a) May provide behavioral health services as described in Section 5 [6] of this administrative regulation at extension locations separate from its permanent facility; and

(b) Shall pay a fee in the amount of \$250 per extension, submitted to the Office of Inspector General at the time of initial licensure, renewal, or the addition of a new extension to the organization's license.

(4)(a) Name change. A behavioral health services organization shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the organization's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. A behavioral health services organization shall not change the location where a program is operated until an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of \$100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of a behavioral health services organization shall submit to the Office of Inspector General an Application for License to Operate a Behavioral Health Services Organization accompanied by a fee of \$750 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 behavioral health services organization or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(5) To obtain approval of initial licensure or renew a license to operate a behavioral health services organization, the licensee shall be in compliance with this administrative regulation and federal, state, and local laws and regulations pertaining to the operation of the organization.

Section 3. Scope of Operation and Services. (1) A behavioral health services organization shall:

(a) Provide behavioral health services, as described in Section 5[6] of this administrative regulation, to meet client needs **for treatment of a:**

1. Mental health disorder; or

2. Co-occurring mental health and substance use disorder (SUD) in which:

a. The mental health disorder is the primary diagnosis and SUD is the secondary diagnosis; and

b. Services are provided by a licensed practitioner qualified to treat co-occurring mental health and SUD:

(i) Under the scope of the practitioner's licensure; and

(ii) In accordance with 907 KAR 15:020, Section 3(2)(b);

and

(b) Unless an extension is granted pursuant to subsection (2) of this section, become accredited within one (1) year of initial licensure by one (1) of the following:

1. Joint Commission;

2. Commission on Accreditation of Rehabilitation Facilities;

3. Council on Accreditation; or

4. A nationally recognized accreditation organization.

(2)(a) If a behavioral health services organization has not obtained accreditation in accordance with subsection (1)(b) of this section within one (1) year of initial licensure, the organization may request a one (1) time only 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 organization initiated the process of becoming accredited within sixty (60) days of initial licensure

and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated.

(3) The cabinet shall revoke a license if a behavioral health services organization fails to meet one (1) of the following requirements:

(a) Become accredited in accordance with subsection (1)(b) of this section;

(b) Request an extension in accordance with subsection (2) of this section if accreditation has not been obtained within one (1) year of initial licensure; or

(c) Maintain accreditation.

(4) Proof of accreditation shall be provided to the Office of Inspector General upon receiving accreditation and at the time of annual renewal described in Section 2(2) of this administrative regulation.

Section 4. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for:

(a) The behavioral health services organization;

(b) The establishment of administrative policy; and

(c) Ensuring compliance with federal, state, and local laws and regulations pertaining to the operation of the organization.

(2) Executive director. The licensee shall establish lines of authority and designate an executive director who:

(a) May serve in a dual role as the organization's program director described in subsection (5)(a) of this section;

(b) Shall be responsible for the administrative management of the organization, including:

1. The total program of the organization in accordance with the organization's written policies; and

2. Evaluation of the program as it relates to the needs of each client; and

(c) Shall have a master's degree in business administration or a human services field, or a bachelor's degree in a human services field, including:

1. Social work;

2. Sociology;

3. Psychology;

4. Guidance and counseling;

5. Education;

6. Religion;

7. Business administration;

8. Criminal justice;

9. Public administration;

10. Child care administration;

11. Christian education;

12. Divinity;

13. Pastoral counseling;

14. Nursing;

15. Public health; or

16. Another human service field related to working with children with ~~serious~~[severe] emotional disabilities or clients with severe mental illness.

(3) An executive director with a master's degree shall have a minimum of two (2) years of prior supervisory experience in a human services program.

(4) An executive director with a bachelor's degree shall have a minimum of two (2) years of prior experience in a human services program plus two (2) years of prior supervisory experience in a human services program.

(5) Personnel. A behavioral health services organization shall employ the following personnel directly or by contract:

(a) A program director who shall be a:

1. Psychiatrist;

2. Physician;

3. Certified or licensed psychologist;

4. Licensed psychological practitioner;

5. Advanced practice registered nurse;

6. Licensed professional clinical counselor;

7. Licensed marriage and family therapist;

8. Licensed professional art therapist;

9. Licensed[~~board-certified~~] behavior analyst; or

10. Licensed clinical social worker; and
 (b) A sufficient number of personnel to provide behavioral health services, which may include:
 1. Behavioral health professionals;
 2. Behavioral health professionals under clinical supervision;
 3. ~~Targeted~~[Licensed behavior analysts; 4. Licensed assistant behavior analysts; 5.] case managers[as described in subsections (6), (7), and (8) of this section];
 4.[6.] Peer support specialists; or
 5.[7. Certified alcohol and drug counselors; or
 8.] Community support associates.
 (6) [A case manager who provides targeted case management services to clients with a substance use disorder shall:
 (a) Have a bachelor's degree in a human services field, including:
 1. Psychology;
 2. Sociology;
 3. Social work;
 4. Family studies;
 5. Human services;
 6. Counseling;
 7. Nursing; or
 8. Another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders;
 (b)1. Have a minimum of one (1) year of full-time employment working directly with adolescents or adults in a human service setting after completion of a bachelor's degree as described in paragraph (a) of this subsection; or
 2. Have a master's degree in a human services field as described in paragraph (a) of this subsection;
 (c)1. Have successfully completed case management training approved by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID) in accordance with 908 KAR 2:260 within six (6) months of employment; and
 2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and
 (d) Be supervised by a behavioral health professional who:
 1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and
 2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual in person basis.
 (7) A case manager who provides targeted case management services to clients with co-occurring mental health or substance use disorders and chronic or complex physical health issues shall:
 (a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;
 (b)1. After completion of a bachelor's degree, have a minimum of five (5) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services; or
 2. After completion of a master's degree in social work, family studies, clinical counseling, psychology, nursing, or another human service degree program related to working with individuals with substance use disorders, mental health disorders, or co-occurring disorders, have a minimum of two (2) years of experience providing service coordination or referring clients with complex behavioral health needs and co-occurring disorders or multi-agency involvement to community based services;
 (c)1. Have successfully completed case management training approved by the DBHDID in accordance with 908 KAR 2:260 within six (6) months of employment; and
 2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and
 (d) For a bachelor's level case manager, be supervised by a behavioral health professional who:
 1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and
 2. Has supervisory contact at least three (3) times per month

with at least two (2) of the contacts on an individual in person basis.
 (8) A case manager who provides targeted case management services to children with a severe emotional disability or clients with a severe mental illness shall:
 (a) Have a bachelor's degree in a human services field as described in subsection (6)(a) of this section;
 (b)1. Have a minimum of one (1) year of full-time employment working directly with individuals with behavioral health needs after completion of a bachelor's degree in a behavioral science field as described in subsection (6)(a) of this section; or
 2. Have a master's degree in a human services field as described in subsection (6)(a) of this section;
 (c)1. Have successfully completed case management training approved by DBHDID in accordance with 908 KAR 2:260 within six (6) months of employment; and
 2. Have successfully completed recertification requirements approved by DBHDID in accordance with 908 KAR 2:260 every three (3) years thereafter; and
 (d) Be supervised by a behavioral health professional who:
 1. Has completed case management training approved by DBHDID in accordance with 908 KAR 2:260; and
 2. Has supervisory contact at least two (2) times per month with at least one (1) of the contacts on an individual in person basis.
 (9) Background checks.
 (a) The executive director and all personnel of a behavioral health services organization shall:
 1. Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;[and]
 2. Not have a criminal conviction, or plea of guilty, to a:
 a. Sex crime as specified in KRS 17.500;
 b. Violent crime as specified in KRS 439.3401;
 c. Criminal offense against a minor as specified in KRS 17.500;
 or
 d. Class A felony; and
 3. Not be listed on the following:
 a. Central registry established by 922 KAR 1:470, if the BHSO provides services to clients under age eighteen (18);
 b. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or
 c. Caregiver misconduct registry established by [922 KAR 5:120E and] 922 KAR 5:120.
 (b)[A behavioral health services organization may use Kentucky's national background check system established by 906 KAR 1:190 to satisfy the background check requirements of paragraph (a) of this subsection.
 (c)] A behavioral health services organization shall perform annual criminal record and registry checks as described in paragraph (a) of this subsection on a random sample of at least twenty-five (25) percent of all personnel.
 (7)[(40)] Policies. The behavioral health services organization shall establish written policies for the administration and operation of the organization, which shall be available to all personnel and include:
 (a) A description of the organizational structure specifying the responsibility, function, and interrelations of each organizational unit, and the lines of administrative and clinical authority;
 (b) The organization's method and procedure for storage, dispensing, and administering a drug or biological agent;
 (c) A client grievance procedure as described in subsection (11)[(14)] of this section;
 (d) The organization's procedure for maintaining the confidentiality of client records in accordance with federal, state, and local statutes and regulations; and
 (e) Personnel policy, including:
 1. A job description and qualifications for each personnel category;
 2. A plan for orientation of personnel to the policies and objectives of the organization and on-the-job training, if necessary; and
 3. An annual training program for staff, which shall include:

- a. Detection and reporting of abuse, neglect, or exploitation;
- b. Behavioral management, including de-escalation training;
- c. Physical management procedures and techniques; and
- d. Emergency and safety procedures.

(8)(14) 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 licensure, certification, registration, or renewals;
- (c) Verification of submission to the background check requirements of subsection (6)(9) of this section;
- (d) Annual performance appraisals; and
- (e) Employee incident reports.

(9)(12) After hours services.

(a) The behavioral health services organization shall provide, directly or through written agreement with another behavioral health services provider, access to face-to-face emergency services face-to-face or via telehealth twenty-four (24) hours per day, seven (7) days per week.

(b) Emergency services shall include interventions necessary to screen, assess, refer, and treat an individual from the point of the identified emergency or behavioral health crisis to the point of resolution of the emergency or crisis.

(10)(13) Quality assurance and utilization review.

(a) The behavioral health services organization shall have a quality assurance and utilization review program designed to:

- 1. Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and
- 2. Provide an effective mechanism for review and evaluation of the service needs of each client.

(b) The need for continuing services shall be evaluated immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

- 1. Discharge;
- 2. Transfer; or
- 3. Referral to another service provider, if appropriate.

(11)(14) Client grievance policy. The behavioral health services organization shall have written policies and procedures governing client grievances, which shall include the following:

- (a) Identification of a behavioral health services organization ombudsman;
- (b) A process for filing a written client grievance;
- (c) An appeals process with time frames for filing and responding to a grievance in writing;
- (d) Protection for a client from interference, coercion, discrimination, or reprisal; and
- (e) Conspicuous posting of the grievance procedures in a public area to inform a client of:
 - 1. His or her right to file a grievance;
 - 2. The process for filing a grievance; and
 - 3. The address and telephone number of the behavioral health services organization's and cabinet's ombudsman.

Section 5. Services. ~~Residential Services for Substance Use Disorders.~~ (1) If a behavioral health services organization licensed under this administrative regulation provides residential services to clients with a substance use disorder, the organization shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370.

(2) In addition to meeting the requirements of 908 KAR 1:370 for residential treatment programs, a behavioral health services organization that provides residential services for substance use disorders shall:

- (a) Provide intensive treatment and skills building in a structured and supportive environment;
- (b) Assist the client in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;
- (c) Provide services in a twenty-four (24) hour a day, live-in facility that offers a planned and structured regimen of care aimed at treating individuals with addiction or co-occurring mental health and substance use disorders;

(d) Assist the client in making necessary changes to enable the individual to live drug- or alcohol-free;

(e) Provide services under the medical direction of a physician; and

(f) Provide continuous nursing services in which a registered nurse shall be:

- 1. On-site during traditional first shift hours, Monday through Friday;
- 2. Continuously available by phone after hours; and
- 3. On-site as needed in follow-up to telephone consultation after hours.

Section 6. Services. (1) A behavioral health services organization licensed under this administrative regulation shall obtain separate licensure as an alcohol and other drug abuse treatment program pursuant to 908 KAR 1:370 if the organization provides any of the following outpatient services for the treatment of individuals with a substance use disorder or co-occurring disorder in which substance use disorder is the primary diagnosis:

- (a) Screening;
- (b) Assessment;
- (c) Crisis intervention;
- (d) Mobile crisis services;
- (e) Day treatment;
- (f) Peer support;
- (g) Intensive outpatient program services;
- (h) Individual outpatient therapy;
- (i) Group outpatient therapy;
- (j) Family outpatient therapy;
- (k) Collateral outpatient therapy;
- (l) Screening, brief intervention and referral to treatment; or
- (m) Targeted case management.

(2) A behavioral health services organization shall provide treatment to meet client needs, including one (1) or more of the following:

(1)(a) Screening, which shall be provided face-to-face or via telehealth by a behavioral health professional or behavioral health professional under clinical supervision [, or certified alcohol and drug counselor] to determine the:

- (a)[4.] Likelihood that an individual has a mental health, substance use, or co-occurring disorder; and
- (b)[2.] Need for an in-depth assessment;

(2)(b) Assessment, which shall:

(a)[4.] Be provided face-to-face or via telehealth by a behavioral health professional or behavioral health professional under clinical supervision [, licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor] who gathers information and engages in a process with the client [, thereby enabling the professional] to:

1.[a.] Establish the presence or absence of a mental health [, substance use, or co-occurring] disorder, substance use disorder, or co-occurring disorder;

2.[b.] Determine the client's readiness for change;

3.[c.] Identify the client's strengths or problem areas that [which] may affect the treatment and recovery processes; and

4.[d.] Engage the client in developing an appropriate treatment relationship;

(b)[2.] Establish or rule out the existence of a clinical disorder or service need;

(c)[3.] Include working with the client to develop a plan of care if a clinical disorder or service need is assessed; and

(d)[4.] Not include psychological or psychiatric evaluations or assessments;

(3)(e) Psychological testing, which shall:

(a)[4.] Be performed by a licensed psychologist, certified psychologist with autonomous functioning, certified psychologist, licensed psychological associate, or licensed psychological practitioner; and

(b)[2.] Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities, and interpretation and written report of testing results;

(4)(d) Crisis intervention, which:

(a)[4-] Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to the client or another individual;

(b)[2-] Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities;

(c)[3-] Shall be provided:

1.[a.] ~~On-site at the behavioral health services organization's facility or office;~~

2.[b.] As an immediate relief to the presenting problem or threat; and

2.[3.] [e-] In a face-to-face, one (1) on one (1) encounter or as a comparable service provided via telehealth;

(d)[4-] May include verbal de-escalation, risk assessment, or cognitive therapy; 5-] Shall be provided by a:

1.[a.] Behavioral health professional; or

2.[b.] Behavioral health professional under clinical supervision; [or c- Certified alcohol and drug counselor;]

(e)[6-] Shall be followed by a referral to noncrisis services, if applicable; and

(f)[7-] May include:

1.[a.] Further service prevention planning, including:—(i) lethal means reduction for suicide risk; or

2. [(ii) Substance use disorder relapse prevention; or b-] Verbal de-escalation, risk assessment, or cognitive therapy;

(5)[(e)] Mobile crisis services, which shall:

(a)[4-] Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

(b)[2-] Be provided for a duration of less than twenty-four (24) hours;

(c) [3-] Not be an overnight service;

(d) [4-] Be a multi-disciplinary team based intervention that ensures access to acute mental health[and substance use] services and supports to:

1.[a.] Reduce symptoms or harm; or

2.[b.] Safely transition an individual in an acute crisis to the appropriate, least restrictive level of care;

(e)[5-] Involve all services and supports necessary to provide:

1.[a.] Integrated crisis prevention;

2.[b.] Assessment and disposition;

3.[c.] Intervention;

4.[d.] Continuity of care recommendations; and

5.[e.] Follow-up services;

(f)[6-] Be provided face-to-face in a home or community setting by[a]:

1. A[a-] behavioral health professional;

2. A[b-] behavioral health professional under clinical supervision; or

3. An adult, family, or youth peer support specialist, as appropriate, working under the supervision of a behavioral health professional[c- Certified alcohol and drug counselor]; and

(g)[7-] Ensure access to a board certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year;

(6)[(f)] Day treatment, which shall:

(a) [4-] Be a nonresidential, intensive treatment program designed for children who:

1.[a.] Have a[~~substance use disorder,~~] mental health disorder [, or co-occurring disorder];

2.[b.] Are under twenty-one (21) years of age; and

3.[c.] Are at high risk of out-of-home placement due to a behavioral health issue;

(b)[2-] Consist of an organized, behavioral health program of treatment and rehabilitative services for[~~substance use disorder,~~] mental health disorder[, or a co-occurring disorder];

(c)[3-] Have unified policies and procedures that address the organization's philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning;

(d)[4-] Include the following:

1.[a.] Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

2.[b.] Behavior management and social skill training;

3.[e-] Independent living skills that correlate to the age and development stage of the client; or

4.[d-] Services designed to explore and link with community resources before discharge and to assist the client and family with transition to community services after discharge;

(e)[5-] Be provided as follows:

1.[a-] In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

2.[b-] On school days and during scheduled school breaks;

3.[e-] In coordination with the child's individual educational plan or Section 504 plan if the child has an individual educational plan or Section 504 plan;

4.[d-] By personnel that includes a behavioral health professional, a behavioral health professional under clinical supervision, or a family or youth peer support specialist, as appropriate, and working under the supervision of a behavioral health professional[a certified alcohol and drug counselor or a peer support specialist]; and

5.[e-] According to a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

(f)[6-] Not include a therapeutic clinical service that is included in a child's individualized education plan;

(7)[(g)] Peer support, which shall:

(a)[4-] Be provided face-to-face by an adult, family, or youth [a] peer support specialist, as appropriate, working under the supervision of a behavioral health professional;

(b)[2-] Be a structured and scheduled nonclinical therapeutic activity with a client or group of clients;

(c)[3-] Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills;[and]

(d)[4-] Be identified in the client's plan of care developed through a person-centered planning process; and

(e) If provided to clients in a group setting, not[to] exceed eight (8) individuals within any group at a time;

(8)[(h)] Intensive outpatient program services, which shall:

(a)[4-] Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

(b)[2-] Be provided at least:

1. Three (3) hours per day at least three (3) days per week for adults; or

2. Six (6) hours per week for adolescents;

(c)[3-] Include [the following]:

1.[a-] Individual outpatient therapy,[-b-] group outpatient therapy, or[-c-] family outpatient therapy unless contraindicated;

2.[d-] Crisis intervention; or

3.[e-] Psycho-education that is related to identified goals in the client's treatment plan. If psycho-education is provided,[during which] the client or client's family member shall be:

a. [(i)] Provided with knowledge regarding the client's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. [(ii)] Taught how to cope with the client's diagnosis or condition in a successful manner;

(d)[(e)] [4-] Include a treatment plan, which shall:

1.[a-] Be individualized; and

2.[b-] Focus on stabilization and transition to a lower level of care;

(e)[(f)] [5-] Be provided by a behavioral health professional or[-] behavioral health professional under clinical supervision[-or-a certified alcohol and drug counselor];

(f)[(g)] [6-] Include access to a board-certified or board-eligible psychiatrist for consultation;

(g)[(h)] [7-] Include access to a psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

(h)[(i)] [8-] Be provided in a setting with a minimum client-to-staff ratio of ten (10) clients to one (1) staff person;

(9)[(j)] Individual outpatient therapy, which shall:

(a)[4-] Be provided to promote the:

- 1.[a-] Health and wellbeing of the client; and
2. Restoration of a client to his or her best possible functional level;

(b)[~~or b-~~ Recovery from a substance-related disorder; -2-]

Consist of a:

- 1.a.[A] Face-to-face, one (1) on one (1) encounter between program staff and [with] the client; or
- b. Telehealth consultation; and
- 2.[b- A] Behavioral health therapeutic intervention provided in accordance with the client's plan of care;

(c)[3-] Be aimed at:

- 1.[a-] Reducing adverse symptoms;
- 2.[b-] Reducing or eliminating the presenting problem of the client; and
- 3.[c-] Improving functioning;

(d)[4-] Not exceed three (3) hours per day alone or in combination with any other outpatient therapy unless additional time with the client is medically necessary in accordance with 907 KAR 3:130; and

(e)[5-] Be provided by a behavioral health professional or[;] behavioral health professional under clinical supervision[~~;-licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor;~~];

(10)[(f)] Group outpatient therapy, which shall:

(a)[4-] Be provided to promote the:

- 1.[a-] Health and wellbeing of the client; and
2. Restoration of a client to his or her best possible functional level;

(b)[~~or b-~~ Recovery from a substance-related disorder; -2-]

Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the client's plan of care;

(c)[3-] Excluding multi-family group therapy, be provided in a group setting of nonrelated individuals, not to exceed twelve (12) individuals in size. For group outpatient therapy, a nonrelated individual means any individual who is not a spouse, significant other, parent or person with custodial control, child, sibling, stepparent, stepchild, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild;

(d)[4-] Focus on the psychological needs of the client as evidenced in the client's plan of care;

(e)[5-] Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

(f)[6-] Not include physical exercise, a recreational activity, an educational activity, or a social activity;

(g)[7-] Not exceed three (3) hours per day alone or in combination with any other outpatient therapy[per client] unless additional time with the client is medically necessary in accordance with 907 KAR 3:130;

(h)[8-] Ensure that the group has a deliberate focus and defined course of treatment;

(i)[9-] Ensure that the subject of group outpatient therapy is[shall be] related to each client participating in the group; and

(j)[10-] Be provided by a behavioral health professional or[;] behavioral health professional under clinical supervision[~~;-licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor;~~ who shall maintain individual notes regarding each client within the group in the client's record;

(11)[(k)] Family outpatient therapy, which shall:

(a)[4-] Consist of a[face-to-face] behavioral health therapeutic intervention provided face-to-face or via telehealth through scheduled therapeutic visits between the therapist, the client, and at least one (1) member of the client's family;

(b)[2-] Address issues interfering with the relational functioning of the family;

(c)[3-] Seek to improve interpersonal relationships within the client's home environment;

(d)[4-] Be provided to promote the health and wellbeing of the client, including restoration of a client to his or her best possible

functional level[or recovery from a substance-use disorder];

(e)[5-] Not exceed three (3) hours per day alone or in combination with any other outpatient therapy[per client] unless additional time with the client is medically necessary in accordance with 907 KAR 3:130; and

(f)[6-] Be provided by a behavioral health professional or[;] a behavioral health professional under clinical supervision[~~;-or a certified alcohol and drug counselor;~~];

(12)[(f)] Collateral outpatient therapy, which shall consist of a face-to-face or telehealth[behavioral health] consultation:

(a)[4-] With a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21), household member, legal representative, school personnel, or treating professional;

(b)[2-] Provided by a behavioral health professional or[;] behavioral health professional under clinical supervision[~~;-licensed behavior analyst, licensed assistant behavior analyst working under the supervision of a licensed behavior analyst, or a certified alcohol and drug counselor;~~]; and

(c)[3-] Provided upon the written consent of a parent, caregiver, or person who has custodial control of a client under the age of twenty-one (21). Documentation of written consent shall be signed and maintained in the client's record;

(13)[(m)] Service planning, which shall be provided face-to-face by a behavioral health professional or[;] behavioral health professional under clinical supervision, either of which shall be of the client's choosing[~~;-licensed behavior analyst, or licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;~~] to:

(a)[4-] Assist the[a] client in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of[a] mental health disorder;

(b)[2-] Restore the[a] client's functional level to the client's best possible functional level; and

(c)[3-] Develop a service plan, which:

- 1.[a-] Shall be directed and signed by the client; and
- 2.[b-] May include:

- a.[(f)] A mental health advance directive being filed with a local hospital;
- b.[(f)] A crisis plan; or
- c.[(f)] A relapse prevention strategy or plan;

(14) Screening, brief intervention and referral to treatment for substance use disorders, which shall:

(a) Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

(b) Consist of:

1. Using a standardized screening tool to assess the individual for risky substance use behavior;
2. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice;
3. Referring the client to therapy or other services that address substance use if the client is determined to need additional services; and
4. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;

(15)[(n)] Residential services for substance use disorders as described in Section 5 of this administrative regulation;

(e) Screening, brief intervention and referral to treatment for substance use disorders which shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use prior to the need for more extensive or specialized treatment;
2. Consist of:

- a. Using a standardized screening tool to assess the individual for risky substance use behavior;
- b. Engaging a client who demonstrates risky substance use behavior in a short conversation, providing feedback and advice;
- c. Referring the client to therapy or other services that address substance use if the client is determined to need additional

services; and

3. Be provided by a behavioral health professional, behavioral health professional under clinical supervision, or a certified alcohol and drug counselor;

(p) Assertive community treatment for mental health disorders, which shall:

(a) [1-] Include assessment, treatment planning, case management, psychiatric services, ~~medication prescribing and monitoring;~~ individual, family, or ~~and~~ group therapy, peer support, mobile crisis services, crisis intervention, mental health consultation with other treating professionals who may have information for the purpose of treatment planning and service delivery, family support to improve family relations to reduce conflict and increase the client's autonomy and independent functioning, or ~~and~~ basic living skills focused on teaching activities of daily living necessary to maintain independent functioning and community living;

(b) [2-] Be provided face-to-face by a multidisciplinary team of at least four (4) professionals, including a ~~psychiatrist;~~ nurse, case manager, peer support specialist, and any other behavioral health professional or behavioral health professional under clinical supervision; and

(c) [3-] Have adequate staffing to ensure that no caseload size exceeds ten (10) participants per team member;

~~(16) [(45)]~~ [(q)] Comprehensive community support services, which shall:

(a) [4-] Consist of activities needed to allow an individual with a mental health disorder to live with maximum independence in the community through the use of skills training as identified in the client's treatment plan;

(b) [2-] Consist of using a variety of psychiatric rehabilitation techniques to:

1. [a-] Improve daily living skills;
2. [b-] Improve self-monitoring of symptoms and side effects;
3. [c-] Improve emotional regulation skills;
4. [d-] Improve crisis coping skills; and
5. [e-] Develop and enhance interpersonal skills; and

(c) [3-] Be provided face-to-face by a:

1. [a-] Behavioral health professional;
2. [b-] Behavioral health professional under clinical supervision;
3. [c-] Community support associate under the supervision of a behavioral health professional; or

4. Registered behavior technician [Licensed assistant behavioral analyst under the supervision of a licensed behavioral analyst]:

~~(17) [(46)]~~ [d-] Licensed behavior analyst; or

e- Licensed assistant behavior analyst working under the supervision of a licensed behavior analyst;

(r) Therapeutic rehabilitation program for an adult with a severe mental illness or child with a serious [severe] emotional disability, which shall:

(a) [1-] Include face-to-face services designed to maximize the reduction of mental illness or emotional disability and restoration of the client's functional level to the individual's best possible functioning;

(b) Require the client to be responsible for establishing his or her [2-] Establish the client's own rehabilitative goals within the person-centered plan of care;

(c) [3-] Be delivered using a variety of psychiatric rehabilitation techniques focused on:

1. [a-] Improving daily living skills;
2. [b-] Self-monitoring of symptoms and side effects;
3. [c-] Emotional regulation skills;
4. [d-] Crisis coping skills; and
5. [e-] Interpersonal skills; and

(d) [4-] Be provided individually or in a group by a:

1. [a-] Behavioral health professional, except for a licensed behavioral analyst;

2. [b-] Behavioral health professional under clinical supervision, except for a **registered behavior technician [licensed assistant behavioral analyst]; or**

3. [c-] Peer support specialist under the supervision of a behavioral health professional;

~~(18) [(47)]~~ [or (s)] Targeted case management services, which shall:

(a) [4-] Include services to ~~one (1) or more of the following target groups]:~~

1. [a-] An adult or a child with substance use disorder; b- An adult or child with co-occurring mental health or substance use disorder and chronic or complex physical health issues; c-] A child with a serious [severe] emotional disability **or co-occurring disorder that includes a:**

a. Chronic or complex physical health issue; or

b. Secondary SUD diagnosis; or

2. [d-] An adult with severe mental illness **or co-occurring disorder that includes a:**

a. Chronic or complex physical health issue; or

b. Secondary SUD diagnosis;

(b) [2-] Be provided by a targeted case manager ~~[as described in Section 4(6), (7), or (8) of this administrative regulation]; and~~

(c) [3-] Include the following assistance:

1. [a-] Comprehensive assessment and reassessment of client needs to determine the need for medical, educational, social, or other services. The reassessment shall be conducted annually or more often if needed based on changes in the client's condition;

2. [b-] Development of a specific care plan, which shall be based on information collected during the assessment and revised if needed upon reassessment;

3. [c-] Referral and related activities, which may include:

a. [(i)] Scheduling appointments for the client to help the individual obtain needed services; or

b. [(ii)] Activities that help link the client with medical, social, educational providers, or other programs and services that [which] address identified needs and achieve goals specified in the care plan; and

4. [d-] Monitoring, which shall be face-to-face and occur no less than once every three (3) months to determine that:

a. [(i)] Services are furnished according to the client's care plan;

b. [(ii)] Services in the care plan are adequate; and

c. [(iii)] Changes in the needs or status of the client are reflected in the care plan; and

5. [e-] Contacts with the client, family members, service providers, or others are conducted as frequently as needed to help the client:

a. [(i)] Access services;

b. [(ii)] Identify needs and supports to assist the client in obtaining services; and

c. [(iii)] Identify changes in the client's needs; or

(19) [(48)] Partial hospitalization, which:

(a) Shall be short-term, with an average of four (4) to six (6) weeks;

(b) Shall be an intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a mental health disorder;

(c) May be provided to an adult or a minor;

(d) Shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the client;

(e) Shall consist of:

1. Individual outpatient therapy;

2. Group outpatient therapy;

3. Family outpatient therapy; or

4. Medication management;

(f) If provided to minors, shall include an agreement with the local educational authority including those provided through 20 U.S.C. 1400 et seq. or 29 U.S.C. 701 et seq.;

(g) Shall be provided for at least five (5) hours per day, four (4) days per week, and focused on one (1) primary presenting problem;

(h) Shall include the following personnel for the purpose of providing medical care, if necessary:

1. An on-site advanced practice registered nurse, physician assistant, or physician; and

2. A board-certified or board-eligible psychiatrist available for consultation; and

(i) Shall provide services utilizing a recognized intervention

~~protocol based on nationally accepted treatment principles.[(3) Excluding methadone-based treatment which is restricted to regulation under 908 KAR 1:340, a behavioral health services organization may employ or have an affiliation with a physician or physicians who prescribe FDA-approved drugs for the treatment of opioid addiction in adult patients. The behavioral health services organization shall comply with the following requirements:~~

~~(a) Ensure that the physician documents in the patient's record whether the patient is compliant with prescribed dosing as evidenced by the results of:~~

~~1. A KASPER report released to the physician pursuant to KRS 218A.202(6)(c); and~~

~~2. Drug testing;~~

~~(b) Offer individual and group outpatient therapy as a service and document monitoring of compliance with recommended non-medication therapies even if the therapies are provided in another behavioral health setting; and~~

~~(c) Ensure that the physician complies with the prescribing and dispensing standards in 201 KAR 9:270 for FDA-approved drugs used for the treatment of opioid addiction.~~

~~(4) A narcotic treatment program (NTP) licensed under 908 KAR 1:340 may obtain licensure as a behavioral health services organization if the NTP employs or has an affiliation with a physician or physicians who prescribe FDA-approved drugs other than methadone for the treatment of opioid addiction in adult patients.]~~

Section 6.[7.] Plan of Care. (1) Each client receiving direct treatment from a behavioral health services organization shall have an individual plan of care signed by a behavioral health professional.

(2) A plan of care shall:

(a) Describe the services to be provided to the client, including the frequency of services;

(b) Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

(c) Describe the client's functional abilities and limitations, or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;

(d) Specify each staff member assigned to work with the client;

(e) Identify methods of involving the client's family or significant others if indicated;

(f) Specify criteria to be met for termination of treatment;

(g) Include any referrals necessary for services not provided directly by the behavioral health services organization; and

(h) State the date scheduled for review of the plan.

(3) The client shall participate to the maximum extent feasible in the development of his or her plan of care, and the participation shall be documented in the client's record.

(4)(a) The initial plan of care shall be developed through multidisciplinary team conferences as clinically indicated and at least thirty (30) days following the first ten (10) days of treatment.

(b)1. The plan of care for an individual[individuals] receiving ~~[residential services for substance use disorder or]~~ intensive outpatient program services or partial hospitalization shall be reviewed every thirty (30) days thereafter and updated every sixty (60) days or earlier if clinically indicated.

2. The plan of care for an individual[individuals] receiving any other outpatient service ~~[services,]~~ as described by Section 5[in Section 6(2)(a) through (g) and (i) through (s)] of this administrative regulation [.] shall be reviewed and updated every six (6) months thereafter or earlier if clinically indicated.

(c) The plan of care and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it.

(5) A medical service, including a change of medication, a diet restriction, or a restriction on physical activity shall be ordered by a physician or other ordering practitioner acting within the limits of his or her statutory scope of practice.

Section 7.[8.] Client Records. (1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be current, dated, signed, and indexed

according to the service received.

(3) Each client record shall contain:

(a) An identification sheet, including the client's name, address, age, gender, marital status, expected source of payment, and referral source;

(b) Information on the purpose for seeking a service;

(c) If applicable, consent of appropriate family members or guardians for admission, evaluation, and treatment;

(d) Screening information pertaining to the mental health[or substance use] disorder;

(e) If applicable, a psychosocial history;

(f) If applicable, staff notes on services provided;

(g) If applicable, the client's plan of care;

(h) If applicable, disposition;

(i) If applicable, assigned status;

(j) If applicable, assigned therapists; and

(k) If applicable, a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

(4) Ownership.

(a) Client records shall be the property of the organization.

(b) The original client record shall not be removed from the organization except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed. Use and disclosure shall be as established by subsection (6) of this section.

(5) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

(a) Retained for six (6) years; or

(b) If a minor, three (3) years after the client reaches the age of majority under state law, whichever is the longest.

(6) Confidentiality and Security: Use and Disclosure.

(a) The organization shall maintain the confidentiality and security of client 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, including 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

(b) The organization may use and disclose client records. Use and disclosure shall be as established or required by[~~4.]~~ HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164 [~~2. 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

(c) A behavioral health services organization may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164[~~or 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2].~~

Section 8.[9.] Client Rights. (1) A behavioral health services organization shall have written policies and procedures to ensure that the rights of a client are protected while receiving one (1) or more services as described in Section 5[6] of this administrative regulation.

(2) A behavioral health services organization shall have written policies and procedures governing client grievances pursuant to Section 4(11)[(14)] of this administrative regulation.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a service.

(4) During a behavioral health services organization's intake procedures, a client shall sign a statement that[which] specifies that the client has the right to:

(a) Give informed consent to receive a service.

1. An adult shall sign an informed consent to receive a service.

2. A parent, caregiver, or person who has custodial control of a child shall sign an informed consent for the child to receive a service;

(b) Have input into his or her plan of care and be informed of the plan's content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation, or opinion regarding the services the client receives;

(e) Give informed written consent regarding participation in a research study with the exception of a child whose parent or guardian shall give informed written consent;

(f) Confidentiality according to Section 7(6) of this administrative regulation;

(g) Request a written statement of the charge for a service and be informed of the policy for the assessment and payment of fees;

(h) Be informed of the rules of client conduct and responsibilities ~~[including the consequences for the use of alcohol and other drugs or other infractions that may result in disciplinary action or discharge];~~

(i) Be treated with consideration, respect, and personal dignity;

(j) Review his or her client record in accordance with the organization's policy; and

(k) Receive one (1) free copy of his or her client record.

(5) The statement of client rights as described in subsection (4) of this section shall be:

(a) Provided to the client;

(b) If the client is a minor or incapacitated, provided to the client's parent, guardian, or other legal representative in addition to the client; and

(c) Read to the client or client's parent, guardian, or other legal representative if requested or if either cannot read.

~~(6) [A program providing twenty-four (24) hour care shall also specify on the client rights statement that a client has the right to:~~

~~(a) Vote in a political election; and~~

~~(b) Reasonable accommodations to afford privacy in bathing and toileting.~~

~~(7) If a client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record of the reason for the restriction and of the explanation given to the client.~~

Section ~~9~~~~[40]~~ Physical Environment. (1) Accessibility. A behavioral health services organization shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities pursuant to KRS 198B.260 and 815 KAR 7:120.

(2) Fire safety. A behavioral health services organization shall be approved by the State Fire Marshal's office prior to initial licensure or if an organization changes location.

(3) Physical location and overall environment.

(a) A behavioral health services organization shall:

1. Comply with building codes, ordinances, and administrative regulations ~~that~~~~[which]~~ are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number and a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day;

4. Have a reception and waiting area;

5. Provide a restroom; and

6. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of clients, personnel, and visitors are assured.

(4) Prior to occupancy, the facility shall have final approval from appropriate agencies.

Section ~~10~~~~[44]~~ License Procedures. The behavioral health services organization shall be subject to the provisions of 902 KAR 20:008, Sections 1, 2, 5, 6, and 7.

Section ~~11~~~~[42]~~ Denial and Revocation. (1) The cabinet shall deny an Application for License to Operate a Behavioral Health Services Organization if:

(a) Any person with ownership interest in the organization has had previous ownership interest in a health care facility that had its license revoked or voluntarily relinquished its license as the result of an investigation or pending disciplinary action;

(b) Any person with ownership interest in the organization has been discontinued from participation in the Medicaid Program due to fraud or abuse of the program; or

(c) The applicant fails after the initial inspection to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(13)(5);

(2) The cabinet shall revoke a license if it finds that:

(a) In accordance with KRS 216B.105(2), there has been a substantial failure by the behavioral health services organization to comply with the provisions of this administrative regulation;

(b) The behavioral health services organization fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by 902 KAR 20:008, Section 2(13)(5); or

~~(c) [The behavioral health services organization fails to comply with the requirements of Section 6(3) of this administrative regulation if the organization employs or has an affiliation with a physician or physicians who prescribe FDA-approved drugs, excluding methadone, to adults for the treatment of opioid addiction; or~~

~~(d) The behavioral health services organization is terminated from participation in the Medicaid Program pursuant to 907 KAR 1:671.~~

(3) The denial or revocation of a behavioral health services organization's license shall be mailed to the applicant or licensee, by certified mail, return receipt requested, or by personal service. Notice of the denial or revocation shall set forth the particular reasons for the action.

(4) The denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within the thirty (30) day period, files a request in writing for a hearing with the cabinet.

(5) Urgent action to suspend a license.

(a) The cabinet shall take urgent action to suspend a behavioral health services organization's license if the cabinet has probable cause to believe that ~~[-1.]~~ the continued operation of the organization would constitute an immediate danger to the health, welfare, or safety of its patients ~~[-or 2- A physician employed by or affiliated with the organization may be engaged in the improper or inappropriate prescribing or dispensing of an FDA-approved drug for the treatment of opioid addiction].~~

(b)1. The behavioral health services organization shall be served with notice of the hearing on the urgent suspension to be held no sooner than twenty (20) days from the delivery of the notice.

2. Notice of the urgent suspension shall set forth the particular reasons for the action. ~~[(c) If the cabinet issues an urgent suspension of the behavioral health services organization's license pursuant to paragraph (a)2 of this subsection, the cabinet shall refer the physician to the Kentucky Board of Medical Licensure and appropriate law enforcement agency.]~~

(6) Notice of a hearing on an urgent suspension shall be served on the behavioral health services organization by certified mail, return receipt requested, or by personal service.

(7)(a) Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the urgent suspension.

(b) The urgent suspension shall be affirmed if there is substantial evidence of an immediate danger to the public health, safety, or welfare.

(8) The decision rendered under subsection (7) of this section shall be a final order of the agency on the matter, and any party aggrieved by the decision may appeal to circuit court.

(9) If the cabinet issues an urgent suspension, the cabinet shall take action to revoke the behavioral health services organization's license pursuant to subsection (3) of this section if:

(a) The organization fails to attend the expedited hearing; or

(b) The decision rendered under subsection (7) of this section affirms that there is substantial evidence of an immediate danger to the public health, safety, or welfare ~~[-or~~

~~(c) Referral to the Kentucky Board of Medical Licensure and law enforcement agency in accordance with subsection (5)(c) of~~

~~this section results in an administrative sanction or criminal conviction against a physician employed by or affiliated with the organization].~~

(10) Pursuant to KRS 216B.050, the cabinet may compel obedience to its lawful orders.

Section 13. Incorporation by Reference. (1) The OIG 20:430, "Application for License to Operate a Behavioral Health Services Organization", ~~October~~July 2019~~[October—2014]~~ 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. 902 KAR 20:430

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services, 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 minimum licensure requirements for the operation of behavioral health services organizations (BHSO) for mental health treatment. The BHSO licensure category was originally created via emergency administrative regulation on July 15, 2014, to enhance access to behavioral health services and address the Kentucky Medicaid Program's efforts to expand the behavioral health network.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the minimum requirements for the licensure of BHSOs that provide services to treat, support, and encourage individuals with mental health disorder to achieve and maintain the highest possible level of health and self-sufficiency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.042, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing standards for licensed BHSOs for mental health treatment.

(2) If 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 "Amended After Comments" version of 902 KAR 20:430 changes the existing administrative regulation as follows:

Adds clarifying language to the title of this administrative regulation that aligns with the title of 907 KAR 15:020, thereby emphasizing that this licensure level will be for the treatment of mental health treatment;

In response to public comments, amends the Necessity, Function, and Conformity paragraph and Section 3(1)(a) to allow for the treatment of co-occurring mental health and substance use disorder (SUD) when mental health disorder is the primary diagnosis and SUD is the secondary diagnosis. This change aligns with the Amended After Comments version of 907 KAR 15:020, Section 3(2)(b). Services to treat a co-occurring disorder shall be provided in a licensed BHSO only by licensed practitioners qualified to treat co-occurring mental health and SUD under the scope of the practitioner's licensure and in accordance with 907

KAR 15:020, Section 3(2)(b);

Deletes the definition of "peer support specialist" and adds definitions for "adult peer support specialist", "family peer support specialist", and "youth peer support specialist" to Section 1;

Adds definitions for "targeted case manager" and "telehealth" to Section 1;

Moves "licensed behavioral analyst" under the definition of "behavioral health professional";

In response to public comments, replaces the reference to "licensed assistant behavioral analyst" with "registered behavior technician" in Section 1(3)(g) and Section 5(16)(c). This change aligns with the Amended After Comments version of 907 KAR 15:020, Section 3(3)(v)4.b.;

Deletes "certified alcohol and drug counselor" and "substance use disorder" from Section 1;

Amends Section 4 to delete unnecessarily duplicative language related to case managers because the training requirements and qualifications for targeted case managers are established in 908 KAR 2:260;

Removes language allowing BHSOs to use the Kentucky National Background Check Program (NBCP) to satisfy the State-level criminal record check requirements. Use of the NBCP was originally included in this administrative regulation by error, prior to receiving additional information from the Federal Bureau of Investigation which clarified that the Kentucky State Police relies upon a federal statute, Section 6201 of the Affordable Care Act, for the submission of fingerprints to the FBI for direct patient access employees in voluntarily participating long-term care settings. Because BHSOs are not included in the statutory definition of a "long-term care facility" or otherwise covered under Section 6201 of the ACA, BHSOs cannot voluntarily participate in the NBCP;

Allows for after-hours services to be provided via telehealth;

Removes the requirement for a BHSO to be separately licensed as an alcohol and other drug treatment entity (AODE) if the BHSO provides residential or outpatient services to clients with substance use disorder (SUD) or a co-occurring disorder in which SUD is the primary diagnosis. This change aligns with efforts to streamline the licensure process and improve the AODE regulations pursuant to the passage of HB 124 from the 2018 legislative session. Therefore, all requirements related to treatment of SUD have been deleted from this administrative regulation as such is covered under 908 KAR Chapter 1;

Allows for screening, assessment, crisis intervention, individual outpatient therapy, family outpatient therapy, and collateral outpatient therapy to be provided via telehealth;

In response to public comments regarding the removal of substance use or co-occurring disorder from the description of assessment, amends Section 5(2) to clarify that assessment may establish the presence or absence of a mental health disorder, SUD, or co-occurring disorder. This change aligns with the same change made in the Amended After Comments version of 907 KAR 15:020, Section 3(3)(b).

In response to public comments, amends Section 5(4)(c) to remove the on-site requirement for crisis intervention and align with the same change made in the Amended After Comments version of 907 KAR 15:020, Section 3(3)(d);

In response to public comments, amends Section 5(14) to add screening, brief intervention, and referral to treatment for substance use disorder back to this administrative regulation and align with the same change made in the Amended After Comments version of 907 KAR 15:020, Section 3(3)(n);

In response to public comments, amends Section 3(18)(a) to clarify that targeted case management services may also be provided to a child or an adult with a co-occurring disorder that includes a chronic or complex physical health issue or secondary SUD diagnosis;

Adds partial hospitalization as a service that a BHSO for mental health treatment may provide; and

Makes technical changes for clarity.

(b) The necessity of the amendment to this administrative regulation: The passage of HB 124 from the 2018 legislative session required the Cabinet to conduct a comprehensive review of all current state licensure and quality standards applicable to

SUD treatment programs as well as develop enhanced standards for treatment and recovery services. Therefore, in addition to the Cabinet's efforts to enhance the AODE standards under 908 KAR Chapter 1, this Amended After Comments version of 902 KAR 20:430 seeks to streamline the licensure process for greater efficiency by eliminating the requirement for AODE programs to be separately licensed as a BHSO for purposes of Medicaid enrollment. Eliminating the dual licensure requirement will have the effect of transforming the BHSO licensure category so that BHSO services will be for the treatment of a mental health disorder or co-occurring disorder in which mental health disorder is the primary diagnosis. SUD treatment programs are subject to AODE licensure standards established under 908 KAR Chapter 1 and will be allowed to enroll in Medicaid under the appropriate tier.

(c) How the amendment conforms to the content of the authorizing statutes: This Amended After Comments version of 902 KAR 20:430 conforms to the content of KRS 216B.042 by establishing standards for licensed behavioral health services organizations for mental health treatment.

(d) How the amendment will assist in the effective administration of the statutes: This Amended After Comments version of 902 KAR 20:430 will assist in the effective administration of the statutes by establishing standards for licensed behavioral health services organizations for mental health treatment.

(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 behavioral health services organizations. A directory of all currently licensed BHSO programs may be downloaded from the following link: <https://chfs.ky.gov/agencies/os/oig/dhc/Pages/hcf.aspx>.

(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 interested in applying for licensure as a BHSO for mental health treatment will be required to comply with the standards established by this administrative regulation, including:

State Fire Marshal approval of the facility's location prior to initial licensure or a change of location;

Accreditation within one (1) year of initial licensure, unless an extension is granted;

Implementation of administrative and personnel policies as well as policies that ensure that the rights of clients are protected;

Compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the organization;

Designation of an executive director who may also serve as the organization's program director if the individual is a behavioral health professional as defined by Section 1 of this administrative regulation;

Employment of a sufficient number of personnel to provide behavioral health services;

Compliance with abuse registry and criminal background check requirements;

Implementation of a process for quality assurance and utilization review;

Client records;

Implementation of a process for responding to client grievances; and

The delivery of one (1) or more of the following outpatient behavioral health services:

Screening;

Assessment;

Psychological testing;

Crisis intervention;

Mobile crisis services;

Day treatment;

Peer support;

Intensive outpatient program (IOP);

Individual outpatient therapy;

Group outpatient therapy;

Family outpatient therapy;

Collateral outpatient therapy;

Service planning;

Screening, brief intervention and referral to treatment for substance use disorder;

Assertive community treatment;

Comprehensive community support services;

Therapeutic rehabilitation for adults with severe mental illness or children with serious emotional disabilities;

Targeted case management services; or

Partial hospitalization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed behavioral health services organizations may enroll in the Kentucky Medicaid Program for reimbursement of covered behavioral health services provided to Medicaid recipients in need of treatment for a mental health disorder or co-occurring mental health and secondary substance use disorder.

(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: The source of funding used for the implementation and enforcement of this administrative regulation is from licensure fees collected from behavioral health services organizations and state general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not increase licensure 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 behavioral health services organizations 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)

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

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

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

(c) How much will it cost to administer this program for the first

year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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. 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.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amended After Comments)

907 KAR 15:010. Coverage provisions and requirements regarding behavioral health services provided by individual approved behavioral health practitioners[providers], behavioral health provider groups, and behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, Chapter 319, 369.101-369.120, 42 C.F.R. Part 2, 431.17, 45 C.F.R. Parts 160, 164, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 290ee-3, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), 12101 et seq., 1320d-2 - 1320d-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed individual behavioral health professionals who are independently enrolled in the Medicaid Program, practitioners working for or under the supervision of the individual behavioral health providers, and individual behavioral health professionals and practitioners under supervision working in behavioral health provider groups or in behavioral health multi-specialty groups.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall:

(a) Be medically necessary;

(b) Meet the coverage requirements established in Section 3 of this administrative regulation;

(c) Be provided to a recipient by:

1. An individual approved behavioral health

practitioner[provider] who:

a. Is enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

b. Except as established in Section 2(1) of this administrative regulation, currently participates in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

c. Is an approved behavioral health practitioner[-:

(i) A physician;

(ii) A psychiatrist;

(iii) An advanced practice registered nurse;

(iv) A physician assistant;

(v) A licensed psychologist;

(vi) A licensed psychological practitioner;

(vii) A certified psychologist with autonomous functioning;

(viii) A licensed clinical social worker;

(ix) A licensed professional clinical counselor;

(x) A licensed marriage and family therapist;

(xi) A licensed professional art therapist;

(xii) A licensed clinical alcohol and drug counselor; or

(xiii) A licensed behavior analyst;

2. ~~An~~[Any of the] individual approved behavioral health practitioner[professionals listed in subparagraph 1.c. of this paragraph] who is working for:

a. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

b. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

3. ~~An approved~~[A] behavioral health practitioner under supervision working for:

a. An individual approved behavioral health practitioner[professional listed in subparagraph 1.c. of this paragraph] who is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

b. A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

c. A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

4. ~~A certified psychologist working under the supervision of a board-approved licensed psychologist who is:~~

a. ~~(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;~~

b. ~~Working for a behavioral health provider group that is:~~

~~(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

~~(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or~~

c. ~~Working for a behavioral health multi-specialty group that is:~~

~~(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and~~

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

5.] An adult peer support specialist, family peer support specialist, youth peer support specialist, or registered alcohol and drug peer support specialist working for:

a. [Any of the individual behavioral health professionals listed in subparagraph 1.c. of this paragraph who is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671;

b.] A behavioral health provider group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

b. [c.] A behavioral health multi-specialty group that is:

(i) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(ii) Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; or

5. A community support associate working for a behavioral health multi-specialty group that is:

a. Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

b. Except as established in Section 2(1) of this administrative regulation, currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(d) Be billed to the department by the:

1. Individual approved behavioral health practitioner[provider] who provided the service or under whose supervision the service was rendered in accordance with Section 3 of this administrative regulation;

2. Behavioral health provider group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation; or

3. Behavioral health multi-specialty group on behalf of which the service was rendered in accordance with Section 3 of this administrative regulation.

(2)(a) Direct[Face-to-face] contact between a provider or practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient therapy service in which the corresponding current procedural terminology code establishes that the recipient is not present;

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or others in which the corresponding current procedural terminology code establishes that the recipient is not present; or

4. A service planning activity in which the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an[a-face-to-face] encounter.

(4) A service shall be:

(a) Stated in a recipient's plan of care; and

(b) Provided in accordance with a recipient's plan of care.

(5)(a) A provider shall establish a plan of care for each recipient receiving services from the provider.

(b) A plan of care shall:

1. Describe the services to be provided to the client, including the frequency of services;

2. Contain measurable goals for the client to achieve, including the expected date of achievement for each goal;

3. Describe the client's functional abilities and limitations, or diagnosis listed in the current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders;

4. Specify each staff member assigned to work with the client;

5. Identify methods of involving the client's family or significant others if indicated;

6. Specify criteria to be met for termination of treatment;

7. Include any referrals necessary for services not provided directly by that provider; and

8. Include the date scheduled for review of the plan.

(c) A separate plan of care shall be established for each recipient receiving services for substance use disorder treatment in accordance with the plan of care requirements established in 908 KAR 1:370, Section 19.

Section 2. Provider Participation. (1) In accordance with 907 KAR 17:015, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.

(2) A provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

(3)(a) A behavioral health multi-specialty group that is providing services for substance use disorder or co-occurring disorders shall possess an alcohol and other drug entity license pursuant to 908 KAR 1:370[3:170] and 908 KAR 1:374.

(b) A behavioral health multi-specialty group that does not possess an alcohol and other drug entity license pursuant to 908 KAR 1:370 and 908 KAR 1:374 may provide services for co-occurring mental health and substance use disorders, if the:

1. Substance use disorder diagnosis is secondary to a primary mental health diagnosis; and

2. Services are provided by an independently licensed practitioner who could independently practice and provide treatment for a co-occurring disorder. A qualifying practitioner shall include:

a. A physician;

b. A psychiatrist;

c. An advanced practice registered nurse;

d. A physician assistant;

e. A licensed psychologist;

f. A licensed psychological practitioner;

g. A certified psychologist with autonomous functioning;

h. A licensed clinical social worker;

i. A licensed professional clinical counselor; or

j. A licensed marriage and family therapist.[3:174.

(4)(a) A physician providing behavioral health services in a behavioral health multi-specialty group shall possess a psychiatric or addictionology specialty.

(b) An advanced practice registered nurse providing services in a behavioral health multi-specialty group shall possess a psychiatric or addictionology specialty.

(c) A physician assistant providing behavioral health services in a behavioral health multi-specialty group shall have a contractual relationship with a supervising physician with psychiatric or addictionology specialty.]

Section 3. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder;

(b) Substance use disorder; or

(c) Co-occurring mental health and substance use disorders.

(2)[The following] Services shall be covered under this administrative regulation in accordance with the requirements established in this section[:

(a) A screening provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed clinical and alcohol drug counselor;
 12. A licensed professional art therapist; or
 13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;
 (b) An assessment provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed behavior analyst;
 12. A licensed clinical alcohol and drug counselor;
 13. A licensed professional art therapist; or
 14. A behavioral health practitioner under supervision;
 (c) Psychological testing provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed psychological associate;
 4. A certified psychologist with autonomous functioning; or
 5. A certified psychologist;
 (d) Service planning provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;
 12. A licensed behavior analyst; or
 13. A behavioral health practitioner under supervision except for a:
 a. Certified alcohol and drug counselor; or
 b. Licensed clinical alcohol and drug counselor associate;
 (e) Individual outpatient therapy, group outpatient therapy, collateral outpatient therapy, or crisis intervention services provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;
 12. A licensed behavior analyst;
 13. A licensed clinical alcohol and drug counselor; or
 14. A behavioral health practitioner under supervision;
 (f) Family outpatient therapy provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;

6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;
 12. A licensed clinical alcohol and drug counselor; or
 13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;
 (g) A screening, brief intervention, and referral to treatment for a substance use disorder or SBIRT provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;
 12. A licensed clinical alcohol and drug counselor; or
 13. A behavioral health practitioner under supervision except for a licensed assistant behavior analyst;
 (h) Day treatment provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;
 12. A licensed behavior analyst;
 13. A behavioral health practitioner under supervision;
 14. An adult peer support specialist, family peer support specialist, or youth peer support specialist working under the supervision of an approved behavioral health services provider;
 15. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health services provider; or
 16. A licensed clinical alcohol and drug counselor;
 (i) Comprehensive community support services provided by:
 1. A licensed psychologist;
 2. A licensed professional clinical counselor;
 3. A licensed clinical social worker;
 4. A licensed marriage and family therapist;
 5. A physician;
 6. A psychiatrist;
 7. An advanced practice registered nurse;
 8. A physician assistant;
 9. A licensed psychological practitioner;
 10. A certified psychologist with autonomous functioning;
 11. A licensed professional art therapist;
 12. A licensed behavior analyst; or
 13. A behavioral health practitioner under supervision except for a:
 a. Certified alcohol and drug counselor; or
 b. Licensed clinical alcohol and drug counselor associate;
 (j) Peer support, except as established in subsection (3)(a) of this section, provided by:
 1. An adult peer support specialist working under the supervision of an approved behavioral health service provider;
 2. A youth peer support specialist working under the supervision of an approved behavioral health service provider;
 3. A family peer support specialist working under the supervision of an approved behavioral health services provider; or
 4. A registered alcohol and drug peer support specialist working under the supervision of an approved behavioral health

services provider;

(k) ~~Intensive outpatient program services, except as established in subsection (3)(b) of this section, provided by:~~

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A physician assistant;
9. A licensed psychological practitioner;
10. A behavioral health practitioner under supervision, ~~except~~

~~for a licensed assistant behavioral analyst;~~

11. A licensed professional art therapist; or
12. A licensed clinical alcohol and drug counselor; or

(l) ~~Therapeutic rehabilitation program services provided by:~~

1. A licensed psychologist;
2. A licensed professional clinical counselor;
3. A licensed clinical social worker;
4. A licensed marriage and family therapist;
5. A physician;
6. A psychiatrist;
7. An advanced practice registered nurse;
8. A physician assistant;
9. A licensed psychological practitioner;
10. A certified psychologist with autonomous functioning;
11. A licensed professional art therapist;
12. A behavioral health practitioner under supervision ~~except~~

~~for a:~~

- a. Certified alcohol and drug counselor;
- b. Licensed clinical alcohol and drug counselor associate; or
- c. Licensed assistant behavior analyst; or

13. ~~An adult peer support specialist, family peer support specialist, or youth peer support specialist working under the supervision of an approved behavioral health services provider.~~

(3)(a) ~~Peer support shall only be covered if provided by a behavioral health:~~

1. Provider group; or
2. Multi-specialty group.

(b) ~~Intensive outpatient program services shall only be covered if provided by a behavioral health:~~

1. Provider group; or
2. Multi-specialty group].

(3)(4)(a) A screening shall:

1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;
2. Not establish the presence or specific type of disorder; ~~and~~
3. Establish the need for an in-depth assessment;
4. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170;

5. Be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:
 - a. Establish the presence or absence of a mental health disorder, substance use disorder, or co-occurring disorders;
 - b. Determine the individual's readiness for change;
 - c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
 - d. Engage the individual in developing an appropriate treatment relationship;
2. Establish or rule out the existence of a clinical disorder or service need;
3. Include working with the individual to develop a treatment and service plan; ~~and~~
4. Not include psychological or psychiatric evaluations or assessments;
5. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170;

6. If being made for the treatment of a substance use disorder, utilize a multidimensional assessment tool that complies with the most current edition of the ASAM Criteria to determine the most appropriate level of care; and

7. Be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision; ~~except for a certified alcohol and drug counselor~~.

(c) Psychological testing shall:

1. Include:

- a. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and
- b. Interpretation and a written report of testing results; ~~and~~

2. Be performed by an individual who has met the requirements of KRS Chapter 319 related to the necessary credentials to perform psychological testing;

3. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

4. Be provided by:

- a. A licensed psychologist;
- b. A licensed psychological practitioner;
- c. A licensed psychological associate under supervision;
- d. A certified psychologist with autonomous functioning; or
- e. A certified psychologist under supervision.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

- a. The recipient; or
- b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a. [On-site at the provider's office;

b.] As an immediate relief to the presenting problem or threat; and

b. [c.] In a [face-to-face,] one-on-one encounter between the provider and the recipient, which is delivered either face-to-face or [including] via telehealth as appropriate pursuant to 907 KAR 3:170;

4. May include:

- a. Further service prevention planning including:
 - (i) Lethal means reduction for suicide risk; or
 - (ii) Substance use disorder relapse prevention; or
- b. Verbal de-escalation, risk assessment, or cognitive therapy;

~~and~~

5. Shall be followed by a referral to noncrisis services if applicable; ~~and~~

6. Shall be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(e) 1. Service planning shall:

a. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of a mental health disorder, substance use disorder, or co-occurring disorders;

b. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

c. Be performed using a person-centered planning process.

2. A service plan:

- a. Shall be directed and signed by the recipient;
- b. Shall include practitioners of the recipient's choosing; and
- c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. Service planning shall be provided face-to-face.

4. Service planning shall be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under

supervision[, except for a certified alcohol and drug counselor].

(f) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and well-being of the recipient; and

b. Restoration of a recipient to their best possible functional level[Recipient's recovery] from a substance use disorder, mental health disorder, or co-occurring~~[mental health and substance use]~~ disorders;

2. Consist of:

a. A~~[face-to-face,]~~ one-on-one encounter between the provider and the recipient, which is delivered either face-to-face or[including] via telehealth as appropriate pursuant to 907 KAR 3:170; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; [and]

4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision[, except for a certified alcohol and drug counselor].

(g)1. Family outpatient therapy shall consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the recipient; and

(ii) Restoration of a recipient to their best possible functional level[Recipient's recovery] from a substance use disorder, mental health disorder, or co-occurring related disorders;~~[and]~~

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per individual unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision[, except for a certified alcohol and drug counselor].

(h)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and well-being of the recipient; and

(ii) Restoration of a recipient to their best possible functional level[Recipient's recovery] from a substance use disorder, mental health disorder, or co-occurring~~[mental health and substance use]~~ disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:

(i) Of unrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision[, except for a certified alcohol and drug counselor].

(i)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision[, except for a certified alcohol and drug counselor].

(j) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; [and]

2. Consist of:

a. Using a standardized screening tool to assess an individual for risky substance use behavior;

b. Engaging a recipient who demonstrates risky substance use behavior in a short conversation and providing feedback and advice to the recipient; and

c. Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need other additional services to address the recipient's substance use;

3. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

4. Be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(k)1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. A mental health disorder, substance use disorder, or co-occurring~~[mental health and substance use]~~ disorders; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and development stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's individualized education program~~[individual educational plan]~~ if the recipient has an individualized education program~~[individual educational plan]~~;

(iv)~~[Under the supervision of an approved behavioral health practitioner]~~~~[services provider]~~~~;~~~~[and]~~ ~~[(v)]~~ With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

(v)~~[(vi)]~~ Face-to-face.

3. To provide day treatment services, a provider shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of substance use disorders, mental health disorders, and co-occurring disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program~~[plan]~~.

5. Day treatment shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, ~~except for a certified alcohol and drug counselor.~~

6. Day treatment support services conducted by a behavioral health multi-specialty group or a behavioral health provider group by an individual working under the supervision of an approved behavioral health practitioner may be provided by:

a. A registered alcohol and drug peer support specialist;

b. An adult peer support specialist;

c. A family peer support specialist; or

d. A youth peer support specialist.

(l)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in the community;

b. Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's plan of care; and

c. Consist of using a variety of psychiatric or behavioral rehabilitation techniques to:

(i) Improve emotional regulation skills;

(ii) Improve crisis coping skills;

(iii) Develop and enhance interpersonal skills;

(iv) Improve daily living skills; and

(v) Improve self-monitoring of symptoms and side effects.

2. To provide comprehensive community support services, a provider shall:

a. Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services ~~[in accordance with subsection (2)(i) of this section]~~ and to coordinate the provision of services among team members; and

b. Meet the requirements for comprehensive community support services established in 908 KAR 2:250.

3. Comprehensive community support services shall be provided face-to-face.

4. Comprehensive community support services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i) Certified alcohol and drug counselor; or

(ii) Licensed clinical alcohol and drug counselor associate.

5. Support services for comprehensive community support services conducted by a behavioral health multi-specialty group or a behavioral health provider group by an individual working under the supervision of an approved behavioral health practitioner may

be provided by:

a. A community support associate; or

b. A registered ~~behavior~~~~[behavioral]~~ technician under the supervision of a licensed behavioral analyst.

(m)1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(ii) A parent or other family member who has been trained and certified in accordance with 908 KAR 2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change;

(iii) ~~An individual~~~~[A family member]~~ who has been trained and certified in accordance with 908 KAR 2:240 and identified as having experienced as a child or youth an emotional, social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders~~[2:230 of a child having or who has had a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change]; or~~

(iv) A registered alcohol and drug peer support specialist who is experiencing or has experienced a substance use disorder to a recipient by sharing a similar substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Except for the engagement into substance use disorder treatment conducted through emergency department bridge clinics, be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care;~~and]~~

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care; and

h. Be provided face-to-face.

2. To provide peer support services, a provider shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ:

(i) Adult peer support specialists, family peer support specialists, or youth peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240; or

(ii) Registered alcohol and drug peer support specialists who are qualified to provide peer support services in accordance with KRS 309.0831; ~~and]~~

c. Use an approved behavioral health practitioner~~[services provider]~~ to supervise adult peer support specialists, family peer support specialists, or youth peer support specialists; and

d. Require that:

(i) Individuals providing peer support services to recipients provide no more than **thirty (30) hours**~~(one hundred and twenty~~

(120) units] per week of direct recipient contact; and

(ii) Peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at one time.

3. Peer support shall only be covered if provided by a behavioral health:

- a. Provider group; or
- b. Multi-specialty group.

(n)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care [inpatient hospitalization or partial hospitalization] for a mental health or substance use disorder, or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. For an intensive outpatient program providing services for SUD treatment, meet the service criteria including components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided face-to-face;

e. Be provided at least three (3) hours per day at least three (3) days per week for adults;

f. Be provided at least six (6) hours per week for adolescents;
and

g.[d.] Include:

- (i) Individual outpatient therapy;
- (ii) Group outpatient therapy;
- (iii) Family outpatient therapy unless contraindicated;
- (iv) Crisis intervention; or
- (v) Psycho-education, related to identified goals in the recipient's treatment plan.

2. During psycho-education, the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

- a. Be individualized; and
- b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a provider shall:

a. Be employed by a behavioral health multi-specialty group or behavioral health provider group; and

b. Have:

(i) Access to a board-certified or board-eligible psychiatrist for consultation;

(ii) Access to a psychiatrist, other physician, or advanced practice registered nurse for medication management;

(iii) The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(iv) The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members;

(v) The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

(vi) Demonstrated experience in serving individuals with behavioral health disorders;

(vii) The administrative capacity to ensure quality of services;

(viii) A financial management system that provides documentation of services and costs; and

(ix) The capacity to document and maintain individual case records.

5. Intensive outpatient program services shall be provided in a setting with a minimum recipient-to-staff ratio of ten (10) to one (1).

6. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

7. Intensive outpatient program services shall only be covered if provided by a behavioral health:

- a. Provider group; or
- b. Multi-specialty group.

(o)1. Therapeutic rehabilitation program services shall be:

a. Face-to-face, on-site, psychiatric rehabilitation and supports for an individual with a severe and persistent mental illness or an [A] rehabilitative service for an:

(i) Adult with a severe mental illness; or

(ii) individual under the age of twenty-one (21) years who has a severe emotional disability; and

b. Designed to maximize the reduction of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the plan of care.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

- (i) Improving daily living skills;
- (ii) Self-monitoring of symptoms and side effects;
- (iii) Emotional regulation skills;
- (iv) Crisis coping skills; and
- (v) Interpersonal skills; and

c. Be delivered individually or in a group.

4. Therapeutic rehabilitation programs shall include:

a. An individualized plan of care identifying measurable goals and objectives, including a discharge and relapse prevention plan; and

b. Coordination of services the individual may be receiving and referral to other necessary support services as needed.

5. Program staffing for a therapeutic rehabilitation program shall include:

a. Licensed clinical supervision, consultation, and support to direct care staff; and

b. Direct care staff to provide scheduled therapeutic activities, training, and support.

6. Therapeutic rehabilitation services shall be provided by:

a. An approved behavioral health practitioner, except for a:

(i) Licensed behavior analyst; or

(ii) licensed clinical alcohol and drug counselor; or

b. An approved behavioral health practitioner under supervision, except for a:

(i) Licensed assistant behavior analyst;

(ii) Certified alcohol and drug counselor; or

(iii) Licensed clinical alcohol and drug counselor associate.

7. If not provided by an allowed practitioner pursuant to clause 6. of this subparagraph, support services for therapeutic rehabilitation services shall be conducted by a provider:

a. Working under the supervision of an approved behavioral health practitioner; and

b. Who is:

(i) An adult peer support specialist;

(ii) A family peer support specialist; or

(iii) A youth peer support specialist.

(p)1. Withdrawal management services shall:

a. Be provided face-to-face for recipients with a substance use disorder or co-occurring disorder and incorporated into a recipient's care along the continuum of care as needed;

b. Meet service criteria in accordance with the most current version of the ASAM Criteria for withdrawal management levels in an outpatient setting;

c. Be provided by:

(i) A behavioral health multi-specialty group;

(ii) A behavioral health provider group; or

(iii) An approved behavioral health practitioner or behavioral health practitioner under supervision with oversight by a physician, advanced practice registered nurse, or physician assistant; and

d. If provided in an outpatient setting, comply with 908 KAR 1:374, Section 2.

2.a. A recipient who is receiving withdrawal management services shall meet the most current edition of diagnostic criteria for substance withdrawal management as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

3. Withdrawal management services in an outpatient setting shall be provided by:

- a. A physician;
- b. A psychiatrist;
- c. A physician assistant;
- d. An advanced practice registered nurse; or

e. An approved behavioral health practitioner or behavioral health practitioner under supervision with oversight by a physician, advanced practice registered nurse, or physician assistant.

(q)1. Medication assisted treatment services shall be provided by an authorized prescribing provider who:

- a. Is:
 - (i) A physician;
 - (ii) An advanced practice registered nurse; or
 - (iii) A psychiatrist;

b. Meets standards established pursuant to 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products; and

d. Has experience and knowledge in addiction medicine.

2. Medication assisted treatment supporting behavioral health services shall:

a. Be co-located within the same practicing site as the practitioner who maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products or via telehealth as appropriate pursuant to 907 KAR 3:170; or

b. Have agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol and other substance use disorders, such as:

- (i) A licensed behavioral health services organization;
- (ii) A multi-specialty group;
- (iii) A provider group; or
- (iv) An individual behavioral health practitioner.

3. Medication assisted treatment may be provided in a provider group or multi-specialty group operating in accordance with 908 KAR 1:374, Section 7.

4. A medication assisted treatment program shall:

a. Assess the need for treatment including:

(i) A full patient history to determine the severity of the patient's substance use disorder; and

(ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;

b. Educate the patient about how the medication works, including:

- (i) The associated risks and benefits; and
- (ii) Overdose prevention;

c. Evaluate the need for medically managed withdrawal from substances;

d. Refer patients for higher levels of care if necessary; and

e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.

(4)(a) Limited laboratory services shall be reimbursable in accordance with 907 KAR 1:028 when provided by a behavioral health provider group or behavioral health multi-specialty group if:

1. The behavioral health provider group or behavioral health multi-specialty group has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the behavioral health provider group or behavioral health multi-specialty group.

(b) Partial limited laboratory services may be administered, as appropriate, by:

- 1. An approved behavioral health practitioner; or
- 2. An approved behavioral health practitioner under

supervision. [(5) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.

(6) A diagnosis or clinic impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.]

Section 4. Additional Limits and Noncovered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

- (a) A service provided to:
 - 1. A resident of:
 - a. A nursing facility; or
 - b. An intermediate care facility for individuals with an intellectual disability;
 - 2. An inmate of a federal, local, or state:
 - a. Jail;
 - b. Detention center; or
 - c. Prison; or
 - 3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;
- (b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the provider;
- (c) A consultation or educational service provided to a recipient or to others;
- (d) Collateral therapy for an individual aged twenty-one (21) years or older;
- (e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of ["face-to-face"], unless the electronic contact is appropriate as a comparable telehealth service pursuant to 907 KAR 3:170;

- (f) Travel time;
- (g) A field trip;
- (h) A recreational activity;
- (i) A social activity; or
- (j) A physical exercise activity group.

(2)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except regarding collateral outpatient therapy as specified in Section 3(3)[(4)](i) of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(3)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

- 1. Crisis intervention;
- 2. A screening; [or]
- 3. An assessment; or
- 4. Peer support services for the engagement into substance use disorder treatment within an emergency department bridge clinic.

(4) The department shall not reimburse for both a screening and an SBIRT (screening, brief intervention, and referral to treatment for a substance use disorder) provided to a recipient on the same date of service.

(5) A billing supervisor arrangement between a billing supervisor and a behavioral health practitioner under supervision shall not:

- (a) Violate the clinical supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the behavioral health practitioner under supervision; or
- (b) Substitute for the clinical supervision rules or policies of the respective professional licensure boards governing the billing

supervisor and the behavioral health practitioner under supervision.

Section 5. Duplication of Service Prohibited. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an individual behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) An individual provider, a behavioral health provider group, or a behavioral health multi-specialty group shall maintain a current health record for each recipient.

(2)(a) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.~~(b) The individual who provided the service shall date and sign the health record within forty-eight (48) hours of the date that the individual provided the service.~~

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance information;
- f. If applicable, the referral source's name and address;
- g. Primary care physician's name and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;
- i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider's name; and

j. The name of the informant and any other information deemed necessary by the provider to comply with the requirements of:

- (i) This administrative regulation;
- (ii) The provider's licensure board, if applicable;
- (iii) State law; or
- (iv) Federal law;

2. Documentation of the:

- a. Screening;
- b. Assessment;
- c. Disposition if a disposition was performed; and
- d. Six (6) month review of a recipient's plan of care each time a six (6) month review occurs, and as needed;

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

- 1. Maintained in an organized central file;
- 2. Furnished upon request to the:
 - a. Cabinet for Health and Family Services; or
 - b. For an enrollee, managed care organization in which the recipient is enrolled or has been enrolled in the past;
- 3. Made available for inspection and copying by:
 - a. Cabinet for Health and Family Services' personnel; or
 - b. Personnel of the managed care organization in which the recipient is enrolled if applicable;
- 4. Readily accessible; and

5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health practitioner's service notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit;~~and~~

2. Indicate if the service was provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

3. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Behavioral health practitioner's intervention;

c. Changes in the plan of care if changes are made; and

d. Need for continued treatment if deemed necessary.

(b)1. Any edit to notes shall:

a. Clearly display the changes; and

b. Be initialed and dated by the person who edited the notes.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional within thirty (30) days of each service visit.

2. If services are provided by a ~~behavioral health~~ practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervising~~[supervision]~~ professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the behavioral health practitioner who performed the screening shall perform a disposition related to:

(a) A provisional diagnosis;

(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7)(a) A recipient's plan of care shall be reviewed at least once every six (6) months, or as needed earlier than six (6) months.

(b) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. Be dated;

3. Be titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering behavioral health practitioner and include the practitioner's professional title (for example, licensed clinical social worker).

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not coverable under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9) A termination summary shall:

(a) Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

(b) Contain a summary of the significant findings and events during the course of treatment including the:

1. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

2. Final diagnosis of clinical impression; and

3. Individual's condition upon termination and disposition.

(c) A health record relating to an individual who terminated

from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, within ten (10) business days of the transfer or referral, transfer the recipient's health record in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring provider shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

- 1.a. The Health Insurance Portability and Accountability Act;
- b. 42 U.S.C. 1320d-2 to 1320d-8; and
- c. 45 C.F.R. Parts 160 and 164; or
- 2.a. 42 U.S.C. 290ee-3; and
- b. 42 C.F.R. Part 2.

(12)(a) If an individual behavioral health practitioner[provider], a behavioral health provider group's, or a behavioral health multi-specialty group's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, or a licensure suspension, the health records of the individual behavioral health practitioner[provider], behavioral health provider group, or behavioral health multi-specialty group shall:

1. Remain the property of the individual behavioral health practitioner[provider], behavioral health provider group, or behavioral health multi-specialty group; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b)1. If an individual behavioral health practitioner[provider] dies, the health records maintained by the individual behavioral health practitioner[provider] shall remain the property of the individual behavioral health practitioner[provider].

2. An individual behavioral health practitioner[provider] shall have a written plan addressing how to maintain health records following the provider's death in a manner that complies with the retention requirements established in subsection (13) of this section.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health specialty group shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) After a recipient's death or discharge from services, an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall maintain the recipient's record for the longest of the following periods:

1. Five (5) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection[section], pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) An individual behavioral health practitioner[provider], a

behavioral health provider group, or a behavioral health multi-specialty group shall comply with 45 C.F.R. Part[Chapter] 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:

- a. The department;
- b. Federal government; or
- c. For an enrollee, the managed care organization in which the enrollee is enrolled.

(c)1. Upon request, an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall provide to an authorized representative of the department, federal government, or managed care organization if applicable, information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department or the managed care organization, if applicable.

2. Failure to provide information referenced in subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group receives any duplicate payment or overpayment from the department, regardless of reason, the individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection[section] may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the individual behavioral health practitioner[provider], a behavioral health provider group, or behavioral health multi-specialty group.

(b)1. An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group makes the recipient aware in advance of providing the service that the:

- (i) Recipient is liable for the payment; and
- (ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:

- a. Individual behavioral health practitioner[provider], [a] behavioral health provider group, or behavioral health multi-specialty group shall not bill the department for the service; and
- b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the individual behavioral health practitioner[provider], a behavioral health provider group, or behavioral health multi-specialty group regarding the service.

(4)(a) An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall attest by the individual behavioral health practitioner's[provider's] signature or signature of an individual on behalf of a behavioral health provider group or behavioral health multi-specialty group that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee; or
5. United States General Accounting Office or its designee.

(c) If an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the individual behavioral health practitioner[provider], a behavioral health provider group, or behavioral health multi-specialty group shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall result in the suspension or termination of the individual behavioral health practitioner[provider], a behavioral health provider group, or behavioral health multi-specialty group from Medicaid Program participation.

(5)(a) If an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group renders a Medicaid-covered service to a recipient, regardless of if the service is billed through the individual behavioral health practitioner's[provider's], behavioral health provider group's, or behavioral health multi-specialty group's Medicaid provider number or any other entity or individual including a non-Medicaid provider, the recipient shall not be charged or billed for the service.

(b) The department shall terminate from Medicaid Program participation an individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group that:

1. Charges or bills a recipient for a Medicaid-covered service; or
2. Participates in an arrangement in which an entity or individual bills a recipient for a Medicaid-covered service rendered by the individual behavioral health practitioner[provider], a behavioral health provider group, or behavioral health multi-specialty group.

Section 8. Third Party Liability. An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) An individual behavioral health practitioner[provider], a behavioral health provider group, or a behavioral health multi-specialty group that chooses to use electronic signatures shall:

- (a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the practitioner's[provider's] employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

- (b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature; and

- (c) Provide the department, immediately upon request, with:

1. A copy of the individual behavioral health practitioner's[provider's], behavioral health provider group's, or behavioral health multi-specialty group's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

- (1) Claim;

- (2) Medical record; or

- (3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and

- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the requirements for Medicaid Program behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups. These providers are a critical component of Medicaid Program substance use disorder and mental health disorder treatment.

(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 providing Medicaid recipients access to mental health disorder and substance use disorder treatment from individual behavioral health professional practices.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by providing Medicaid recipients access to mental health disorder and substance use disorder treatment from individual behavioral health professional practices.

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

(a) How the amendment will change this existing administrative regulation: The amendments are being promulgated to establish substance use disorder (SUD) treatment guidelines as appropriate to existing services. The amendment changes this administrative regulation by using a defined term to refer to all providers. The amended regulation also allows community support associates to provide services within a behavioral health multi-specialty group, and establishes additional standards for a plan of care. The regulation also requires a behavioral health multi-specialty group that is providing services for substance use disorder treatment to possess an alcohol and other drug entity license, and requires physicians and advance practice registered nurses providing behavioral health services within a behavioral health multi-specialty group to have a psychiatry specialty. In addition, physician assistants are required to have a contractual relationship with a supervising physician with a psychiatry specialty in order to provide behavioral health services within a behavioral health multi-specialty group. The amendment also makes organizational changes by deleting language that listed the service and appropriate provider, this information has now been consolidated and included with the subsection that addresses covered services. Additional changes to the covered services subsection include: requiring an assessment for substance use disorder (SUD) utilize an ASAM Criteria compliant multidimensional assessment tool, clarifying which services may be provided face-to-face or via telehealth, and clarifying how day treatment support services and comprehensive community support services may be provided. In addition, amendments will allow for peer support services to include engagement into SUD treatment within emergency department bridge clinics. Peer support services are also amended to protect peer support specialists by limiting them to 120 units per week of direct recipient contact, and prohibiting peer support services in a group setting from exceeding 8 individuals within any group at one time. Intensive outpatient programs providing services for SUD treatment are now required to meet the most current edition of The ASAM Criteria for intensive outpatient level of care. Therapeutic rehabilitation services are also amended to include additional requirements relating to plans of care, coordination of services, program staffing, and support services. New services and complying requirements that are included in this administrative regulation include withdrawal management services, and medication assisted treatment services requirements. A new subsection allows for certain laboratory services to be reimbursable if provided within a behavioral health multi-specialty group that has an appropriate clinical laboratory improvement amendments (CLIA) certificate.

The Amended After Comments version of the administrative regulation removes a requirement that physicians, advanced practice nurse practitioners, and physician assistants have a psychiatry or addictionology specialty to practice within a multi-specialty group (MSG). This version also allows for independently licensed practitioners to provide services for co-occurring disorders if the substance use disorder diagnosis is secondary to a primary mental health diagnosis, and provides a specific list of qualifying providers. This version also clarifies a requirement for the weekly practice of peer support specialists by requiring that a peer support specialist provide no more than 30 hours of direct contact with patients each week. In addition, certified alcohol and drug counselors are now allowed to provide the following services: assessments, day treatment, individual outpatient therapy, group

therapy, family therapy, collateral therapy, and service planning. The availability or lack of availability of crisis intervention services via telehealth has also been clarified. Finally, Licensed Behavior Analysts and Licensed Assistant Behavior Analysts are now allowed to conduct therapeutic rehabilitation services.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement a SUD 1115 Waiver that is part of the Kentucky HEALTH 1115 Waiver and conforming state plan amendments.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing an approved 1115 Waiver and conforming state plan amendments.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by enhancing Medicaid recipient access to behavioral health services and implementing the approved 1115 Waiver and state plan amendments.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients who qualify for behavioral health services will be affected by this administrative regulation. There are approximately 2,170 individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups enrolled in the Medicaid Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment expands the authorized behavioral health professional base to include community support associates.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No additional costs are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Community support associates will be allowed to bill for services provided to Medicaid recipients.

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

(a) Initially: The department anticipates no additional costs in the implementation of this amendment.

(b) On a continuing basis: The department anticipates no additional costs in the 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 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 is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the requirements apply to all providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(10)(B) and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To

qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations. . . to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Medicaid reimbursement for services is required to be consistent with efficiency, economy and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 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 will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(30)(A).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS does not expect any additional costs in administering these amendments during the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not expect any additional costs in administering these amendments during subsequent years.

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

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Medicaid Services Division of Policy and Operations (Amended After Comments)

907 KAR 15:020. Coverage provisions and requirements regarding services provided by behavioral health services organizations for mental health treatment.

RELATES TO: KRS 205.520, 20 U.S.C. 1400 et seq., 29 U.S.C. 701 et seq., 42 U.S.C. 290 ee-3, 1320d-2 to 1320d-8, 1396a(a)(10)(B), [42 U.S.C.] 1396a(a)(23), 42 C.F.R. Part 2, 431.17, 45 C.F.R. Parts 160, 164

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by tier I behavioral health services organizations.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient service in which the corresponding current procedural terminology code establishes that the recipient is not present; or

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or other kin if the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an[a face-to-face] encounter.

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A behavioral health services organization shall establish a plan of care for each recipient receiving services from the behavioral health services organization.

(b) A plan of care shall meet the plan of care requirements established in 902 KAR 20:430.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a behavioral health services organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b)[~~Except as established in subsection (2) of this section,~~] Be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;
2. Documented~~[Demonstrated]~~ experience in serving individuals with behavioral health disorders;
3. The administrative capacity to ensure quality of services;
4. A financial management system that provides documentation of services and costs; and
5. The capacity to document and maintain individual case records in accordance with Section 6 of this administrative regulation.

~~(2)[In accordance with 907 KAR 17:015, Section 3(3), a behavioral health services organization which provides a service to an enrollee shall not be required to be currently participating in the fee-for-service Medicaid Program.~~

~~(3)] A behavioral health services organization shall:~~

- ~~(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;[and]~~
- ~~(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act; and~~
- ~~(c) Provide, directly or through written agreement with another behavioral health services provider, access to face-to-face or telehealth, as appropriate pursuant to 907 KAR 3:170, emergency services twenty-four (24) hours per day, seven (7) days per week.~~

~~(3) A BHSO I shall:~~

~~(a) Not receive reimbursement for services provided for outpatient or residential substance use disorder treatment, **except as permitted pursuant to Section 3 of this administrative regulation if the primary diagnosis is mental health.**~~

~~(b) Provide services in accordance with its licensure, 902 KAR 20:430, and Section 3 of this administrative regulation for mental health treatment; and~~

~~(c) Possess accreditation within one (1) year of initial enrollment by one (1) of the following:~~

- ~~1. The Joint Commission;~~
- ~~2. The Commission on Accreditation of Rehabilitation Facilities;~~
- ~~3. The Council on Accreditation; or~~
- ~~4. A nationally recognized accreditation organization.~~

Section 3. Covered Services. (1) The following providers shall not be eligible to provide services under this administrative regulation for a BHSO I:

- ~~(a) A licensed clinical alcohol and drug counselor (LCADC);~~
- ~~(b) A licensed clinical alcohol and drug counselor associate (LCADCA);~~
- ~~(c) A certified alcohol and drug counselor (CADC); or~~
- ~~(d) A substance use disorder peer support specialist.~~

~~(2)[A physician providing behavioral health services in a BHSO I shall possess a psychiatric specialty.~~

~~(3) An advanced practice registered nurse providing behavioral health services in a BHSO I shall possess a psychiatric specialty.~~

~~(4) A physician assistant providing behavioral health services in a BHSO I shall have a contractual relationship with a supervising physician who has a psychiatric specialty.~~

~~(5)] Except as specified in the requirements stated for a given service, the services covered may be provided for a:~~

~~(a)]:~~

~~(a)] Mental health disorder; or~~

~~(b) Co-occurring disorders, if the:~~

~~1. Substance use disorder diagnosis is secondary to a primary mental health diagnosis; and~~

~~2. Services are provided by an independently licensed practitioner who could independently practice and provide treatment for a co-occurring disorder. The following qualifying practitioners may provide co-occurring disorder treatment within a BHSO I:~~

~~a. A physician;~~

~~b. A psychiatrist;~~

~~c. An advanced practice registered nurse;~~

~~d. A physician assistant;~~

~~e. A licensed psychologist;~~

f. A licensed psychological practitioner;

g. A certified psychologist with autonomous functioning;

h. A licensed clinical social worker;

i. A licensed professional clinical counselor; or

j. A licensed marriage and family therapist;]

~~(b) Substance use disorder; or~~

~~(c) Co-occurring mental health and substance use disorders].~~

~~(3)[(6)](2)] The[following] services established in this subsection shall be covered under this administrative regulation in accordance with the[corresponding—following] requirements established in this section.[:~~

~~(a) A screening, crisis intervention, or intensive outpatient program service provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A licensed clinical social worker;~~
- ~~4. A licensed professional clinical counselor;~~
- ~~5. A licensed professional art therapist;~~
- ~~6. A licensed marriage and family therapist;~~
- ~~7. A physician;~~
- ~~8. A psychiatrist;~~
- ~~9. An advanced practice registered nurse; or~~
- ~~10. A behavioral health practitioner under supervision except~~

~~for a licensed assistant behavior analyst;~~

~~(b) An assessment provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A licensed clinical social worker;~~
- ~~4. A licensed professional clinical counselor;~~
- ~~5. A licensed professional art therapist;~~
- ~~6. A licensed marriage and family therapist;~~
- ~~7. A physician;~~
- ~~8. A psychiatrist;~~
- ~~9. An advanced practice registered nurse;~~
- ~~10. A licensed behavior analyst; or~~
- ~~11. A behavioral health practitioner under supervision;~~

~~(c) Psychological testing provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological associate working under the supervision of a licensed psychologist; or~~
- ~~3. A licensed psychological practitioner;~~

~~(d) Day treatment, mobile crisis services, or residential services for substance use disorders provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A licensed clinical social worker;~~
- ~~4. A licensed professional clinical counselor;~~
- ~~5. A licensed professional art therapist;~~
- ~~6. A licensed marriage and family therapist;~~
- ~~7. A physician;~~
- ~~8. A psychiatrist;~~
- ~~9. An advanced practice registered nurse;~~
- ~~10. A behavioral health practitioner under supervision except~~

~~for a licensed assistant behavior analyst; or~~

~~11. A peer support specialist working under the supervision of:~~

~~a. An approved behavioral health services provider; or~~

~~b. A certified alcohol and drug counselor;~~

~~(e) Peer support provided by a peer support specialist working under the supervision of:~~

~~1. An approved behavioral health services provider; or~~

~~2. A certified alcohol and drug counselor;~~

~~(f) Individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy provided by:~~

- ~~1. A licensed psychologist;~~
- ~~2. A licensed psychological practitioner;~~
- ~~3. A licensed clinical social worker;~~
- ~~4. A licensed professional clinical counselor;~~
- ~~5. A licensed professional art therapist;~~
- ~~6. A licensed marriage and family therapist;~~
- ~~7. A physician;~~
- ~~8. A psychiatrist;~~
- ~~9. An advanced practice registered nurse;~~
- ~~10. A licensed behavior analyst; or~~

11. A behavioral health practitioner under supervision;
 (g) Family outpatient therapy provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse; or
 10. A behavioral health practitioner under supervision except
 for a licensed assistant behavior analyst;
 (h) Service planning provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A licensed behavior analyst; or
 11. A behavioral health practitioner under supervision except
 for a certified alcohol and drug counselor;
 (i) A screening, brief intervention, and referral to treatment for a
 substance use disorder or SBIRT provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse; or
 10. A behavioral health practitioner under supervision except
 for a licensed assistant behavior analyst;
 (j) Assertive community treatment provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A behavioral health practitioner under supervision except
 for a:
 a. Licensed assistant behavior analyst; or
 b. Certified alcohol and drug counselor;
 11. A peer support specialist working under the supervision of
 an approved behavioral health services provider; or
 12. A community support associate;
 (k) Comprehensive community support services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;
 3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A licensed behavior analyst;
 11. A behavioral health practitioner under supervision except
 for a certified alcohol and drug counselor; or
 12. A community support associate; or
 (l) Therapeutic rehabilitation program services provided by:
 1. A licensed psychologist;
 2. A licensed psychological practitioner;

3. A licensed clinical social worker;
 4. A licensed professional clinical counselor;
 5. A licensed professional art therapist;
 6. A licensed marriage and family therapist;
 7. A physician;
 8. A psychiatrist;
 9. An advanced practice registered nurse;
 10. A behavioral health practitioner under supervision except
 for a:
 a. Licensed assistant behavior analyst; or
 b. Certified alcohol and drug counselor; or
 11. A peer support specialist working under the supervision of
 an approved behavioral health services provider.
 (3)(a) A screening shall:
 1. ~~Determine~~Be the determination of the likelihood that an
 individual has a mental health disorder, substance use disorder, or
 co-occurring disorders;
 2. Not establish the presence or specific type of disorder;[and]
 3. Establish the need for an in-depth assessment;
 4. Be face-to-face or via telehealth, as appropriate pursuant to
907 KAR 3:170; and
 5. Be provided by:
a. An approved behavioral health practitioner; or
b. An approved behavioral health practitioner under
supervision.
 (b) An assessment shall:
 1. Include gathering information and engaging in a process
 with the individual that enables the practitioner to:
 a. Establish the presence or absence of a mental health
 disorder, substance use disorder, or co-occurring disorders;
 substance use disorder, or co-occurring disorders];
 b. Determine the individual's readiness for change;
 c. Identify the individual's strengths or problem areas that may
 affect the treatment and recovery processes; and
 d. Engage the individual in developing an appropriate
 treatment relationship;
 2. Establish or rule out the existence of a clinical disorder or
 service need;
 3. Include working with the individual to develop a plan of care;
[and]
 4. Not include psychological or psychiatric evaluations or
 assessments;
 5. Be face-to-face or via telehealth as appropriate pursuant to
907 KAR 3:170; and
 6. Be provided by:
a. An approved behavioral health practitioner; or
b. An approved behavioral health practitioner under
supervision.
 (c) 1. Psychological testing shall include:
a. [1.] A psychodiagnostic assessment of personality,
psychopathology, emotionality, or intellectual disabilities; and
b. [2.] Interpretation and a written report of testing results.
2. Psychological testing shall be provided face-to-face or via
telehealth as appropriate pursuant to 907 KAR 3:170.
3. Psychological testing shall be provided by:
a. A licensed psychologist;
b. A certified psychologist with autonomous functioning;
c. A licensed psychological practitioner;
d. A certified psychologist under supervision; or
e. A licensed psychological associate under supervision.
 (d) Crisis intervention:
 1. Shall be a therapeutic intervention for the purpose of
 immediately reducing or eliminating the risk of physical or
 emotional harm to:
 a. The recipient; or
 b. Another individual;
 2. Shall consist of clinical intervention and support services
 necessary to provide integrated crisis response, crisis stabilization
 interventions, or crisis prevention activities for individuals;
 3. Shall be provided:
 a. ~~On-site at the behavioral health services organization's~~
office;
 b. ~~As an immediate relief to the presenting problem or threat;~~

and

b.[c.] In a[face-to-face,] one (1) on one (1) encounter between the provider and the recipient, **which is delivered either face-to-face or as a comparable service provided via telehealth as appropriate pursuant to 907 KAR 3:170;**

4. Shall be followed by a referral to non-crisis services if applicable;[and]

5. May include:

a. Further service prevention planning including[:

(i) lethal means reduction for suicide risk[; or

(ii) Substance use disorder relapse prevention]; or

b. Verbal de-escalation, risk assessment, or cognitive therapy;

and

6. Shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(e) Mobile crisis services shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;

2. Be provided for a duration of less than twenty-four (24) hours;

3. Not be an overnight service;

4. Be provided via face-to-face contact~~for telehealth, as appropriate pursuant to 907 KAR 3:170,~~ by a multi-disciplinary team based intervention in a home or community setting that ensures access to mental health~~and substance use disorder~~ services and supports to:

a. [(i)] Reduce symptoms or harm; or

b. [(ii)] Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;

5. Involve all services and supports necessary to provide:

a. Integrated crisis prevention;

b. Assessment and disposition;

c. Intervention;

d. Continuity of care recommendations; and

e. Follow-up services; [and]

6. Be provided face-to-face in a home or community setting;

7. Include access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and

8. Be provided by:

a. An approved behavioral health practitioner;

b. An approved behavioral health practitioner under supervision; or

c. A peer support specialist who:

(i) Is under the supervision of an approved behavioral health practitioner; and

(ii) Provides support services under this paragraph.

(f) 1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:

a. A mental health disorder[, substance use disorder, or co-occurring mental health and substance use disorders]; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services;

b. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skills training;

(iii) Independent living skills that correlate to the age and developmental stage of the recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

c. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled school breaks;

(iii) In coordination with the recipient's individualized education program[educational plan] or Section 504 plan if the recipient has an individualized education program[educational plan] or Section 504 plan;

(iv) Under the supervision of an approved[a licensed or certified] behavioral health practitioner or an approved[a] behavioral health practitioner [working] under [clinical] supervision;[and]

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider; and

(vi) Face-to-face.

3. To provide day treatment services, a behavioral health services organization shall have:

a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and

b. Knowledge of mental health[substance use] disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program[plan] or Section 504 plan.

5.a. Day treatment shall be provided by:

(i) An approved behavioral health practitioner; or

(ii) An approved behavioral health practitioner under supervision.

b. A peer support specialist working under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.

(g) 1. Peer support services shall:

a. Be emotional support that is provided by:

(i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a mental health disorder[, substance use disorder, or co-occurring mental health and substance use disorders] to a recipient by sharing a similar mental health disorder[, substance use disorder, or co-occurring mental health and substance use disorders] in order to bring about a desired social or personal change;

(ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a mental health disorder[, substance use, or co-occurring mental health and substance use disorders] to a parent or family member of a child sharing a similar mental health disorder[, substance use, or co-occurring mental health and substance use disorders] in order to bring about a desired social or personal change; or

(iii) An individual[A family member], who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing as a child or youth an emotional, social, or behavioral disorder that is defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders[2:230, of a child having or who has had a mental health, substance use, or co-occurring mental health and substance use disorders to a parent or family member of a child sharing a similar mental health, substance use, or co-occurring mental health and substance use disorders in order to bring about a desired social or personal change];

b. Be an evidence-based practice;

c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;

d. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;

e. Be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;

f. Be identified in each recipient's plan of care;[and]

g. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care; and

h. Be provided face-to-face.

2. To provide peer support services, a behavioral health services organization shall:

a. Have demonstrated:

(i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and

(ii) Experience in serving individuals with behavioral health disorders;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, or 908 KAR 2:240;

c. Use an approved behavioral health practitioner~~[services provider or certified alcohol and drug counselor]~~ to supervise peer support specialists;

d. Have the capacity to coordinate the provision of services among team members;~~[and]~~

e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients to provide no more than **thirty (30) hours**~~[120 units]~~ per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at a time.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care~~[inpatient hospitalization or partial hospitalization]~~ for a mental health disorder~~[- substance use disorder, or co-occurring disorders];~~

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week for adults; ~~[and]~~

d. Be provided at least six (6) hours per week for adolescents;

e. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan; and

f. Be provided face-to-face.

2. During psycho-education, the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, except for a licensed behavior analyst; or

b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Restoration of a recipient to the recipient's best possible functional level~~[Recovery]~~ from a~~[substance use disorder,]~~ mental health disorder~~[- or co-occurring mental health and substance use disorders];~~

2. Consist of:

a. A~~[face-to-face,]~~ one (1) on one (1) encounter between the provider and recipient, **which is delivered either face-to-face or provided via telehealth as appropriate pursuant to 907 KAR 3:170;** and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; ~~[and]~~

4. Not exceed three (3) hours per day, alone or in combination with any other outpatient therapy per recipient, unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Restoration of a recipient to the recipient's best possible functional level~~[Recovery]~~ from a~~[substance use disorder,]~~ mental health disorder~~[- or co-occurring mental health and substance use disorders];~~

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day, alone or in combination with any other outpatient therapy, per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.

(k)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention or occur via telehealth as appropriate pursuant to 907 KAR 3:170, provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

- (i) Health and wellbeing of the individual; or
- (ii) Restoration of a recipient to the recipient's best possible functional level[Recovery] from a[substance use disorder,] mental health disorder[, or co-occurring mental health and substance use disorders]; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient[individual] unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(l)1. Collateral outpatient therapy shall:

occur via telehealth as appropriate pursuant to 907 KAR 3:170:

- (i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and
- (ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age; and

c. ~~Not exceed three (3) hours per day per individual unless additional time is medically necessary].~~

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(m)1. Service planning shall:

- a. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of a mental health disorder;
- b. Involve restoring a recipient's functional level to the recipient's best possible functional level; [and]
- c. Be performed using a person-centered planning process; and
- d. Be provided face-to-face.

2. A service plan:

- a. Shall be directed and signed by the recipient;
- b. Shall include practitioners of the recipient's choosing; and
- c. May include:

- (i) A mental health advance directive being filed with a local hospital;
- (ii) A crisis plan; or
- (iii) A relapse prevention strategy or plan.

3. Service planning shall be provided by:

- a. An approved behavioral health practitioner; or
- b. An approved behavioral health practitioner under supervision.

(n) **Screening, brief intervention, and referral to treatment for a substance use disorder shall:**

1. **Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment;**
2. **Consist of:**
 - a. **Using a standardized screening tool to assess an individual for risky substance use behavior;**
 - b. **Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and**
 - c. **Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address substance use; and**
3. **Be provided by:**
 - a. **An approved behavioral health practitioner; or**

b. An approved behavioral health practitioner under supervision.

(o)1. Residential services for substance use disorders shall:

- a. ~~Be provided in a twenty-four (24) hour per day unit that is a live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring mental health and substance use disorders;~~
- b. ~~Be short or long-term to provide intensive treatment and skills building in a structured and supportive environment;~~
- c. ~~Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;~~
- d. ~~Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug or alcohol-free;~~
- e. ~~Be provided under the medical direction of a physician;~~
- f. ~~Provide continuous nursing services in which a registered nurse shall be:~~
 - (i) ~~On-site during traditional first shift hours, Monday through Friday;~~
 - (ii) ~~Continuously available by phone after hours; and~~
 - (iii) ~~On-site as needed in follow-up to telephone consultation after hours;~~
- g. ~~Be based on individual need and may include:~~
 - (i) ~~A screening;~~
 - (ii) ~~An assessment;~~
 - (iii) ~~Service planning;~~
 - (iv) ~~Individual outpatient therapy;~~
 - (v) ~~Group outpatient therapy;~~
 - (vi) ~~Family outpatient therapy; or~~
 - (vii) ~~Peer support; and~~
- h. ~~Be provided in accordance with 908 KAR 1:370.~~

2.a. ~~Except as established in clause b of this subparagraph, the physical structure in which residential services for substance use disorders is provided shall:~~

- (i) ~~Have between nine (9) and sixteen (16) beds; and~~
- (ii) ~~Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.~~

b. ~~If every recipient receiving services in the physical structure is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in clause a of this subparagraph shall not apply.~~

3. ~~A short-term length-of-stay for residential services for substance use disorders:~~

- a. ~~Shall be less than thirty (30) days in duration;~~
- b. ~~Shall include planned clinical program activities constituting at least fifteen (15) hours per week of structured professionally-directed treatment activities to:~~
 - (i) ~~Stabilize a recipient's substance use disorder; and~~
 - (ii) ~~Help the recipient develop and apply recovery skills; and~~
- c. ~~May include the services listed in subparagraph 1.g. of this paragraph.~~

4. ~~A long-term length-of-stay for residential services for substance use disorders:~~

- a. ~~Shall be between thirty (30) days and ninety (90) days in duration;~~
- b. ~~Shall include planned clinical program activities constituting at least forty (40) hours per week of structured professionally-directed treatment activities to:~~
 - (i) ~~Stabilize a recipient's substance use disorder; and~~
 - (ii) ~~Help the recipient develop and apply recovery skills; and~~
- c. ~~May include the services listed in subparagraph 1.g. of this paragraph.~~

5. ~~Residential services for substance use disorders shall not include:~~

- a. ~~Room and board;~~
- b. ~~Educational services;~~
- c. ~~Vocational services;~~
- d. ~~Job training services;~~
- e. ~~Habilitation services;~~
- f. ~~Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;~~
- g. ~~Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;~~
- h. ~~Recreational activities;~~

i. Social activities; or
j. ~~Services required to be covered elsewhere in the Medicaid state plan.~~

6. ~~To provide residential services for substance use disorders, a behavioral health services organization shall:~~

a. ~~Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members; and~~

b. ~~Be licensed as a non-medical and non-hospital based alcohol and other drug abuse treatment program in accordance with 908 KAR 1:370.~~

(c) ~~Screening, brief intervention, and referral to treatment for a substance use disorder shall:~~

1. ~~Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and~~

2. ~~Consist of:~~

a. ~~Using a standardized screening tool to assess an individual for risky substance use behavior;~~

b. ~~Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and~~

c. ~~Referring a recipient to additional mental health disorder, substance use disorder, or co-occurring disorders services if the recipient is determined to need additional services to address substance use.~~

(p)1. ~~Assertive community treatment shall:~~

a. ~~Be an evidence-based psychiatric rehabilitation practice that provides a comprehensive approach to service delivery for individuals with a serious mental illness; and~~

b. ~~Include:~~

(i) ~~Assessment;~~

(ii) ~~Treatment planning;~~

(iii) ~~Case management;~~

(iv) ~~Psychiatric services;~~

(v) ~~Medication prescribing and monitoring;~~

(vi) ~~Individual outpatient therapy;~~

(vii) ~~Family outpatient therapy;~~

(viii) ~~Group outpatient therapy;~~

(ix) ~~Mobile crisis services;~~

(x) ~~Crisis intervention;~~

(xi) ~~Mental health consultation; or~~

(xii) ~~Family support and basic living skills; and~~

c. ~~Be provided face-to-face.~~

2.a. ~~Mental health consultation shall involve brief, collateral interactions with other treating professionals who may have information for the purpose of treatment planning and service delivery.~~

b. ~~Family support shall involve the assertive community treatment team's working with the recipient's natural support systems to improve family relations in order to:~~

(i) ~~Reduce conflict; and~~

(ii) ~~Increase the recipient's autonomy and independent functioning.~~

c. ~~Basic living skills shall be rehabilitative services focused on teaching activities of daily living necessary to maintain independent functioning and community living.~~

3. ~~To provide assertive community treatment services, a behavioral health services organization shall:~~

a. ~~Employ at least one (1) team of multidisciplinary professionals:~~

(i) ~~Led by an approved behavioral health services practitioner/provider; and~~

(ii) ~~Comprised of at least four (4) full-time equivalents including a prescriber, a nurse, an approved behavioral health services practitioner/provider, or a case manager, or a co-occurring disorder specialist;~~

b. ~~Have adequate staffing to ensure that a team's caseload size shall not exceed ten (10) participants per team member (for example, if the team includes five (5) individuals, the caseload for the team shall not exceed fifty (50) recipients);~~

c. ~~Have the capacity to:~~

(i) ~~Employ staff authorized to provide assertive community treatment services in accordance with this paragraph;~~

(ii) ~~Coordinate the provision of services among team members;~~

(iii) ~~Provide the full range of assertive community treatment services as stated in this paragraph; and~~

(iv) ~~Document and maintain individual case records; and~~

d. ~~Demonstrate experience in serving individuals with persistent and serious mental illness who have difficulty living independently in the community.~~

4. ~~Assertive community treatment shall be provided by:~~

a. ~~An approved behavioral health practitioner; or~~

b. ~~An approved behavioral health practitioner under supervision.~~

5.a. ~~A peer support specialist under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.~~

b. ~~A community support associate under supervision of an approved behavioral health practitioner may provide support services under this paragraph.~~

(p)(e)(4)1. ~~Comprehensive community support services shall:~~

a. ~~Be activities necessary to allow an individual to live with maximum independence in the community;~~

b. ~~Be intended to ensure successful community living through the utilization of skills training as identified in the recipient's plan of care; and~~

c. ~~Consist of using a variety of psychiatric rehabilitation techniques to:~~

(i) ~~Improve daily living skills;~~

(ii) ~~Improve self-monitoring of symptoms and side effects;~~

(iii) ~~Improve emotional regulation skills;~~

(iv) ~~Improve crisis coping skills; and~~

(v) ~~Develop and enhance interpersonal skills; and~~

d. ~~Be provided face-to-face.~~

2. ~~To provide comprehensive community support services, a behavioral health services organization shall:~~

a. ~~Have the capacity to employ staff authorized pursuant to 908 KAR 2:250 to provide comprehensive community support services [in accordance with subsection (2)(k) of this section] and to coordinate the provision of services among team members; and~~

b. ~~Meet the requirements for comprehensive community support services established in 908 KAR 2:250.~~

3. ~~Comprehensive community support services shall be provided by:~~

a. ~~An approved behavioral health practitioner; or~~

b. ~~An approved behavioral health practitioner under supervision.~~

4.a. ~~A community support associate under supervision of an approved behavioral health practitioner may provide support services under this paragraph.~~

b. ~~A registered behavior[behavioral] technician under the supervision of a licensed behavior analyst may provide support services under this paragraph.~~

(q)(b)(1)1. ~~Therapeutic rehabilitation program services shall be:~~

a. ~~A rehabilitative service for an:~~

(i) ~~Adult with a serious mental illness; or~~

(ii) ~~Individual under the age of twenty-one (21) years who has a serious emotional disability; and~~

b. ~~Designed to maximize the reduction of the effects of a mental health disorder and the restoration of the individual's functional level to the individual's best possible functional level; and~~

c. ~~Provided face-to-face.~~

2. ~~A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.~~

3. ~~A therapeutic rehabilitation program shall:~~

a. ~~Provide face-to-face, on-site psychiatric rehabilitation and supports;~~

b. ~~Be delivered using a variety of psychiatric rehabilitation techniques;~~

c. ~~Focus on:~~

(i) Improving daily living skills;
 (ii) Self-monitoring of symptoms and side effects;
 (iii) Emotional regulation skills;
 (iv) Crisis coping skill; and
 (v) Interpersonal skills; ~~and~~
d.[c.] Be delivered individually or in a group; and
e. Include:
(i) An individualized plan of care identifying measurable goals and objectives including discharge and relapse prevention planning;
(ii) Coordination of services the individual may be receiving; and
(iii) Referral to other necessary service supports as needed.
4. Therapeutic rehabilitation staffing shall include:
a. Licensed clinical supervision, consultation, and support to direct care staff; and
b. Direct care staff to provide scheduled therapeutic activities, training, and support for Medicaid recipients.
5. Therapeutic rehabilitation program services shall be provided by:
a. An approved behavioral health practitioner, except for a licensed behavior analyst; or
b. An approved behavioral health practitioner under supervision, except for a licensed assistant behavior analyst.
6. A peer support specialist working under the supervision of an approved behavioral health practitioner may provide support services under this paragraph.
(r)(g) 1. Partial hospitalization services shall be:
a. Short-term with an average of four (4) to six (6) weeks;
b. Less than twenty-four (24)-hours each day; and
c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a mental health disorder.
2. Partial hospitalization may be provided to an adult or a minor.
3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.
4. A partial hospitalization program shall consist of:
a. Individual outpatient therapy;
b. Group outpatient therapy;
c. Family outpatient therapy; or
d. Medication management.
5. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.
6. An outpatient behavioral health services organization's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.
7. Partial hospitalization shall be:
a. Provided for at least four (4) hours per day; ~~and~~
b. Focused on one (1) primary presenting problem; and
c. Provided face-to-face.
8. A partial hospitalization program operated by a behavioral health services organization shall:
a. Include the following personnel for the purpose of providing medical care:
(i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and
(ii) A board-certified or board-eligible psychiatrist available for consultation; and
b. Have the capacity to:
(i) Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;
(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and
(iii) Provide the full range of services included in the scope of partial hospitalization established in this paragraph.
9. Partial hospitalization services shall be provided by:
a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision.
[(4) The extent and type of a screening shall depend upon the problem of the individual seeking or being referred for services.
(5) A diagnosis or clinical impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.
(6) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.]

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;
2. Crisis intervention;
3. A screening; or
4. An assessment.

(2) ~~For a recipient who is receiving residential services for substance use disorders, the following shall not be billed or reimbursed for the same date of service for the recipient:~~

- (a) A screening;
- (b) An assessment;
- (c) Service planning;
- (d) A psychiatric service;
- (e) Individual outpatient therapy;
- (f) Group outpatient therapy;
- (g) Family outpatient therapy; or
- (h) Peer support services.

(3) For a recipient who is receiving assertive community treatment, the following shall not be billed or reimbursed for the same date of service for the recipient:

- (a) An assessment;
- (b) Case management;
- (c) Individual outpatient therapy;
- (d) Group outpatient therapy;
- (e) Peer support services; or
- (f) Mobile crisis services.

(3) [(4)] The department shall not reimburse for both a screening provided pursuant to this administrative regulation and a screening, brief intervention and referral to treatment (SBIRT) [an SBIRT] provided [pursuant to 907 KAR 15:022] to a recipient on the same date of service.

(4) [(5)] The following services or activities shall not be covered under this administrative regulation:

- (a) A service provided to:
 1. A resident of:
 - a. A nursing facility; or
 - b. An intermediate care facility for individuals with an intellectual disability;
 2. An inmate of a federal, local, or state:
 - a. Jail;
 - b. Detention center; or
 - c. Prison; or
 3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;
- (b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;
- (c) A consultation or educational service provided to a recipient or to others;
- (d) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face" established in 907 KAR 15:005, Section 1(21). Contact prohibited under subparagraph 1. of this paragraph may be permissible if it is conducted in the course of a telehealth service permitted pursuant to 907 KAR 3:170 or this administrative regulation, as applicable[(44)];

- (e) Travel time;
- (f) A field trip;
- (g) A recreational activity;
- (h) A social activity; or
- (i) A physical exercise activity group.

(5)(6)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section 3(3)(6)(3)(l)1_ of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(6)(7) A billing supervisor arrangement between a billing supervisor and an approved(a) behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the approved behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A behavioral health services organization shall maintain a current health record for each recipient.

(2)(a) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service. ~~(b) The individual who provided the service shall date and sign the health record on the date that the individual provided the service except as established in subsection (5)(a) of this section.~~

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

- a. Name;
- b. Social Security number;
- c. Date of intake;
- d. Home (legal) address;
- e. Health insurance or Medicaid information;
- f. Referral source and address of referral source;
- g. Primary care physician and address;
- h. The reason the individual is seeking help including the presenting problem and diagnosis;

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider; and

j. The name of the informant and any other information deemed necessary by the behavioral health services organization to comply with the requirements of:

(i) This administrative regulation;

(ii) The behavioral health services organization's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

- a. Screening;
 - b. Assessment if an assessment was performed; and
 - c. Disposition if a disposition was performed;
3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services; and

(b) Be:

- 1. Maintained in an organized central file;
- 2. Furnished to the:
 - a. Cabinet for Health and Family Services upon request; or
 - b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;
- 3. Made available for inspection and copying by:
 - a. Cabinet for Health and Family Services' personnel; or
 - b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;
- 4. Readily accessible; and
- 5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A behavioral health services organization's service note(notes) regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit; ~~and~~

2. Indicate if the service was provided face-to-face or via telehealth; and

3. Describe the:

- a. Recipient's symptoms or behavior, reaction to treatment, and attitude;
- b. Therapist's intervention;
- c. Changes in the plan of care if changes are made; and
- d. Need for continued treatment if continued treatment is needed.

(b)1. Any edit to notes shall:

- a. Clearly display the changes; and
 - b. Be initialed and dated by the person who edited the notes.
2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by an approved(a) behavioral health practitioner ~~[working]~~ under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.

2. If services are provided by an approved(a) behavioral health practitioner ~~[working]~~ under supervision, there shall be a monthly supervisory note recorded by the supervising professional reflecting consultations with the approved behavioral health practitioner ~~[working]~~ under supervision concerning the:

- a. Case; and
- b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

- (a) A provisional diagnosis;
- (b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

- 1. Be organized in chronological order;
- 2. Be dated;
- 3. Be titled to indicate the service rendered;
- 4. State a starting and ending time for the service; and
- 5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and
2. Not be reimbursable.

(9)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and
2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;

b. Final diagnosis of clinical impression; and

c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring behavioral health services organization shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;

b. 42 U.S.C. 1320d-2 to 1320d-8; and

c. 45 C.F.R. Parts 160 and 164; or

2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R. Part 2.

(12)(a) If a behavioral health services organization's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the behavioral health services organization shall:

1. Remain the property of the behavioral health services organization; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a behavioral health services organization shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or

2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A behavioral health services organization shall comply

with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;

2. Not be disclosed to an unauthorized individual; and

3. Be disclosed to an authorized representative of:

a. The department; or

b. Federal government.

(c)1. Upon request, a behavioral health services organization shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service; and

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information required by subparagraph 1₂ of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A behavioral health services organization shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the behavioral health services organization accepts the payment:

1. The payment shall be considered payment in full;

2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the behavioral health services organization.

(b)1. A behavioral health services organization may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Behavioral health services organization makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1₂ of this paragraph, the:

a. Behavioral health services organization shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the behavioral health services organization regarding the service.

(4)(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee; or

5. United States General Accounting Office or its designee.

(c) If a behavioral health services organization receives a request from the department to provide a claim, related

information, related documentation, or record for auditing purposes, the behavioral health services organization shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a behavioral health services organization shall result in the suspension or termination of the behavioral health services organization from Medicaid Program participation.

Section 8. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A behavioral health services organization that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the behavioral health services organization's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the behavioral health services organization's electronic signature policy;

2. The signed consent form; and

3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by Tier I behavioral health services organizations (BHSO I). A BHSO I is an entity that provides treatment for mental health and is licensed and regulated by the Office of Inspector General in accordance with 902 KAR 20:430. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; partial hospitalization; assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.6311, which mandates that Kentucky's Medicaid Program "expand the behavioral health network to allow providers to provide services within their licensure category."

(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 expanding "the behavioral health network to allow providers to provide services within their licensure category."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by expanding "the behavioral health network to allow providers to provide services within their licensure category."

(2) If 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 include establishing the first tier, of what will be a 3-tiered division of BHSO services. The new tiers will divide BHSO services provided for non-substance use disorder (SUD) treatment services, outpatient SUD treatment services, and residential SUD treatment services. Each tier will require different licensure. The amendments to the administrative regulation require that a BHSO I only provide mental health treatment, and not SUD treatment. Accreditation is now required within one year of initial enrollment. In addition, certain types of providers and support staff are not allowed to practice within a BHSO I. The amendments also better refer to the defined terms of an "approved behavioral health practitioner" or an "approved behavioral health practitioner under supervision", and these terms now include certain additional practitioners. The amendments also require physicians and advance practice registered nurses providing behavioral health services within a BHSO I to have a psychiatric specialty. Physician assistants are now required to have a contractual relationship with a supervising physician with a psychiatric specialty in order to provide behavioral health services within a BHSO I. The amendments further clarify that face-to-face contact between the provider and recipient is not required for family therapy which involves informing family members (in the absence of the recipient) regarding the recipient's psychological testing and service planning. The amendments further clarify that the three (3) hour per day limit regarding individual outpatient therapy, group outpatient therapy, and family outpatient therapy applies to each service or any combination of the therapies in aggregate. The amendments also make organizational changes by deleting language that listed the service and appropriate provider, this information has now been consolidated and included with the subsection that addresses covered services.

The Amended After Comments version of the administrative regulation removes a requirement that physicians, advanced practice nurse practitioners, and physician assistants have a

psychiatry or addictionology specialty to practice within a multi-specialty group (MSG). This version also allows for independently licensed practitioners to provide services for co-occurring disorders if the substance use disorder diagnosis is secondary to a primary mental health diagnosis, and provides a specific list of qualifying providers. This version also clarifies a requirement for the weekly practice of peer support specialists by requiring that a peer support specialist provide no more than 30 hours of direct contact with patients each week. The subject matter of assessments has also been clarified. The availability or lack of availability of crisis intervention and mobile crisis services via telehealth has also been clarified. Finally, the service category of a screening, brief intervention, and referral to treatment for a substance use disorder has been restored as an available service within this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to increase treatment licensure and quality standards as a part of a cabinet-wide process mandated by HB 124 of the 2018 Regular Session. Additional clarifications relating to face-to-face contact for family therapy, psychological testing, and service planning were necessary to reflect that these services may be conducted without the recipient present. Clarifying that the three (3) hour limit regarding individual outpatient therapy, group outpatient therapy, and family outpatient therapy is an aggregate as well as individual service limit is necessary for clarity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by enhancing and ensuring that licensure standards and SUD treatment meet a standard established by HB 124 of the 2018 Regular Session, in addition, the amendments help meet recipient demand as well as conforms to the content of KRS 205.6311(2).

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the authorizing statutes by implementing part of a tiering process of BHSOs according to the licensure and type of services provided, and by enabling additional practitioners throughout the new tiers to provide services to help meet recipient demand. In addition, the amendments will assist with conforming to the content of KRS 205.6311(2).

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: There are currently 134 entities licensed as behavioral health services organizations that will be affected by this administrative regulation. Medicaid recipients in need of substance use treatment, mental health treatment, or treatment for a co-occurring disorder will also be affected by the amendment. There are currently 1.4 million individuals enrolled in the Medicaid program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Providers that plan to provide non-SUD treatment will need to only attain or retain BHSO licensure. In addition, BHSOs will need to ensure that the appropriate services are provided by the appropriate provider.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Entities that only provide non-SUD treatment services will only need to attain or retain BHSO licensure.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid recipients in need of mental health treatment that does not include SUD treatment will have access to a broad range of mental health treatment. Facilities may provide many services with no need for dual licensure due to these changes. Currently there are 1.4 million Kentuckians receiving Medicaid services.

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

(a) Initially: DMS does not anticipate additional costs as a result of the amendments to this administrative regulation.

(b) On a continuing basis: DMS does not anticipate additional costs as a result of the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

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 will be affected by the amendment to this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

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

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

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

(c) How much will it cost to administer this program for the first year? DMS does not expect any additional costs in administering these amendments during the first year.

(d) How much will it cost to administer this program for subsequent years? DMS does not expect any additional costs in administering these amendments during subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amended After Comments)

907 KAR 15:022. Coverage provisions and requirements regarding services provided by behavioral health services organizations for substance use disorder treatment and co-occurring disorders.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 1396a(a)(23), 12101

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

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by tier II and III behavioral health services organizations.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary; and

(b) Provided:

1. To a recipient; and

2. By a behavioral health services organization that meets the provider participation requirements established in Section 2 of this administrative regulation.

(2)(a) Direct contact between a practitioner and a recipient shall be required for each service except for:

1. Collateral outpatient therapy for a child under the age of twenty-one (21) years if the collateral outpatient therapy is in the child's plan of care;

2. A family outpatient service in which the corresponding current procedural terminology code establishes that the recipient is not present; or

3. A psychological testing service comprised of interpreting or explaining results of an examination or data to family members or other kin if the corresponding current procedural terminology code establishes that the recipient is not present.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in an encounter.

(4) A service shall be:

(a) Stated in the recipient's plan of care; and

(b) Provided in accordance with the recipient's plan of care.

(5)(a) A behavioral health services organization shall establish a plan of care for each recipient receiving services from the behavioral health services organization.

(b) A plan of care shall meet the plan of care requirements established in 908 KAR 1:370, Section 19.

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation, a behavioral health services organization shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;

(b) Be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and

(c) Have:

1. For each service it provides, the capacity to provide the full range of the service as established in this administrative regulation;

2. Documented experience in serving individuals with substance use disorders;

3. The administrative capacity to ensure quality of services;

4. A financial management system that provides documentation of services and costs; and

5. The capacity to document and maintain individual case records.

(2) A behavioral health services organization shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability;

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act; and

(c) Provide, directly or through written agreement with another behavioral health services provider, access to face-to-face or telehealth, as appropriate pursuant to 907 KAR 3:170, emergency services twenty-four (24) hours per day, seven (7) days per week.

(3)(a) Each behavioral health services organization II (BHSO II) shall provide services in accordance with 908 KAR 1:374 and this administrative regulation for outpatient substance use disorder services and co-occurring disorders.

(b) Each behavioral health services organization III (BHSO III) shall provide services in accordance with 908 KAR 1:372 and this administrative regulation for residential substance use disorder services and co-occurring disorders.

(4) A BHSO II shall:

(a) Possess an outpatient alcohol and other drug treatment entity (AODE) license issued pursuant to 908 KAR 1:370 and 908 KAR 1:374;

(b) Possess accreditation within one (1) year of initial enrollment by one (1) of the following:

1. The Joint Commission;

2. The Commission on Accreditation of Rehabilitation Facilities;

3. The Council on Accreditation; or

4. A nationally recognized accreditation organization; and

(c) Be authorized to provide outpatient substance use disorder treatment services authorized by Section 3 of this administrative regulation to treat substance use disorders and co-occurring disorders by the appropriate provider.

(5) A BHSO III shall:

(a) Possess a residential alcohol and other drug treatment entity (AODE) license issued pursuant to 908 KAR 1:370 and 908 KAR 1:372;

(b) Possess accreditation within one (1) year of initial enrollment by one (1) of the following:

1. The Joint Commission;
2. The Commission on Accreditation of Rehabilitation Facilities;
3. The Council on Accreditation; or
4. A nationally recognized accreditation organization; and

(c) Be authorized to provide residential substance use disorder treatment services authorized by Section 3 of this administrative regulation to treat substance use disorders and co-occurring disorders by the appropriate provider.

Section 3. Covered Services.

~~(1)(a) A physician providing services in a BHSO II shall possess:~~

- ~~1. A psychiatric specialty; or~~
- ~~2. An addictionology specialty.~~

~~(b) An advanced practice registered nurse providing services in a BHSO II shall possess:~~

- ~~1. A psychiatric specialty; or~~
- ~~2. An addictionology specialty.~~

~~(c) A physician assistant providing behavioral health services in a BHSO II shall have a contractual relationship with a supervising physician with:~~

- ~~1. A psychiatric specialty; or~~
- ~~2. An addictionology specialty.~~

~~(2)] Reimbursement shall not be available for services performed within a BHSO II by a:~~

- ~~(a) Licensed behavior analyst;~~
- ~~(b) Licensed assistant behavior analyst;~~
- ~~(c) Registered behavior[behavioral] technician; or~~
- ~~(d) Community support associate.~~

~~(2)(3)] A BHSO III shall provide services on a residential basis to treat a beneficiary's substance use disorder.~~

~~(3)(4)(a) A physician providing services in a BHSO III shall possess:~~

- ~~1. A psychiatric specialty; or~~
- ~~2. An addictionology specialty.~~

~~(b) An advanced practice registered nurse providing services in a BHSO III shall possess:~~

- ~~1. A psychiatric specialty; or~~
- ~~2. An addictionology specialty.~~

~~(c) A physician assistant providing behavioral health services in a BHSO III shall have a contractual relationship with a supervising physician with:~~

- ~~1. A psychiatric specialty; or~~
- ~~2. An addictionology specialty.~~

~~(5)] Reimbursement shall not be available for services performed within a BHSO III by a:~~

- ~~(a) Licensed behavior analyst;~~
- ~~(b) Licensed assistant behavior analyst;~~
- ~~(c) Registered behavior[behavioral] technician; or~~
- ~~(d) Community support associate.~~

~~(4)(6)] Except as specified in the requirements stated for a given service, the services covered may be provided for:~~

- ~~(a) A substance use disorder; or~~
- ~~(b) Co-occurring disorders if provided in accordance with Section 2 of this administrative regulation.~~

~~(5)(7)] The services established in this subsection shall be covered under this administrative regulation in accordance with the requirements established in this subsection.~~

~~(a) A screening shall:~~

- ~~1. Determine the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorders;~~
- ~~2. Not establish the presence or specific type of disorder;~~
- ~~3. Establish the need for an in-depth assessment;~~
- ~~4. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and~~

~~5. [In a BHSO II,] Be provided by:~~

- ~~a. An approved behavioral health practitioner, as limited by subsections (1)(2)] and (3)(5)] of this section; or~~
- ~~b. An approved behavioral health practitioner under supervision, as limited by subsections (1)(2)] and (3)(5)] of this section.~~

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the practitioner to:

- a. Establish the presence or absence of a substance use disorder, mental health disorder, or co-occurring disorders;
- b. Determine the individual's readiness for change;
- c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and
- d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a clinical disorder or service need;

3. Include working with the individual to develop a plan of care;

4. Not include a psychological or psychiatric evaluation or assessment;

5. If being made for the treatment of a substance use disorder, utilize a multidimensional assessment that complies with the most current edition of The ASAM Criteria to determine the most appropriate level of care;

6. Be provided face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

7. Be provided by:

a. An approved behavioral health practitioner, as limited by subsections (1)(2)] and (3)(5)] of this section; or

b. An approved behavioral health practitioner under supervision, ~~[except for a certified alcohol and drug counselor, and]~~ as limited by subsections (1)(2)] and (3)(5)] of this section.

(c) Psychological testing shall:

1. Include a psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities;

2. Include an interpretation and a written report of testing results;

3. Be face-to-face or via telehealth as appropriate pursuant to 907 KAR 3:170; and

4. Be provided by:

- a. A licensed psychologist;
- b. A certified psychologist with autonomous functioning;
- c. A licensed psychological practitioner;
- d. A certified psychologist under supervision; or
- e. A licensed psychological associate under supervision.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or eliminating the risk of physical or emotional harm to:

- a. The recipient; or
- b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals;

3. Shall be provided:

a. ~~[On-site at the behavioral health services organization's office;~~

b. ~~As an immediate relief to the presenting problem or threat; and~~

b.c.] In a [face-to-face,] one (1) on one (1) encounter between the provider and the recipient, which is delivered either face-to-face or [including] via telehealth if appropriate pursuant to 907 KAR 3:170;

4. Shall be followed by a referral to non-crisis services if applicable;

5. May include:

a. Further service prevention planning including:

- (i) Lethal means reduction for suicide risk; or
- (ii) Substance use disorder relapse prevention; or
- b. Verbal de-escalation, risk assessment, or cognitive therapy;

and

6. Shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections (1)(2)] and (3)(5)] of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections (1)(2)] and (3)(5)] of this section.

(e) Mobile crisis services shall:

1. Be available twenty-four (24) hours a day, seven (7) days a week, every day of the year;
2. Be provided for a duration of less than twenty-four (24) hours;
3. Not be an overnight service;
4. Be a face-to-face~~[or telehealth, as appropriate pursuant to 907 KAR 3:170,]~~ multi-disciplinary team based intervention in a home or community setting that ensures access to substance use disorder and co-occurring disorder services and supports to:
 - a. Reduce symptoms or harm; or
 - b. Safely transition an individual in an acute crisis to the appropriate least restrictive level of care;
5. Involve all services and supports necessary to provide:
 - a. Integrated crisis prevention;
 - b. Assessment and disposition;
 - c. Intervention;
 - d. Continuity of care recommendations; and
 - e. Follow-up services;
6. Include access to a board-certified or board-eligible psychiatrist twenty-four (24) hours a day, seven (7) days a week, every day of the year; and
7. Be provided by:
 - a. An approved behavioral health practitioner, as limited by subsections **(1)(2)** and **(3)(5)** of this section;
 - b. An approved behavioral health practitioner under supervision, ~~[except for a certified alcohol and drug counselor, and]~~ as limited by subsections **(1)(2)** and **(3)(5)** of this section; or
 - c. A peer support specialist who:
 - (i) Is under the supervision of an approved behavioral health practitioner; and
 - (ii) Provides support services for a mobile crisis service.
- (f)1. Day treatment shall be a non-residential, intensive treatment program for a child under the age of twenty-one (21) years who has:
 - a. A substance use disorder or co-occurring disorders; and
 - b. A high risk of out-of-home placement due to a behavioral health issue.
2. Day treatment shall:
 - a. Be face-to-face;
 - b. Consist of an organized, behavioral health program of treatment and rehabilitative services;
 - c. Include:
 - (i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;
 - (ii) Behavior management and social skills training;
 - (iii) Independent living skills that correlate to the age and developmental stage of the recipient; or
 - (iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and
 - d. Be provided:
 - (i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);
 - (ii) On school days and during scheduled school breaks;
 - (iii) In coordination with the recipient's individualized education program or Section 504 plan if the recipient has an individualized education program or Section 504 plan; **and**
 - (iv)~~[Under the supervision of an approved behavioral health practitioner or an approved behavioral health practitioner under supervision, as limited by subsections (2) and (5) of this section; and~~
 - (v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.
3. To provide day treatment services, a behavioral health services organization shall have:
 - a. The capacity to employ staff authorized to provide day treatment services in accordance with this section and to coordinate the provision of services among team members; and
 - b. Knowledge of substance use disorders and co-occurring

disorders.

4. Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education program or Section 504 plan.
5. Day treatment shall be provided by:
 - a. An approved behavioral health practitioner, as limited by subsections **(1)(2)** and **(3)(5)** of this section; or
 - b. An approved behavioral health practitioner under supervision, ~~[except for a certified alcohol and drug counselor, and]~~ as limited by subsections **(1)(2)** and **(3)(5)** of this section.
6. Day treatment support services conducted by a provider working under the supervision of an approved behavioral health practitioner may be provided by:
 - a. A registered alcohol and drug peer support specialist;
 - b. An adult peer support specialist;
 - c. A family peer support specialist; or
 - d. A youth peer support specialist.
- (g)1. Peer support services shall:
 - a. Be emotional support that is provided by:
 - (i) An individual who has been trained and certified in accordance with 908 KAR 2:220 and who is experiencing or has experienced a substance use disorder or co-occurring disorders to a recipient by sharing a similar substance use disorder or co-occurring disorders in order to bring about a desired social or personal change;
 - (ii) A parent or other family member, who has been trained and certified in accordance with 908 KAR 2:230, of a child having or who has had a substance use or co-occurring disorders to a parent or family member of a child sharing a similar substance use or co-occurring disorders in order to bring about a desired social or personal change;
 - (iii) An individual who has been trained and certified in accordance with 908 KAR 2:240 and identified as experiencing a substance use disorder or co-occurring disorders~~[, as defined in the current version of the Diagnostic and Statistical Manual for Mental Disorders];~~ or
 - (iv) A registered alcohol and drug peer support specialist who has been trained and certified in accordance with KRS 309.0831 and is a self-identified consumer of substance use disorder services who provides emotional support to others with substance use disorders to achieve a desired social or personal change;
 - b. Be an evidence-based practice;
 - c. Be structured and scheduled non-clinical therapeutic activities with an individual recipient or a group of recipients;
 - d. Be provided face-to-face;
 - e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient;
 - f. Except for the engagement into substance use disorder treatment through an emergency department bridge clinic, be coordinated within the context of a comprehensive, individualized plan of care developed through a person-centered planning process;
 - g. Be identified in each recipient's plan of care; and
 - h. Be designed to directly contribute to the recipient's individualized goals as specified in the recipient's plan of care.
2. To provide peer support services, a behavioral health services organization shall:
 - a. Have demonstrated:
 - (i) The capacity to provide peer support services for the behavioral health population being served including the age range of the population being served; and
 - (ii) Experience in serving individuals with behavioral health disorders;
 - b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220, 908 KAR 2:230, 908 KAR 2:240, or KRS 309.0831;
 - c. Use an approved behavioral health practitioner to supervise peer support specialists;
 - d. Have the capacity to coordinate the provision of services among team members;
 - e. Have the capacity to provide on-going continuing education and technical assistance to peer support specialists;

f. Require individuals providing peer support services to recipients to provide no more than **thirty (30) hours**~~120 units~~ per week of direct recipient contact; and

g. Require peer support services provided to recipients in a group setting not exceed eight (8) individuals within any group at one (1) time.

(h)1. Intensive outpatient program services shall:

a. Be an alternative to or transition from a higher level of care for a substance use disorder or co-occurring disorders;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for intensive outpatient level of care services;

d. Be provided face-to-face;

e. Be provided at least three (3) hours per day at least three (3) days per week for adults;

f. Be provided at least six (6) hours per week for adolescents; and

g. Include:

(i) Individual outpatient therapy, group outpatient therapy, or family outpatient therapy unless contraindicated;

(ii) Crisis intervention; or

(iii) Psycho-education related to identified goals in the recipient's treatment plan.

2. During psycho-education, the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a behavioral health services organization shall have:

a. Access to a board-certified or board-eligible psychiatrist for consultation;

b. Access to a psychiatrist, physician, or advanced practiced registered nurse for medication prescribing and monitoring;

c. Adequate staffing to ensure a minimum recipient-to-staff ratio of ten (10) recipients to one (1) staff person;

d. The capacity to provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles; and

e. The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members.

5. Intensive outpatient program services shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)(2)** and **(3)(5)** of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections **(1)(2)** and **(3)(5)** of this section.

(i) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; and

b. Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders;

2. Consist of:

a. A face-to-face encounter or via telehealth as appropriate pursuant to 907 KAR 3:170 that is a one (1) on one (1) encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the

recipient; and

c. Improving functioning;

4. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary; and

5. Be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)(2)** and **(3)(5)** of this section; or

b. An approved behavioral health practitioner under supervision, **[except for a certified alcohol and drug counselor, and]** as limited by subsections **(1)(2)** and **(3)(5)** of this section.

(j)1. Group outpatient therapy shall:

a. Be a behavioral health therapeutic intervention provided in accordance with a recipient's identified plan of care;

b. Be provided to promote the:

(i) Health and wellbeing of the individual; and

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders;

c. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified plan of care;

d. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals except for multi-family group therapy; and

(ii) Not to exceed twelve (12) individuals in size;

e. Focus on the psychological needs of the recipients as evidenced in each recipient's plan of care;

f. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

g. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

h. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of group outpatient therapy shall relate to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

5. Group outpatient therapy shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)(2)** and **(3)(5)** of this section; or

b. An approved behavioral health practitioner under supervision, **[except for a certified alcohol and drug counselor, and]** as limited by subsections **(1)(2)** and **(3)(5)** of this section.

(k)1. Family outpatient therapy shall consist of a face-to-face or appropriate telehealth, pursuant to 907 KAR 3:170, behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Restoration of a recipient to their best possible functional level from a substance use disorder or co-occurring disorders; and

b. Not exceed three (3) hours per day alone or in combination with any other outpatient therapy per recipient unless additional time is medically necessary.

4. Family outpatient therapy shall be provided by:

a. An approved behavioral health practitioner; or

b. An approved behavioral health practitioner under supervision, **[except for a certified alcohol and drug counselor].**

(l)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face or appropriate telehealth, provided pursuant to 907 KAR 3:170, behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's plan of care; and

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age.

2. Written consent by a parent or custodial guardian to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

3. Collateral outpatient therapy shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)(2)** and **(3)(5)** of this section; or

b. An approved behavioral health practitioner under supervision, **[except for a certified alcohol and drug counselor, and]** as limited by subsections **(1)(2)** and **(3)(5)** of this section.

(m)1. Service planning shall:

a. Be provided face-to-face;

b. Involve assisting a recipient in creating an individualized plan for services and developing measurable goals and objectives needed for maximum reduction of the effects of a substance use disorder or co-occurring disorders;

c. Involve restoring a recipient's functional level to the recipient's best possible functional level; and

d. Be performed using a person-centered planning process.

2. A service plan:

a. Shall be directed and signed by the recipient;

b. Shall include practitioners of the recipient's choosing; and

c. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

3. Service planning shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)(2)** and **(3)(5)** of this section; or

b. An approved behavioral health practitioner under supervision, **[except for a certified alcohol and drug counselor, and]** as limited by subsections **(1)(2)** and **(3)(5)** of this section.

(n)1. Residential services for substance use disorders shall:

a. Be provided in a twenty-four (24) hour per day unit that is a live-in facility that offers a planned and structured regimen of care aimed to treat individuals with addiction or co-occurring disorders;

b. Provide intensive treatment and skills building in a structured and supportive environment;

c. Assist an individual in abstaining from alcohol or substance use and in entering alcohol or drug addiction recovery;

d. Assist a recipient in making necessary changes in the recipient's life to enable the recipient to live drug- or alcohol-free;

e. Be provided under the medical direction of a physician;

f. Provide continuous nursing services in which a registered nurse shall be:

(i) On-site during traditional first shift hours, Monday through Friday;

(ii) Continuously available by phone after hours; and

(iii) On-site as needed in follow-up to telephone consultation after hours;

g. Be provided following an assessment of an individual and a determination that the individual meets the dimensional admission criteria for approval of residential level of care placement in accordance with the most current edition of The ASAM Criteria; and

h. Be based on individual need and shall include clinical activities to help the recipient develop and apply recovery skills.

2. Residential services may include:

a. A screening;

b. An assessment;

c. Service planning;

d. Individual outpatient therapy;

e. Group outpatient therapy;

f. Family outpatient therapy;

g. Peer support;

h. Withdrawal management; or

i. Medication assisted treatment.

3. For recipients in residential substance use treatment, care coordination shall include at minimum:

a. If the recipient chooses medication assisted treatment, facilitation of medication assisted treatment off-site of the BHSO III, if not offered on-site;

b. Referral to appropriate community services;

c. Facilitation of medical and behavioral health follow ups; and

d. Linking the recipient to the appropriate level of substance use treatment within the continuum to provide ongoing supports.

4. Residential services shall be provided in accordance with 908 KAR 1:370 and 908 KAR 1:372.

5. Length-of-stay for residential services for substance use disorders shall be person-centered and according to an individually designed plan of care that is consistent with this administrative regulation and the licensure of the facility and practitioner.

6.a. Except as established in clause b. **or c.** of this subparagraph, the physical structure in which residential services for substance use disorders is provided shall:

(i) Have between nine (9) and sixteen (16) beds; and

(ii) Not be part of multiple units comprising one (1) facility with more than sixteen (16) beds in aggregate.

b. If every recipient receiving services in the physical structure is under the age of twenty-one (21) years or over the age of sixty-five (65) years, the limit of sixteen (16) beds established in clause a. of this subparagraph shall not apply.

c. The limit of sixteen (16) beds established in clause a. of this subparagraph shall not apply if the facility possesses a departmental provisional certification to provide residential substance use disorder services that are equivalent to the appropriate level of The ASAM Criteria.

7. Residential services for substance use disorders shall not include:

a. Room and board;

b. Educational services;

c. Vocational services;

d. Job training services;

e. Habilitation services;

f. Services to an inmate in a public institution pursuant to 42 C.F.R. 435.1010;

g. Services to an individual residing in an institution for mental diseases pursuant to 42 C.F.R. 435.1010;

h. Recreational activities;

i. Social activities; or

j. Services required to be covered elsewhere in the Medicaid state plan.

8. To provide residential services for substance use disorders, a behavioral health services organization shall:

a. Have the capacity to employ staff authorized to provide services in accordance with this section and to coordinate the provision of services among team members; **[and]**

b. Be licensed as a non-medical and non-hospital based alcohol and other drug abuse treatment entity in accordance with 908 KAR 1:370 and 908 KAR 1:372; **and**

c. After July 1, 2021, possess an appropriate ASAM Level of Care Certification in accordance with The ASAM Criteria.

9. A BHSO III may provide residential services for substance use disorders, if provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)(2)** and **(3)(5)** of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections **(1)(2)** and **(3)(5)** of this section.

10. Support services for residential services for substance use disorders may be provided by a peer support specialist under the supervision of an approved behavioral health practitioner.

(o)1. Screening, brief intervention, and referral to treatment for a substance use disorder shall:

a. Be provided face-to-face or via telehealth as appropriate according to 907 KAR 3:170;

b. Be an evidence-based early intervention approach for an individual with non-dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

c. Consist of:

(i) Using a standardized screening tool to assess an individual for risky substance use behavior;

(ii) Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and

(iii) Referring a recipient to additional substance use disorder or co-occurring disorder services if the recipient is determined to need additional services to address substance use.

2. A screening and brief intervention that does not meet criteria for referral to treatment may be subject to coverage by the department.

3. A screening, brief intervention, and referral to treatment for a substance use disorder shall be provided by:

a. An approved behavioral health practitioner, as limited by subsections **(1)(2)** and **(3)(5)** of this section; or

b. An approved behavioral health practitioner under supervision, as limited by subsections **(1)(2)** and **(3)(5)** of this section.

(p)1. Withdrawal management services shall:

a. Be provided face-to-face for recipients with a substance use disorder or co-occurring disorders;

b. Be incorporated into a recipient's care as appropriate according to the continuum of care described in the most current version of The ASAM Criteria;

c. Be in accordance with the most current version of The ASAM Criteria for withdrawal management levels in an outpatient setting;

d. If provided in an outpatient setting, comply with 908 KAR 1:374, Section 2; and

e. If provided in a substance use disorder residential program, comply with 908 KAR 1:372, Section 2.

2. A recipient who is receiving withdrawal management services shall:

a. Meet the most current edition of diagnostic criteria for substance withdrawal management found in the Diagnostic and Statistical Manual of Mental Disorders; and

b. Meet the current dimensional admissions criteria for withdrawal management level of care as found in The ASAM Criteria.

3. Withdrawal management services shall be provided by:

a. A physician;

b. A psychiatrist;

c. A physician assistant;

d. An advanced practice registered nurse; or

e. Any other approved behavioral health practitioner with oversight by a physician, advanced practice registered nurse, or a physician assistant, as limited by subsections **(1)(2)** and **(3)(5)** of this section.

(q)1. Medication assisted treatment services shall be provided by an authorized prescribing provider who:

a.(i) Is a physician licensed to practice medicine under KRS Chapter 311; or

(ii) Is an advanced practice registered nurse (APRN);

b. Meets standards in accordance with 201 KAR 9:270 or 201 KAR 20:065;

c. Maintains a current waiver under 21 U.S.C. 823(g)(2) to prescribe buprenorphine products; and

d. Has experience and knowledge in addiction medicine.

2. Medication assisted treatment with behavioral health therapies shall:

a. Be co-located within the same practicing site or via telehealth as appropriate according to 907 KAR 3:170 as the practitioner with a waiver pursuant to subparagraph 1.c. of this paragraph; or

b. Be conducted with agreements in place for linkage to appropriate behavioral health treatment providers who specialize in substance use disorders and are knowledgeable in biopsychosocial dimensions of alcohol or other substance use

disorder, such as:

(i) An approved behavioral health practitioner, as limited by subsections **(1)(2)** and **(3)(5)** of this section; or

(ii) A multi-specialty group or behavioral health provider group pursuant to 907 KAR 15:010.

3. Medication assisted treatment may be provided in:

a. An outpatient behavioral health setting, including in a narcotic treatment program for substance use disorder treatment with methadone operating in accordance with 908 KAR 1:374, Section 7; or

b. A residential treatment program for substance use disorders. If a residential treatment program for substance use disorders does not offer medication assisted treatment on-site, care coordination shall be provided to facilitate medication assisted treatment off-site if necessary by recipient choice.

4. A medication assisted treatment program shall:

a. Assess the need for treatment including:

(i) A full patient history to determine the severity of the patient's substance use disorder; and (ii) Identifying and addressing any underlying or co-occurring diseases or conditions, as necessary;

b. Educate the patient about how the medication works, including:

(i) The associated risks and benefits; and

(ii) Overdose prevention;

c. Evaluate the need for medically managed withdrawal from substances;

d. Refer patients for higher levels of care if necessary; and

e. Obtain informed consent prior to integrating pharmacologic or nonpharmacologic therapies.

5. Medication assisted treatment shall be provided by:

a. A physician;

b. A psychiatrist; or

c. An advanced practice registered nurse.

6.a. Notwithstanding any other provision of 907 KAR Chapter 15 to the contrary, temporary licensure shall be permissible for a certified alcohol and drug counselor practicing within a narcotic treatment program.

b. A temporarily certified alcohol and drug counselor practicing within a narcotic treatment program shall be under the direct supervision of a licensed clinical alcohol and drug counselor.

c. A temporarily certified alcohol and drug counselor pursuant to this subparagraph shall provide only the following services:

(i) Individual counseling;

(ii) Group counseling; and

(iii) Targeted case management pursuant to 907 KAR 15:040 and 907 KAR 15:050.

d.(i) The provisions of this subparagraph shall no longer be operational two (2) years after this administrative regulation becomes effective.

(ii) After the two (2) year period has lapsed, an individual performing temporarily licensed certified alcohol and drug counselor duties as specified in clause c. of this subparagraph shall possess an appropriate license to perform those duties.

(r)1. Partial hospitalization services shall be:

a. Short-term with an average of four (4) to six (6) weeks,

b. Less than twenty-four (24) hours each day;**[and]**

c. An intensive treatment program for an individual who is experiencing significant impairment to daily functioning due to a substance use disorder or co-occurring disorders;**and**

d. Provided face-to-face.

2. Partial hospitalization may be provided to an adult or a minor.

3. Admission criteria for partial hospitalization shall be based on an inability of community-based therapies or intensive outpatient services to adequately treat the recipient.

4. A partial hospitalization program shall meet the service criteria, including the components for support systems, staffing, and therapies outlined in the most current edition of The ASAM Criteria for partial hospitalization level of care services.

5. A partial hospitalization program shall consist of:

a. Individual outpatient therapy;

b. Group outpatient therapy;

c. Family outpatient therapy; or

d. Medication management.

6. The department shall not reimburse for educational, vocational, or job training services provided as part of partial hospitalization.

7.a. A behavioral health services organization's partial hospitalization program shall have an agreement with the local educational authority to come into the program to provide all educational components and instruction that are not Medicaid billable or reimbursable.

b. Services in a Medicaid eligible child's individualized education program shall be coverable under Medicaid.

8. Partial hospitalization shall be:

- a. Provided for at least four (4) hours per day; and
- b. Focused on one (1) primary presenting problem.

9. A partial hospitalization program operated by a behavioral health services organization shall:

a. Include the following personnel for the purpose of providing medical care:

(i) An advanced practice registered nurse, a physician assistant, or a physician available on site; and

(ii) A board-certified or board-eligible psychiatrist available for consultation; and

b. Have the capacity to:

(i) Provide services utilizing a recognized intervention protocol based on nationally accepted treatment principles;

(ii) Employ required practitioners and coordinate service provision among rendering practitioners; and

(iii) Provide the full range of services included in the scope of partial hospitalization established in this paragraph.

~~(6)(9)~~(a) Limited laboratory services shall be reimbursable in accordance with 907 KAR 1:028 if provided by a BHSO II or a BHSO III if:

1. The BHSO II or BHSO III has the appropriate CLIA certificate to perform laboratory testing pursuant to 907 KAR 1:028; and

2. The services are prescribed by a physician, advanced practice registered nurse, or physician assistant who has a contractual relationship with the BHSO II or BHSO III.

(b) Limited laboratory services shall be administered, as appropriate, by:

1. An approved behavioral health practitioner, as limited by subsections ~~(1)(2)~~ and ~~(3)(5)~~ of this section; or

2. An approved behavioral health practitioner under supervision, as limited by subsections ~~(1)(2)~~ and ~~(3)(5)~~ of this section.

Section 4. Additional Limits and Non-covered Services or Activities. (1)(a) Except as established in paragraph (b) of this subsection, unless a diagnosis is made and documented in the recipient's medical record within three (3) visits, the service shall not be covered.

(b) The requirement established in paragraph (a) of this subsection shall not apply to:

1. Mobile crisis services;
2. Crisis intervention;
3. A screening;
4. An assessment; or

5. Peer support services for the engagement into substance use disorder treatment within an emergency department bridge clinic.

(2) For a recipient who is receiving residential services for a substance use disorder, the following shall not be billed or reimbursed for the same date of service for the recipient:

- (a) A screening;
- (b) An assessment;
- (c) Service planning;
- (d) A psychiatric service;
- (e) Individual outpatient therapy;
- (f) Group outpatient therapy;
- (g) Family outpatient therapy; or
- (h) Peer support services.

(3) For a recipient who is receiving assertive community

treatment for non-substance use disorder treatment pursuant to 907 KAR 15:020, the following shall not be billed or reimbursed for the same date of service for the recipient:

- (a) An assessment;
- (b) Case management;
- (c) Individual outpatient therapy;
- (d) Group outpatient therapy;
- (e) Peer support services; or
- (f) Mobile crisis services.

(4) The department shall not reimburse for both a screening and a screening, brief intervention, and referral to treatment provided to a recipient on the same date of service.

(5) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison; or

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the behavioral health services organization;

(c) A consultation or educational service provided to a recipient or to others;

(d) A telephone call, an email, a text message, or other electronic contact that is not ~~[""]~~face-to-face~~[""]~~, unless permitted as a telehealth service pursuant to 907 KAR 3:170 and this administrative regulation;

(e) Travel time;

(f) A field trip;

(g) A recreational activity;

(h) A social activity; or

(i) A physical exercise activity group.

(6)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as established in Section ~~3(5)(m)1.3(7)(i)1-.~~ of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

(7) A billing supervisor arrangement between a billing supervisor and an approved behavioral health practitioner under supervision shall not violate the supervision rules or policies of the respective professional licensure boards governing the billing supervisor and the approved behavioral health practitioner under supervision.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A behavioral health services organization shall maintain a current health record for each recipient.

(2) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;
c. Date of intake;
d. Home (legal) address;
e. Health insurance or Medicaid information;
f. Referral source and address of referral source;
g. Primary care physician and address;
h. The reason the individual is seeking help including the presenting problem and diagnosis;
i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:
(i) Where the individual is receiving treatment for the physical health diagnosis; and
(ii) The physical health provider; and
j. The name of the informant and any other information deemed necessary by the behavioral health services organization to comply with the requirements of:
(i) This administrative regulation;
(ii) The behavioral health services organization's licensure board;
(iii) State law; or
(iv) Federal law;
2. Documentation of the:
a. Screening;
b. Assessment if an assessment was performed; and
c. Disposition if a disposition was performed;
3. A complete history including mental status and previous treatment;
4. An identification sheet;
5. A consent for treatment sheet that is accurately signed and dated; and
6. The individual's stated purpose for seeking services; and
(b) Be:
1. Maintained in an organized central file;
2. Furnished to the:
a. Cabinet for Health and Family Services upon request; or
b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;
3. Made available for inspection and copying by:
a. Cabinet for Health and Family Services' personnel; or
b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;
4. Readily accessible; and
5. Adequate for the purpose of establishing the current treatment modality and progress of the recipient if the recipient received services beyond a screening.
(4) Documentation of a screening shall include:
(a) Information relative to the individual's stated request for services; and
(b) Other stated personal or health concerns if other concerns are stated.
(5)(a) A behavioral health services organization's service notes regarding a recipient shall:
1. Be made within forty-eight (48) hours of each service visit;
2. Indicate if the service was provided face-to-face or via telehealth; and
3. Describe the:
a. Recipient's symptoms or behavior, reaction to treatment, and attitude;
b. Therapist's intervention;
c. Changes in the plan of care if changes are made; and
d. Need for continued treatment if continued treatment is needed.
(b)1. Any edit to notes shall:
a. Clearly display the changes; and
b. Be initialed and dated by the person who edited the notes.
2. Notes shall not be erased or illegibly marked out.
(c)1. Notes recorded by an approved behavioral health practitioner under supervision shall be co-signed and dated by the supervising professional within thirty (30) days.
2. If services are provided by an approved behavioral health practitioner under supervision, there shall be a monthly supervisory

note recorded by the supervising professional reflecting consultations with the approved behavioral health practitioner under supervision concerning the:

a. Case; and
b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the practitioner shall perform a disposition related to:

(a) A provisional diagnosis;
(b) A referral for further consultation and disposition, if applicable; or

(c)1. If applicable, termination of services and referral to an outside source for further services; or

2. If applicable, termination of services without a referral to further services.

(7) Any change to a recipient's plan of care shall be documented, signed, and dated by the rendering practitioner and by the recipient or recipient's representative.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;
2. Be dated;
3. Be titled to indicate the service rendered;
4. State a starting and ending time for the service; and
5. Be recorded and signed by the rendering practitioner and include the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not covered under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and
2. Not be reimbursable.

(9)(a) A termination summary shall:

1. Be required, upon termination of services, for each recipient who received at least three (3) service visits; and
2. Contain a summary of the significant findings and events during the course of treatment including the:

a. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's plan of care;
b. Final diagnosis of clinical impression; and
c. Individual's condition upon termination and disposition.

(b) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11)(a) Except as established in paragraph (b) of this subsection, if a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring behavioral health services organization shall, within ten (10) business days of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;
b. 42 U.S.C. 1320d-2 to 1320d-8; and
c. 45 C.F.R. Parts 160 and 164; or
2.a. 42 U.S.C. 290 ee-3; and
b. 42 C.F.R. Part 2.

(b) If a recipient is transferred or referred to a residential crisis stabilization unit, a psychiatric hospital, a psychiatric distinct part unit in an acute care hospital, or an acute care hospital for care or treatment, the transferring behavioral health services organization shall, within forty-eight (48) hours of the transfer or referral, transfer the recipient's records in a manner that complies with the records' use and disclosure requirements as established in or required by:

1.a. The Health Insurance Portability and Accountability Act;
b. 42 U.S.C. 1320d-2 to 1320d-8; and
c. 45 C.F.R. Parts 160 and 164; or
2.a. 42 U.S.C. 290 ee-3; and

b. 42 C.F.R. Part 2.

(12)(a) If a behavioral health services organization's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of an owner or deaths of owners, the health records of the behavioral health services organization shall:

1. Remain the property of the behavioral health services organization; and
2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A behavioral health services organization shall have a written plan addressing how to maintain health records in the event of death of an owner or deaths of owners.

(13)(a) Except as established in paragraph (b) or (c) of this subsection, a behavioral health services organization shall maintain a case record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) After a recipient's death or discharge from services, a provider shall maintain the recipient's record for the longest of the following periods:

1. Six (6) years unless the recipient is a minor; or
2. If the recipient is a minor, three (3) years after the recipient reaches the age of majority under state law.

(c) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A behavioral health services organization shall comply with 45 C.F.R. Part 164.

(b) All information contained in a health record shall:

1. Be treated as confidential;
2. Not be disclosed to an unauthorized individual; and
3. Be disclosed to an authorized representative of:
 - a. The department; or
 - b. Federal government.

(c)1. Upon request, a behavioral health services organization shall provide to an authorized representative of the department or federal government information requested to substantiate:

- a. Staff notes detailing a service that was rendered;
- b. The professional who rendered a service; and
- c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information required by subparagraph 1. of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A behavioral health services organization shall comply with:

- (a) 907 KAR 1:671;
- (b) 907 KAR 1:672; and
- (c) All applicable state and federal laws.

(2)(a) If a behavioral health services organization receives any duplicate payment or overpayment from the department, regardless of reason, the behavioral health services organization shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and
2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the behavioral health services organization accepts the payment:

1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and

3. Payment from the recipient for the same service shall not be accepted by the behavioral health services organization.

(b)1. A behavioral health services organization may bill a

recipient for a service that is not covered by the Kentucky Medicaid Program if the:

- a. Recipient requests the service; and
- b. Behavioral health services organization makes the recipient aware in advance of providing the service that the:
 - (i) Recipient is liable for the payment; and
 - (ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1. of this paragraph, the:

- a. Behavioral health services organization shall not bill the department for the service; and
- b. Department shall not:
 - (i) Be liable for any part of the payment associated with the service; and
 - (ii) Make any payment to the behavioral health services organization regarding the service.

(4)(a) A behavioral health services organization shall attest by the behavioral health services organization's staff's or representative's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;
2. Cabinet for Health and Family Services, Office of Inspector General, or its designee;
3. Kentucky Office of Attorney General or its designee;
4. Kentucky Office of the Auditor for Public Accounts or its designee; or
5. United States General Accounting Office or its designee.

(c) If a behavioral health services organization receives a request from the department to provide a claim, related information, related documentation, or record for auditing purposes, the behavioral health services organization shall provide the requested information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a behavioral health services organization shall result in the suspension or termination of the behavioral health services organization from Medicaid Program participation.

Section 8. Third Party Liability. A behavioral health services organization shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A behavioral health services organization that chooses to use electronic signatures shall:

- (a) Develop and implement a written security policy that shall:
 1. Be adhered to by each of the behavioral health services organization's employees, officers, agents, or contractors;
 2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

- (b) Develop a consent form that shall:
 1. Be completed and executed by each individual using an electronic signature;
 2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(c) Provide the department, immediately upon request, with:

1. A copy of the behavioral health services organization's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 10. Auditing Authority. The department shall have the authority to audit any:

- (1) Claim;

- (2) Medical record; or
- (3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by behavioral health services organizations (BHSOs) that focus on substance use disorder treatment. The specific tiers of BHSO referenced within this administrative regulation will focus on outpatient substance use disorder services (BHSO II) and residential substance use disorder services (BHSO III). The licensure for BHSO IIs and IIIs will be determined by the AODE licensure administrative regulations pursuant to 908 KAR 3:170, 3:172, and 3:174. A BHSO is an entity that provides treatment for mental health and substance use disorders and is licensed and regulated by the Office of Inspector General in accordance with 902 KAR 20:430. The array of services includes a screening, an assessment, psychological testing, crisis intervention, mobile crisis services, medication assisted treatment, day treatment, peer support, intensive outpatient program services, individual outpatient therapy, group outpatient therapy, family outpatient therapy, collateral outpatient therapy, partial hospitalization, service planning, and residential services for substance use disorders. In addition, this administrative regulation allows for Medicaid reimbursement for SUD treatment that includes methadone.

The Amended After Comments version of this administrative regulation removes a requirement that a physician, APRN, or physician have a specialty in addictionology or psychiatry or its equivalent. The administrative regulation is also amended to clarify that peer support specialists shall not provide more than 30 direct hours of Medicaid beneficiary contact each week. In addition, certified alcohol and drug counselors are now allowed to provide the following services: assessments, mobile crisis services, day treatment, individual outpatient therapy, group outpatient therapy, family outpatient therapy, collateral outpatient therapy, and service planning. The subject matter of assessments has also been clarified. The availability or lack of availability of crisis intervention and mobile crisis services via telehealth has also been clarified. Residential facilities are informed that they need to have an ASAM certification by July 1, 2021. Finally, notice and a reference to a process to participate in the IMD exclusion waiver offered via the

1115 SUD waiver is included.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 205.6311, which mandates that Kentucky's Medicaid Program "expand the behavioral health network to allow providers to provide services within their licensure category." In addition, this administrative regulation will assist with the implementation of an approved SUD 1115 Waiver that is part of the Kentucky HEALTH 1115 Waiver.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by expanding "the behavioral health network to allow providers to provide services within their licensure category."

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist in the effective administration of the authorizing statutes by tiering BHSOs according to the licensure and type of services provided. In addition, new practitioners are included throughout the tiers to provide services to help meet recipient demand. Finally, the provisions will assist with conforming to the content of KRS 205.6311(2).

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this 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 government affected by this administrative regulation: Entities licensed as alcohol or other drug treatment entities and as behavioral health services organizations will be affected by this administrative regulation as a need for dual licensure will be removed. Medicaid recipients in need of substance use treatment, mental health treatment, or treatment for co-occurring disorders will also be affected by this administrative regulation. Currently, there are 1.4 million Medicaid members. DMS anticipates that up to seven (7) percent of the Medicaid population could seek opioid use disorder treatment. There are currently 11 narcotic treatment programs enrolled in Kentucky as Medicaid providers. There are currently 134 enrolled BHSOs.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Providers that plan to provide SUD or co-occurring disorder treatment services in a BHSO setting will need to attain AODE inpatient or outpatient licensure and ensure that the appropriate services are provided by the appropriate provider within each tier of facility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Entities will need to qualify for and attain AODE inpatient or outpatient licensure as appropriate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). This administrative regulation will allow access to a full continuum of care for substance use disorder services. Any Medicaid recipient in need of substance use disorder services will have access to SUD services that are provided by a facility with appropriate licensure. Currently there are 1.4 million Kentuckians receiving Medicaid services.

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

(a) Initially: DMS currently performs many of the functions in this administrative regulation. DMS will be expanding coverage of methadone as a part of this administrative regulation. DMS may

cover as many as 4,000 Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care.

(b) On a continuing basis: DMS anticipates that methadone coverage will continue for certain Medicaid members at a cost of \$8000 per year per member. DMS may cover as many as 4,000 Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care.

(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 is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that established types of services are now grouped by licensure and whether the service is for substance use disorder or mental health treatment. However, the requirements within each tier of service are applied equally to all entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 18022(b)(1)(E), 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. 42 U.S.C. 18022(b)(1)(E) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency that oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid). Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand

exceeding supply in any given area.

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 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 194A.030(2), 194A.050(1), 205.520(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The administrative regulation 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 administrative regulation 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? DMS will be expanding coverage of methadone as a part of this administrative regulation. DMS may cover as many as 4,000 Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care. Furthermore, DMS does not expect any additional costs in administering this administrative regulation during the first year due to program enhancements and IT infrastructure upgrades.

(d) How much will it cost to administer this program for subsequent years? DMS will be expanding coverage of methadone as a part of this administrative regulation. DMS may cover as many as 4,000 Medicaid eligible members. Methadone coverage may cost as much as \$8000 per year per member, however, this will not be a hydraulic price increase because at least ninety-five (95) percent of the impacted individuals are within managed care. Furthermore, DMS does not expect any additional costs in administering this administrative regulation during subsequent years due to program enhancements and IT infrastructure upgrades.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amended After Comments)

922 KAR 1:320. Service appeals.

RELATES TO: KRS 2.015, Chapter 13B, 23A.010, 194A.005, 194A.030(11), 199.011(4), (9), 199.555(2), 199.557, 209.020(4), (5), 209A.020(4), (5), 600.020(9), (28), (46), 605.090(1)(b), (6),

610.110(6)(~~4~~), 620.020(1), 620.140(1)(e), 620.142, 620.157, 620.180(2)(a)1, 620.230, 620.363, 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, 671(a)(23), 673, 675, 1397

STATUTORY AUTHORITY: KRS 13B.170(1), 194A.010(2), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) designates the Cabinet for Health and Family Services as the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. 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, including 45 C.F.R. 205.10, made applicable to titles IV-B and IV-E programs by references in 45 C.F.R. 1355.21(b) and 1355.30(p). KRS 13B.170(1) authorizes promulgating administrative regulations necessary to carry out the provisions of KRS Chapter 13B. This administrative regulation establishes procedures related to appeals and complaints for benefits and services under 922 KAR Chapters 1 and 5.

Section 1. Definitions. (1) "Adoption assistance" means a payment under:

(a) KRS 199.555(2) and 922 KAR 1:050; or

(b) KRS 199.557 and 922 KAR 1:060.

(2) "Adult" is defined by KRS 209.020(4).

(3) "Caretaker relative" means a relative with whom a child is, or will be, placed by the cabinet.

(4) "Case permanency plan" is defined by KRS 620.020(1) and described in KRS 620.230 for a child placed in the custody of the cabinet by an order of commitment[outside the home].

(4)(~~5~~) "Case plan" means a plan described in 922 KAR 1:430 for a child who is not placed in the custody of the cabinet by an order of commitment[remains in the home].

(5)(~~6~~) "Case planning conference" means a meeting in which a case plan or a case permanency plan is developed or modified in accordance with KRS 620.180(2)(a)1.

(6)(~~7~~) "Child" means:

(a) A child defined by KRS 199.011(4) and 600.020(9);

(b) A 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)(~~d~~); or

(c) A person under age twenty-one (21) who meets the exceptions to the age of majority in accordance with KRS 2.015.

(7)(~~8~~) "Child welfare services" means benefits or services on behalf of a child meeting a purpose of 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670, or 1397.

(8)(~~9~~) "Commissioner" means the Commissioner of the Department for Community Based Services or designee.

(9)(~~10~~) "Contract agency" means a business or organization that offers child welfare, adult, or domestic violence services to the public through a contract or agreement with the cabinet.

(10)(~~11~~) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).

(11)(~~12~~) "General adult services" means a voluntary preventive[preventative] service in accordance with 922 KAR 5:090.

(12)(~~13~~) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal in accordance with Section 6(7) of this administrative regulation.

(13)(~~14~~) "Kinship caregiver" means a qualified caretaker relative of a child with whom the child is placed [by the cabinet] as an alternative to foster care in accordance with 922 KAR 1:130.

(14)(~~15~~) "Parent" is defined by KRS 600.020(46) and 42 U.S.C. 675(2) for child welfare benefits and services.

(15)(~~16~~) "Protective services" is defined by KRS 209.020(5).

(16) "Relative" means an individual related to a child by blood, marriage, or adoption.

Section 2. Right to Appeal. (1) A parent may request review of the following through an administrative hearing:

(a) Denial, reduction, modification, suspension, or termination

of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 12; or

2. 922 KAR 1:430, Section 4; [~~or~~]

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan or case permanency plan;

3. Provide or refer for services as specified in the case plan or case permanency plan; or

4. Meet a mandated timeframe for child protective services

specified in 922 KAR 1:330; or

(d) The cabinet's determination that return home is not recommended for their child, in accordance with KRS 620.157.

(2) A foster parent approved by the department in accordance with 922 KAR 1:350 or an adoptive parent may request review of the following through an administrative hearing:

(a) Failure by the cabinet to:

1. Process reimbursement to the home with reasonable promptness;

2. Provide information required by KRS 605.090(1)(b) and (6);

3. Advise an adoptive parent of the availability of adoption assistance in accordance with 922 KAR 1:050 or 922 KAR 1:060; or

4. Provide an adoptive parent with known relevant facts

regarding the:

a. Child;

b. Child's background prior to finalization of the adoption; and

c. Child's biological family;

(b) Determination of ineligibility for adoption assistance upon execution of an adoptive placement agreement under 922 KAR 1:050 or 922 KAR 1:060;

(c) Denial of a request for a change in payment level due to a change in circumstances of an adoptive parent or child when the adoption assistance agreement is renewed under 922 KAR 1:050 or 922 KAR 1:060; or

(d) Closure of a foster or adoptive home under 922 KAR 1:350 unless a provision of Section 3(1)(f), (g), (h), [~~or~~] (i), or (j) of this administrative regulation applies.

(3) An approved and available adoptive parent outside the jurisdiction with responsibility for handling the case of an adoptive child may request an administrative hearing for the cabinet's denial or delay in placement of the child for adoption pursuant to 42 U.S.C. 671(a)(23).

(4)(a) A kinship caregiver may request an administrative hearing pursuant to 922 KAR 1:130, Section 19.

(b) Pursuant to 922 KAR 1:130, Section 19(2), a kinship caregiver who is dissatisfied with an action or inaction on the part of the cabinet relating to financial assistance under the Kinship Care Program may request an administrative hearing under the provisions of 921 KAR 2:055.

(5) An applicant determined by the cabinet to be ineligible for a tuition waiver may request an administrative hearing pursuant to 922 KAR 1:450, Section 3.

(6) An applicant determined by the cabinet to be ineligible for an educational and training voucher may request an administrative hearing pursuant to 922 KAR 1:500, Section 5.

(7) An adult may request review of the following through an administrative hearing:

(a) The cabinet's denial of general adult services or protective services to an adult identified as a victim of abuse, neglect, or exploitation; or

(b) Failure by the cabinet to respond with reasonable promptness to a request for:

1. General adult services; or

2. Protective services for an adult.

(8) A non-parent relative or fictive kin caregiver who received physical custody of a child through a child abuse, neglect, or dependency action may appeal:

(a) Regarding a protection and permanency service as established in[accordance with] 922 KAR 1:565, Section 7; or

(b) A denial, reduction, modification, suspension, or termination

of child welfare services unless a provision of Section 3(1)(f), (g), (h), (i), (j), or (n) of this administrative regulation applies.

(9) An individual aggrieved by an action of the cabinet may request an administrative hearing for a matter by which a Kentucky Revised Statute or 922 KAR Chapters 1 and 5 expressly permits the appeal of a cabinet action or alleged act.

(10)(99) A parent or an adult aggrieved by an action of the cabinet may request review of the following through an administrative hearing:

(a) A cabinet denial, reduction, suspension, or termination of services or federally-funded benefits, payments, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and 5; or

(b) A cabinet failure to act with reasonable promptness to a request for a federally-funded benefit, payment, or financial assistance to which an individual may be entitled under 922 KAR Chapters 1 and 5.

Section 3. Matters Not Appealable through an Administrative Hearing. (1) The following shall not be subject to review through an administrative hearing:

(a) A matter in which a court:

1. Has previously made a judicial determination or issued an order on the same issue being appealed; or

2. Is currently engaged in legal proceedings regarding the same issue being appealed;

(b) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;

(c) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;

(d) Failure to submit a written request for appeal within the time frame established by Section 6(4)(b) of this administrative regulation;

(e) A decision to deny:

1. Approval of an individual seeking to provide foster or adoptive services or respite care in accordance with 922 KAR 1:350 or 922 KAR 1:310; or

2. A caretaker relative approval as a kinship caregiver if the:

a. Caretaker relative fails to meet the provisions of 922 KAR 1:130, Section 5; or

b. Child is ineligible in accordance with 922 KAR 1:130, Section 9;

(f) The cabinet's fitness determination of a relative or fictive kin in accordance with 922 KAR 1:565, Section 3(3). A caretaker relative's or fictive kin's ineligibility for reimbursement in accordance with 922 KAR 1:140, Section 3(8); or

4. Approval of an individual seeking to be a relative or fictive kin placement if the individual fails to meet provisions of 922 KAR 1:140, Section 3(6);

(g)(ff) Removal of a foster child from a foster or adoptive home or respite care provider if the foster or adoptive home parent, respite care provider, or another individual residing in the home has been found by the cabinet to have abused, neglected, or exploited a child and the:

1. Foster or adoptive home parent, respite care provider, or other individual waived the right to appeal the substantiated incident; or

2. Substantiated incident was upheld after:

a. An administrative hearing; or

b. Judicial review;

(h)(gg) Removal of a child from a foster home, relative caregiver, or fictive kin caregiver for the purpose of:

1. Achieving a permanency goal described by 922 KAR 1:140;

or

2. Uniting or reuniting the child with a sibling at the next placement;

(i)(hh) Closure of a foster or adoptive home if the cabinet has not placed a child in the home within the previous two (2) years;

(j)(ii) Closure of a relative, fictive kin, foster, or adoptive home according to the terms of the contract between the cabinet and the relative, fictive kin, foster, or adoptive home;

(k)(jj) A situation where state or federal law requires

adjustment of a payment or grant, except if a payment or grant computation is incorrect;

(l)(kk) The per diem rate of reimbursement paid to a foster home parent; or

(m) (A)(ff) decision to not recommend a foster home parent in accordance with 922 KAR 1:350, Section 6(9), for enrollment in specialized training as a medically complex foster parent or care plus foster parent; or

(n) A request for foster care maintenance payment on behalf of a child who was not in the cabinet's legal custody during the period of time for which the payment is requested.

(2) A complaint of discrimination may be filed with the cabinet's Office of Human Resource Management in accordance with 920 KAR 1:090.

Section 4. Service Complaints. (1) If a matter is not subject to review through an administrative hearing, a parent, ~~caretaker~~ relative or kinship caregiver, fictive kin caregiver, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, or an adult may:

(a) Attempt to resolve the issue by submitting a written complaint to the service region administrator or designee within thirty (30) calendar days after the date of the cabinet action or alleged act; or

(b) Contact the cabinet's Office of the Ombudsman and Administrative Review if the matter was not previously reviewed:

1. By that office; or

2. Pursuant to paragraph (a) of this subsection.

(2) A child who is in the custody of the cabinet, or a child who has aged out of the cabinet's custody within the previous twelve (12) months may file a complaint through the Office of the Ombudsman and Administrative Review for any of the following:

(a) Denial, reduction, modification, suspension, or termination of child welfare services provided by the cabinet;

(b) Closure of a child protective services case in accordance with:

1. 922 KAR 1:330, Section 12; or

2. 922 KAR 1:430, Section 4; or

(c) Failure by the cabinet to:

1. Respond with reasonable promptness to a request for child welfare services provided by the cabinet;

2. Complete a case plan or case permanency plan;

3. Provide or refer for services as specified in the case plan or case permanency plan; ~~or~~

4. Meet a mandated timeframe for child protective services specified in 922 KAR 1:330; or

5. Demonstrate diligence in the protection and preservation of a foster child's right in accordance with KRS 620.363.

(3) A child described in subsection (2) of this section may file a complaint or a request for the commissioner's review in accordance with subsection (5) of this section with assistance from the child's authorized representative.

(4)(a) The service region administrator, administrator's designee, or the cabinet's Office of the Ombudsman and Administrative Review shall provide a written response to the complainant within thirty (30) calendar days of receipt of a written complaint not subject to review through an administrative hearing.

(b) The service region administrator or the ombudsman may grant an extension to the response timeframe given in paragraph (a) of this subsection if:

1. Extenuating circumstances prolong the review of the complaint; and

2. Notice of the extension is provided to the complainant.

(5)(a) A parent, ~~caretaker~~ relative or kinship caregiver, fictive kin caregiver, foster or adoptive parent approved by the department in accordance with 922 KAR 1:350, a child described in subsection (2) of this section, or an adult dissatisfied with a written response rendered by the service region administrator, administrator's designee, or the Office of the Ombudsman and Administrative Review may request that the commissioner review the complaint and the written response.

(b) A request for review shall be submitted in writing to the commissioner within ten (10) calendar days of receipt of the written

response provided in accordance with subsection (4) of this section.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The department shall abide by the commissioner's written determination.

(6) The department shall compile data regarding service complaints to:

- (a) Fulfill federal and state reporting requirements; and
- (b) Use for program development and evaluation.

Section 5. Other Appeals. (1) An individual who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing in accordance with 922 KAR 1:480.

(2) An individual aggrieved by a cabinet action or inaction under 922 KAR Chapter 2 may appeal the action or inaction in accordance with 922 KAR 2:260.

Section 6. Request for Appeal. (1) The cabinet shall provide a copy of the DPP-154, Protection and Permanency Service Appeal Request, to an individual:

(a) At each case planning conference;

(b) Upon denial, reduction, modification, suspension, or termination by the cabinet of:

1. Child welfare services provided by the cabinet;
2. General adult services or protective services, if notification does not present a risk of harm to the victim;
3. Adoption assistance; or
4. Other federally-funded program benefit described in 922 KAR Chapter 1 or 5; or

(c) Upon determination that a student is not eligible for a tuition waiver or education and training voucher.

(2) At least ten (10) calendar days prior to the denial, reduction, modification, suspension, or termination of a benefit or services, the cabinet shall hand-deliver or mail the DPP-154A, Protection and Permanency Notice of Intended Action.

(3) The cabinet may take emergency action under KRS 13B.125.

(4) A request for appeal shall:

(a) Be written by the appellant, with the assistance of the cabinet or contract agency if the appellant is unable to comply without assistance;

(b) Be submitted to the cabinet no later than thirty (30) calendar days from the date:

1. That the notice provided in accordance with subsection (2) of this section was issued; or

2. Of the occurrence of the disputed action;

(c) Describe the:

1. Cabinet action in dispute; or

2. Alleged act;

(d) Specify:

1. The reason the appellant disputes the cabinet's action;

2. Name of each cabinet staff person involved with the disputed action, if known; and

3. Date of the cabinet action or alleged act in dispute; and

(e) Include the notice provided in accordance with subsection (2) of this section, if available.

(5)(a) Upon receipt of a written request for appeal, the cabinet shall determine whether the matter is subject to review through an administrative hearing.

(b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the:

1. Matter is not appealable; and

2. Resolution of the matter may be pursued through the service complaint process described in Section 4 or 10 of this administrative regulation.

(6) If the cabinet receives a written request for appeal within

ten (10) calendar days from the date the notice provided in accordance with subsection (2) of this section was issued or the date of the disputed action and the matter is appealable, the cabinet shall continue to provide federally-funded assistance in accordance with 45 C.F.R. 205.10(a)(6) pending the out-come of the appeal.

(7) The cabinet shall not dismiss a request for appeal if an appellant demonstrates good cause. Justification may include:

(a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or

(b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:

1. Submit a written request for appeal; or

2. Participate in a proceeding related to an administrative hearing.

Section 7. Administrative Hearing. Each administrative hearing conducted by the cabinet or designee shall comply with KRS Chapter 13B.

Section 8. Recommended Order. (1) A copy of the recommended order shall be sent simultaneously to:

(a) Each party to the administrative hearing;

(b) The commissioner of the Department for Community Based Services; and

(c) The secretary of the Cabinet for Health and Family Services or designee.

(2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:

(a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;

(b) Be based on facts and evidence presented at the hearing;

(c) Not refer to evidence that was not introduced at the hearing; and

(d) Be sent to each party involved in the hearing.

Section 9. Final Order. (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.

(2)(a) Unless waived by an appellant, final administrative action shall be taken within ninety (90) calendar days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.

(b) If the appellant waives the ninety (90) calendar day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.

(3) An aggrieved party may petition for judicial review in accordance with:

(a) KRS 13B.140 to 13B.160; or

(b) KRS 23A.010.

Section 10. Contract Agencies. (1) A contract agency shall offer a complaint process consistent with:

(a) Section 4 of this administrative regulation; or

(b) Provisions of the contract or agreement between the contract agency and the cabinet, if the provisions are different from Section 4 of this administrative regulation.

(2)(a) An individual dissatisfied with a final written response rendered by a contract agency regarding a complaint may request that the commissioner review the complaint and the contract agency's written response.

(b) A request for review shall be submitted to the commissioner within ten (10) calendar days of the contract agency's written response.

(c) Upon completion of the review, the commissioner shall render a written determination regarding the complaint within thirty (30) calendar days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner notifies the client of the need for an extension to the timeframe specified in this paragraph.

(d) The contract agency shall abide by the commissioner's written determination.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DPP-154, Protection and Permanency Service Appeal Request", 1216/2019; and

(b) "DPP-154A, Protection and Permanency Notice of Intended Action", 6/2019.

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

ERIC T. CLARK, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 9, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, Cabinet for Health and Family Services, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Phone (502) 564-3703, Email: Laura.Begin@ky.gov; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures related to appeals and complaints for benefits and services under Title 922 KAR Chapters 1 and 5.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish appeals and complaint procedures for benefits and services under Title 922 KAR Chapters 1 and 5.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing appeals and complaint procedures for benefits and services under Title 922 KAR Chapters 1 and 5.

(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 procedures related to appeals and complaints for services and benefits under Title 922 Chapters 1 and 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: The amendment to this administrative regulation aligns appeals and complaint procedures with 2019 Ky. Acts ch. 073 and 033, House Bills 2 and 158 from the 2019 Regular Session respectively, and makes other technical corrections in accordance with KRS Chapter 13A. More specifically, the amendment incorporates the new service array for relative and fictive kin caregivers, new service and notice provision to foster parents, and the foster child bill of rights. This administrative regulation is being further amended in response to public comment received during the public comment period to clarify relating to the appeals process and correct an incorporated form.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to align appeals and complaint procedures with the implementation deadline of legislation enacted during the 2019 Regular Session, and to protect the health, safety, and welfare of vulnerable children, families, and adults served through the ability to appeal and submit a complaint regarding cabinet provision of services and benefits under Title 922 KAR Chapters 1 and 5.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its alignment of appeals and complaint procedures with recently enacted state law applicable to

services and benefits under Title 922 KAR Chapters 1 and 5.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its congruency with recently enacted state law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals receiving child welfare or adult services are entities impacted by this administrative regulation, which governs appeals and complaints for Title 922 KAR Chapters 1 and 5. In State Fiscal Year 2018, the cabinet investigated nearly 34,000 reports of suspected adult maltreatment or self-neglect, and 55,000 reports of suspected child maltreatment. As of September 1, 2019, there were 9,721 children in out-of-home care.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required of regulated entities; rather, the basis for appeals and complaints have been clarified in accordance with recently enacted state laws.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new or additional cost imposed upon regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Appeal and complaint procedures for vulnerable children, families, and adults will be congruent with recently enacted state laws, thereby better ensuring the access to quality service provision and entitlements.

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

(a) Initially: Initial implementation costs to the administering agency will be within existing appropriations. Any fluctuation in the number of service appeals as a result of this administrative regulation cannot be projected at this time.

(b) On a continuing basis: Ongoing implementation of the administrative regulation will be within existing appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Social Services Block Grant, funds through Title IV-E of the Social Security Act, and General Funds are utilized to support the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not necessary at this time 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 directly or indirectly increase a fee.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670-675, 1397

2. State compliance standards. KRS 13B.170(1), 194A.010(2), 194A.050(1)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670-675, 1397

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

additional or different responsibilities or requirements, than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation. Local or quasi-governmental entities may be impacted if those entities serve as a contractor of the department.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170(1), 194A.010(2), 194A.050(1), 45 C.F.R. 205.10, 1355.21(b), 1355.30(p), 42 U.S.C. 601(a)(1), 621(1)-(4), 629, 670-675, 1397

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

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

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

(c) How much will it cost to administer this program for the first year? Any new administrative function associated with this administrative regulation will be absorbed within existing appropriations.

(d) How much will it cost to administer this program for subsequent years? Any new administrative function associated with this administrative regulation will be absorbed within existing appropriations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

**FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(Amendment)**

**102 KAR 1:035. Employment by retired members;
calculation of the Daily Wage Threshold and Average Daily
Rate.**

RELATES TO: KRS 161.500, 161.605

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Teachers' Retirement System of the State of Kentucky to promulgate administrative regulations for the administration of retirement system funds and for the transaction of business. This administrative regulation establishes procedures necessary to administer KRS 161.605, concerning income limitations required for employment by retired members.

Section 1. Definitions. (1) "Average Daily Rate (ADR)" means the average daily rate of pay a retired member returning to work receives over a fiscal year as calculated under this administrative regulation.

(2) "Daily Wage Threshold (DWT)" means the limitations of seventy-five (75) percent or sixty-five (65) percent of a member's last annual compensation measured on a daily rate as prescribed in KRS 161.605(1) and (2).

(3) "Extra Service" means service that is not part of, and is provided outside of, the service provided for Position Contract Days and does not earn service credit. It includes, but is not limited to, service for which compensation is paid from the district's supplemental or extra service salary schedules, coaching, professional development and summer school.

(4) "Position Contract Days" means days during the regular school or fiscal year that are part of the normal school calendar and are performed during regular school hours that, standing alone without any other worked service, earn service credit in TRS. It includes service performed on these days through full-time employment as defined in KRS 161.220(21), part-time employment, and substitute teaching. It does not include extra service as defined by this section. ~~[For purposes of KRS 161.605 any period of substitute or part-time teaching of three and one-half (3 1/2) hours or less shall be considered one-half (1/2) day and any period greater than three and one-half (3 1/2) hours shall be considered one (1) full day. Part-time employment in a nonteaching capacity shall not exceed:~~

~~(1) Fifty-four (54) percent of a full-time member's weekly schedule for the equivalent of a regular school term (nine and one-fourth (9 1/4) months); and Thirty-nine (39) percent of a full-time member's weekly schedule for the equivalent of a twelve (12) month school term.]~~

Section 2. To determine the DWT of a retiring member, TRS shall first divide the member's last annual compensation, as defined under KRS 161.220(23), by the number of Position Contract Days worked by the member immediately prior to the member's initial retirement that provided the member with one (1) full year of service credit. This number shall then be multiplied by either sixty-five (65) percent or seventy-five (75) percent pursuant to KRS 161.605(1) and (2), the product of which is the DWT.

Section 3. (1) The ADR shall be measured by adding the total annual compensation for all services performed by the retired member for the fiscal year and dividing that compensation over the number of Position Contract Days worked by the retired member. The total annual compensation for this calculation shall include all forms of remuneration and benefits, except for health insurance coverage generally provided to all eligible employees by the employer, reimbursement for travel expense at the rates approved for state employees, and professional dues. All remuneration of a retiring member returning to work shall be evaluated to determine whether his or her ADR exceeded the DWT for each fiscal year

worked. If the ADR exceeds the DWT, the amount of that excess shall be multiplied by the Position Contract Days worked by the retired member for that year to determine the total reduction in the retired member's benefits required under KRS 161.605(6).

(2) Days worked in Position Contract Days shall be calculated on a full-time equivalent basis. Any day in which the retired member works less than a full day as defined by school district or employer policy shall be measured on a pro rata basis so that the retired member is accredited with a partial day based on the ratio of the hours worked during the day divided by the district's or employer's definition of a full day. Full and partial days worked shall be added to calculate the full-time equivalent number of days worked.

(3) Compensation earned in extra services will be included in total annual compensation for ADR calculation purposes if accompanied with any Position Contract Days worked by the retired member. Extra service shall earn only salary credit.

(4) If extra service is not accompanied by Position Contract Days worked by the retired member, no salary or service credit will be awarded. The retirement contributions forwarded to TRS on that service shall be refunded to the member at the completion of the fiscal year, and any salary credit awarded to the member for that service shall be removed.

ALI WRIGHT, Chairperson

APPROVED BY AGENCY: September 16, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 23, 2019, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, December 16, 2019, five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Tuesday, December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, email Beau.Barns@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes procedures for calculating income limitations for employment of retired members.

(b) The necessity of this administrative regulation: This administrative regulation will assist in the proper administration of KRS 161.605.

(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 assisting the proper administration of agency funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing procedures for the proper administration of KRS 161.605.

(2) If 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 (1) define terms utilized in the regulation, (2) set forth the calculations for a member's Average Daily Rate, Daily Wage Threshold and the days worked in Position Contract Days, (3) clarify when compensation for extra services is included for calculation of the Average Daily Rate, and (4) explain that contributions made on extra service which is not accompanied by Position Contract Days will be refunded without awarding either salary or service credit.

(b) The necessity of the amendment to this administrative regulation: To provide the necessary definitions, set forth the requisite calculations and provide clarification regarding the application or exclusion of compensation for extra services.

(c) How the amendment conforms to the content of the authorizing statutes: Provides detailed clarification of how the amount a retired member may earn upon return to work in a position covered by the retirement system is calculated, including how or when compensation for extra services may or may not be included in the member's total annual compensation or result in the award of salary or service credit.

(d) How the amendment will assist in the effective administration of the statutes: Ensure more efficient and consistent administration of the retirement system's funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Members of the retirement system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The members will not have to take any overt action.

(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 the members of the retirement system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Retired members will understand how rates and limitations are calculated and applied to their reemployment.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members 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? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.605.

3. Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or 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 costs will be incurred.

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Kentucky Teacher's Retirement System (Amendment)

102 KAR 1:036. Part-time service for university, college, and community college members.

RELATES TO: KRS 161.220(4), 161.545, 161.5465

STATUTORY AUTHORITY: KRS 161.310(1), 161.545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.545 authorizes members of the Teachers' Retirement System to make contributions based on part-time service in accordance with trustee administrative regulations. KRS 161.310(1) requires the Teachers' Retirement System Board of Trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. This administrative regulation establishes the service towards which contributions may be made and the procedures for crediting those contributions.

Section 1. Active, contributing members who opt to purchase service credit pursuant to this administrative regulation and who are employed on a part-time basis in a position listed in KRS 161.220(4)(b) and (n) in one (1) of the universities[~~colleges~~] or community colleges shall make retirement contributions and receive service credit in compliance with the following conditions:

(1) An active, contributing member who teaches or is paid the equivalent of at least three-tenths (3/10) of regular full-time service may make contributions on the member's salary and receive a fractional year of service credit[~~or~~]

(2) Contributions shall be based upon the equivalent annual contract salary if a full year of service is to be granted.

(3) Members may make personal contributions for that service in accordance with this administrative regulation upon certification of service and salary by the applicable authority.

(4) The contributions shall be made directly to the retirement office on or before December 31 immediately following the fiscal year in which the part-time service was rendered.

(5) Interest charges of eight (8) percent per annum shall be added to payments made after June 30 of the year that the service occurred.

Section 2.[~~(2)(a)~~] An active, contributing member who is employed and teaches or is paid[~~on the basis of~~] at least seven-tenths (7/10) of the regular contract year shall have the option of purchasing credit for the balance of the contract year in accordance with the conditions of this section[~~full-time service may make contributions for the balance of the contract year~~].

(1) The member shall be employed in a regular full-time position pursuant to a contract that requires a full day of service for every workday of a full contract year.

(2) The member would have received one (1) year of service credit for completing the contract had it been completed.

(3) The member provided service for less than a full year as required by the contract.

(4) The member was employed pursuant to the contract at the beginning of the fiscal or school contract year.

(5) A member employed after the beginning of a regular contract year shall not be eligible to obtain service credit for the time prior to the member's employment.

(6) The contributions shall be made directly to the retirement office on or before December 31 immediately following the fiscal year in which the part-time service was rendered.

(7) Interest charges of eight (8) percent per annum shall be added to payments made after June 30 of the year that the service occurred. (b) Members who are employed on a part-time basis after the start of a regular contract year shall not be eligible to obtain service credit for any period of the contract year prior to the date of their employment.

(c) Contributions shall be based upon the equivalent annual contract salary if a full year of service is to be granted.

(3)(a) Retirement deductions shall not be made for members who are employed on a part-time basis.

(b) Members may make personal contributions for that service in accordance with this administrative regulation upon certification of service and salary by the applicable authority.

(c) The contributions shall be made directly to the retirement office on or before December 31 immediately following the fiscal year in which the part-time service was rendered.

(d) Interest charges of eight (8) percent per annum shall be added to payments made after June 30 of the year that the service occurred.]

(8)(e)] The total amount of service credit that may be purchased pursuant to this section [Section 1(2) of this administrative regulation] shall not exceed five (5) years. Service purchased pursuant to this section [Section 1(2) of this administrative regulation] shall be included in calculating the maximum of five (5) years of nonqualified service credit that may be purchased in accordance with KRS 161.5465.

Section 3. Active, contributing members who purchase retirement credit for full-time or part-time employment in one (1) of the universities or community colleges during years in which they have full-time employment with another employer participating in Teachers' Retirement System, and for which the purchase would result in more than one (1) year of service credit, shall receive salary credit only. Notwithstanding Section 2(8) of this administrative regulation, members making this salary credit purchase, shall purchase every year of their part-time service with the university or community college.

ALI WRIGHT, Chairperson

APPROVED BY AGENCY: September 16, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 23, 2019 at 9:00 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, December 16, 2019, five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Tuesday, December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers'

Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, telephone (502) 848-8508, facsimile (502) 573-0199, or email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the service towards which contributions may be made and the administrative procedures for crediting those contributions to members' accounts.

(b) The necessity of this administrative regulation: This administrative regulation establishes the service towards which contributions may be made and the administrative procedures for crediting those contributions to members' accounts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting forth how active, contributing members may receive service credit for less than regular full-time teaching.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by setting forth the criteria for active, contributing members to receive service credit for less than regular full-time teaching.

(2) If 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 clarify what contributions are based upon, how contributions shall be made and which members have the option of purchasing retirement credit.

(b) The necessity of the amendment to this administrative regulation: To clarify what contributions are based upon, how contributions shall be made and which members have the option of purchasing retirement credit.

(c) How the amendment conforms to the content of the authorizing statutes: Clarifies how contributions shall be made for service credit and for purchasing service credit.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will ensure the member's retirement benefit is based upon all service credit, both earned and purchased.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Members of the retirement system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The members will not have to take any overt action.

(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 the members of the retirement system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be able to make contributions and/or purchase retirement credit.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is

no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members 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? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310(1), 161.545.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 costs will be incurred.

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Kentucky Teachers' Retirement System (Amendment)

102 KAR 1:037. Administrative staff membership.

RELATES TO: KRS 161.220

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.220(4)(d) provides that the Board of Trustees may designate by administrative regulation the members of the staff of the Teachers' Retirement System who shall be members of the system. This administrative regulation sets out the positions which shall[will] be covered by this section.

Section 1. Any position requiring graduation from a four (4) year college or university[~~The executive secretary, the deputy executive secretaries, and other staff employees requiring a professional level of training~~] as a condition of employment shall be included in the membership of the Teachers' Retirement System.

ALI WRIGHT, Chairperson

APPROVED BY AGENCY: September 16, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 23, 2019, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, December 16, 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 this date,

the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through the end of the calendar day, Tuesday, December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199, or email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets out the positions of the administrative staff of Teachers' Retirement System covered by the definition of "member" in KRS 161.220(4)(d).

(b) The necessity of this administrative regulation: This administrative regulation sets out the positions of the administrative staff of Teachers' Retirement System covered by KRS 161.220(4)(d).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting out the positions of the administrative staff of Teachers' Retirement System covered by KRS 161.220(4)(d).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by positions of the administrative staff of Teachers' Retirement System covered by KRS 161.220(4)(d).

(2) If 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 requires a four-year degree as a condition of employment.

(b) The necessity of the amendment to this administrative regulation: To reflect the requirement of a four-year degree as a condition of employment.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment helps ensure qualified individuals will be administering the funds of the retirement system and transacting business on its behalf.

(d) How the amendment will assist in the effective administration of the statutes: Ensure qualified individuals will be administering the funds of the retirement system and transacting business on its behalf.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any individual applying for employment with Teachers' Retirement System.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The members must have a four year degree.

(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 the members of the retirement system.

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

entities identified in question (3): Applicants may gain employment with the retirement system.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members 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? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310.

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? 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 costs will be incurred.

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Kentucky Teachers' Retirement System (Amendment)

102 KAR 1:100. Insurance.

RELATES TO: KRS161.675

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.675 provides that the trustees are authorized to enter into contracts with insurance carriers to provide hospital-medical insurance for members retired for service or disability and for certain dependents of retirees. This administrative regulation sets out procedures under which this coverage shall be provided.

Section 1. The Board of Trustees of the Teachers' Retirement System shall provide for members retired for service; members retired for disability; eligible spouses and eligible ~~minor~~ children of retired members as provided in KRS 161.675; and spouses

receiving monthly benefits under the provisions of KRS 161.525[; and minor children of members deceased prior to retirement if the member was eligible for retirement as provided in KRS 161.600], a medical benefit program including but not limited to hospital room and board, drugs and medicines, doctor fees, nursing care, and convalescent hospital care.

Section 2. Specific material provisions and exclusions shall be provided in the blanket contract with the insurance carrier selected by the board of trustees, the master policy issued under the contract, and any modifications to the contract or master policy approved by the board of trustees.

ALI WRIGHT, Chairperson

APPROVED BY AGENCY: September 16, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 23, 2019, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, December 16, 2019, five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day, Tuesday, December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199 or email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Sets out the procedures for contracting to provide hospital-medical insurance for members retired for service or disability and certain dependents of retirees.

(b) The necessity of this administrative regulation: This administrative regulation sets out who is eligible for hospital-medical insurance.

(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 assuring efficient operation of the hospital-medical insurance program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by delineating who is eligible for the hospital-medical insurance and sets out procedures under which coverage shall be provided.

(2) If 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 clarify that coverage shall be provided (1) pursuant to KRS 161.675 to spouses under age 65 and disabled children of a member regardless of the child's age; and (2) pursuant to KRS 161.525, spouses receiving benefits due to the death of a member eligible to retire by reason of service.

(b) The necessity of the amendment to this administrative regulation: To clarify that in order to receive hospital-medical insurance, a spouse must meet the eligibility requirements of KRS

161.675 and 161.525 and eligible children are not limited to minors, but includes those who are disabled regardless of the child's age.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments clarify that the spouses and children who may receive hospital-medical insurance are those meeting the eligibility requirements set forth KRS 161.675 and 161.525.

(d) How the amendment will assist in the effective administration of the statutes: The amendments clarify that the spouses and children who may receive hospital-medical insurance are those meeting the eligibility requirements set forth KRS 161.675 and 161.525.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Retired members, eligible spouses and children of retired members.

(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 comply with this administrative regulation or amendment: The members retired for service or disability will have to sign up for hospital-medical insurance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cost to the members retired for service or disability will depend upon the amount of the difference between the insurance premium and the applicable supplemental payment for coverage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members retired for service or disability, eligible spouses and member's disabled children will be able to obtain hospital-medical insurance.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by contributions to the medical insurance fund.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members 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? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310, 161.675.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 costs will be incurred.

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Kentucky Teachers' Retirement System (Amendment)

102 KAR 1:125. Omitted contributions.

RELATES TO: KRS 161.560

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.560 provides that each agency employing members of the Teachers' Retirement System shall deduct the appropriate member contributions and forward the contributions to the system on a monthly basis. This administrative regulation sets out the conditions under which these required contributions shall be paid in the event the employing agency fails to deduct these amounts from the member's salary and forward the contributions to the retirement system.

Section 1. In every case where a properly ~~certified~~[certificated] member entitled to membership under KRS 161.470 was employed, or is employed in the future, and the ~~employer~~[board of education] fails for any reason to deduct the retirement contribution due under the retirement Act, the employee if a member of the retirement system, and not retired, may pay the retirement contributions which should have been deducted by the employer plus eight (8) percent compound interest from the end of the year in which the service was performed to date of payment, and receive credit for those years, provided the teacher was not at fault in creating this delinquency.

Section 2. Members of the retirement system who have previously withdrawn their contributions, may reinstate these accounts by complying with the requirements of KRS 161.470(3), and by repaying the amount refunded plus interest at the rate of eight (8) percent compounded annually from the date of withdrawal to date of repayment.

Section 3. Payment may be made directly to the retirement system. Payments shall not be made in installments. A receipt shall be given to the member making a payment.

ALI WRIGHT, Chairperson

APPROVED BY AGENCY: September 16, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 23, 2019, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, December 16, 2019, five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation

until the end of the calendar day on Tuesday, December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199 or email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out conditions under which members' contributions shall be paid if the employing agency fails to deduct these amounts and forward to the retirement system.

(b) The necessity of this administrative regulation: This administrative regulation ensures that members' contributions will be paid to the retirement system in the event the employing agency fails to do so.

(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 permitting the member to make the requisite contributions and receive retirement credit for the payment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by permitting the member to make the requisite contributions and receive retirement credit for the payment.

(2) If 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 recognizes employing entities other than a board of education.

(b) The necessity of the amendment to this administrative regulation: The addition of employer encompasses public boards, institutions or agencies set forth in KRS 161.220(4) who may act as employers and make contributions to the retirement system.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment encompasses public boards, institutions or agencies set forth in KRS 161.220(4) who may act as employers and make contributions to the retirement system.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify that members employed by the public boards, institutions or agencies set forth in KRS 161.220(4) may make contributions to the retirement system in the event the employer does not in order to receive retirement credit for the payment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Members employed by the public boards, institutions or agencies set forth in KRS 161.220(4) whose employers fail to make the required contributions to the retirement system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The members will have to pay the contributions and interest to the retirement system.

(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 members will depend upon such factors as their salaries and years of service, and the compounded interest.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be able to receive retirement credit for the payments.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members 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? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310 161.560.

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Kentucky Teachers' Retirement System (Amendment)

102 KAR 1:135. Interest credited to accounts.

RELATES TO: KRS 161.440, 161.580, 161.705

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.440 provides for crediting interest, as defined in KRS 161.220(13), to the various funds of the Teachers' Retirement System, and KRS 161.580 requires that individual accounts be maintained for each member of the system. This administrative regulation sets out the procedures to be followed in crediting interest to each member's account.

Section 1. For individuals who became members prior to July 1, 2008, interest at the rate of three (3) percent shall be credited to the member's account~~[all member accounts]~~ as long as the member is in active status with the retirement system. For individuals who become members on or after July 1, 2008, interest

at the rate of two and one-half (2.5) percent shall be credited to the member's account as long as the member is in active status with the retirement system.

Section 2. For purposes of this administrative regulation "active status" means the status of a member who has vested with at least five (5) years of [that time during which the member has valid] service credit with the retirement system. Members with less than five (5) years of service credit shall be deemed to be in active status if they have had any service in the most recent three (3) years.

Section 3. No interest shall be credited to member accounts during the first fiscal year of membership. Subsequent to the first fiscal year of membership, interest shall be credited as of June 30 of each year of active status.

Section 4. ~~Interest shall be assigned from the guarantee fund to each of the other funds, except the expense fund, at the end of each fiscal year.~~ At the end of each fiscal year, interest shall be assigned from the guarantee fund to individual funds as follows:

(1) The teachers' savings fund and the state accumulation fund shall be assigned equal amounts of interest in accordance with Sections 1, 2, and 3 of this administrative regulation.

(2) The allowed reserve fund ~~The voluntary fund shall be assigned interest in accordance with 102 KAR 1:122.~~

(3) ~~All other funds, except the expense fund,~~ shall be assigned interest based upon the average month end balance of the fund for each fiscal year.

ALI WRIGHT, Chairperson

APPROVED BY AGENCY: September 16, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, December 23, 2019, at 9:00 a.m. Eastern Time at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, December 16, 2019, five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Tuesday, December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199 or email Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for crediting interest to each member's account.

(b) The necessity of this administrative regulation: This administrative regulation ensures interest shall be accurately credited to members' accounts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting forth the procedures for crediting interest to each member's account.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by ensuring interest shall be accurately credited to members' accounts.

(2) If 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 clarify the amount of interest to be paid dependent upon when an individual became a member of the retirement system, who is in active status, and how and when the interest shall be assigned to members' accounts.

(b) The necessity of the amendment to this administrative regulation: To clarify the amount of interest to be paid dependent upon when an individual became a member of the retirement system, who is in active status, and how and when the interest shall be assigned to members' accounts.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment ensures for the proper administration of the interest credited to members' accounts.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures the correct rate of interest is applied to accounts in active status.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Members who are in active, contributing status with the retirement system.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: The members will not have to take any overt action.

(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 the members of the retirement system.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Members will be credited the correct rate of interest.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members 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? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310.

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? 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 costs will be incurred.

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 1:120. Employee Access to Federal Tax Information (FTI).

RELATES TO: KRS 18A.095, 131.032, 131.081, 131.130, 131.190, 131.990

STATUTORY AUTHORITY: KRS 42.014, 131.032(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.014 requires the Office of the Secretary to establish internal organization, functions and duties as necessary to fulfill the duties of the cabinet. KRS 131.032(2) requires the Department of Revenue to promulgate administrative regulations to establish requirements concerning criminal background investigations for employees, including contract staff, with access to or use of federal tax information (FTI). This administrative regulation establishes the guidelines to implement the requirements set forth in KRS 131.032 and Internal Revenue Service (IRS) Publication 1075.

Section 1. Definitions. (1) "Applicant" means an individual who applies for employment with the Finance and Administration Cabinet, Department of Revenue, or a contractor working on behalf of those agencies who have, or will likely have, access to federal tax information in their regular course of business.

(2) "Classified employee" is defined by KRS 18A.005(7).

(3) "Contract Staff" means an individual employed with the Finance and Administration Cabinet, Department of Revenue, or a contractor working on behalf of those agencies that does not meet the definition of a classified employee with KRS Chapter 18A status.

(4) "Criminal background investigation" means a local, state, or national fingerprint-supported criminal history background investigation performed in accordance with KRS 131.032.

(5) "Department" is defined by KRS 131.010(2).

(6) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor, or offense the nature of which indicates that the employee constitutes an unreasonable and immediate risk to the security of FTI or confidential taxpayer information, unless the department determines there are mitigating circumstances that sufficiently remediate the existing risks.

(7) "Federally funded time-limited employee" is defined by KRS 18A.005(15).

(8) "Federal tax information" or "FTI" means a return or return information received directly from the IRS or obtained through an authorized secondary source, such as the Social Security Administration (SSA) or any entity acting on behalf of the IRS pursuant to an Internal Revenue Code (IRC) Section 6103 (p)(2)(B) Agreement.

(9) "Responsible agency" means an office within the Cabinet, Department, or an entity under contract with the cabinet or

department, that employs or offers employment to an individual in a position for which the job duties include access to FTI.

(10) "Unclassified employee" means an employee that meets the criteria established in KRS 18A.115.

Section 2. Requirement for Criminal Background Investigations. (1) The cabinet, department, or responsible agency shall require prospective or current employees, including contract staff, whose job duties include access to FTI, to submit to a fingerprint-based local, state, or national criminal background investigation as a condition of initial or continued employment:

(a) After the individual is offered a job but before they begin working; and

(b) At least one (1) time every five (5)~~ten (10)~~ years thereafter.

(2) The cabinet, department, or responsible agency that requests a fingerprint-based local, state, or national criminal background investigation on behalf of a prospective or current employee shall incur all fees associated with the cost of each background investigation requested.

(3) The cabinet, department, or responsible agency shall not employ any person in a position for which job duties include access to FTI or confidential taxpayer information if the individual refuses to consent to a fingerprint-based state or national criminal background investigation.

(4) The cabinet, department, or responsible agency shall notify each prospective or current employee determined to have a disqualifying offense.

Section 3. Disqualification. The cabinet, department, or responsible agency shall not employ or offer employment to an individual with a disqualifying offense listed in Section 1 of this administrative regulation or whose background investigation reveals any factor that bears upon the fitness of the individual to work in a position with access to FTI or confidential taxpayer information. The department shall have the sole discretion to determine if a prospective or current employee of the department is suitable to work in a position with access to FTI or confidential taxpayer information to ensure its protection and security in accordance with KRS 131.190, IRS Publication 1075, and Finance and Administration Cabinet Standard Procedure 6.1.2 entitled "Confidentiality of State and Federal Information".

Section 4. Individuals Ineligible to be Hired. The cabinet, department, or responsible agency may refuse to employ, contract with, or permit to work as an employee, any applicant that submits to a background investigation if one (1) or more of the following conditions apply:

(1) The applicant refuses to provide photo identification;

(2) The applicant fails to submit their fingerprints at an authorized collection site as directed, within five (5) business days of being offered employment;

(3) Upon completion of the criminal background investigation, the cabinet or department receives notice that the applicant is found to have a disqualifying offense; or

(4) Final and acceptable disposition of a criminal charge or offense related to a disqualifying offense is not provided to the department within sixty (60) days of fingerprint submission.

Section 5. Notice of a Disqualifying Offense and Appeals - Applicants. (1) The cabinet, department, or responsible agency shall notify applicants determined to have a disqualifying offense.

(2) If an applicant wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background investigation, the department shall refer the individual to the appropriate state or federal law enforcement agency.

Section 6. Notice of a Disqualifying Offense and Appeals - Current Employees. (1) A current employee with classified status found to have a disqualifying offense upon completion of the criminal background investigation may be:

(a) Immediately removed from duties with access to FTI or confidential taxpayer information;

(b) Immediately placed on administrative leave pending an internal review of the disqualifying offense; or

(c) Dismissed from employment if the nature of the disqualifying offense presents an immediate, serious, and irreparable risk to FTI or confidential taxpayer information if the employee's job duties require access to FTI or confidential taxpayer information.

(2) A cabinet or department classified employee whose background investigation reveals a disqualifying offense shall be eligible for reconsideration under an internal department review process and determination in accordance with KRS Chapter 18A.

(3) A cabinet or department classified employee may submit a written request for an internal employment reconsideration review to the Division of Human Resources no later than fourteen (14) calendar days from the date of notice of a disqualifying offense issued pursuant to Section 2 of this administrative regulation.

(4) A cabinet or department classified employee who requests a reconsideration of dismissal may be retained on staff during the review process subject to the following factors:

- (a) The nature and severity of the disqualifying offense;
- (b) The disposition of the offense;
- (c) The time elapsed since the disqualifying offense;
- (d) The employee's personnel history; and
- (e) Whether the employee is assigned duties that require access to FTI or confidential taxpayer information.

(5) The request for an internal employment reconsideration review shall include the following information:

(a) A written explanation of each disqualifying offense, including:

- 1. A description of the events related to the disqualifying offense;
- 2. The number of years since the occurrence of the disqualifying offense;
- 3. The age of the offender at the time of the disqualifying offense; and
- 4. Any other relevant and mitigating circumstances regarding the offense;

(b) Official documentation showing that all fines, including court-imposed fines, costs, or restitution, have been paid, or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(6) After review, the department may reverse the dismissal if the department determines that the disqualifying offense, along with any mitigating circumstances, does not bear upon the fitness of the individual to work in a position with access to FTI or confidential taxpayer information.

(7) No later than thirty (30) calendar days from receipt of the written request for the reconsideration review, the cabinet, department, or responsible agency shall notify the employee of the final determination of the reconsideration review by the department.

(8) The employee may appeal the results of a reconsideration review to the Personnel Board in accordance with KRS 18A.095.

Section 7. Challenges to Criminal History Record Information. An individual subject to a criminal background investigation required by KRS 131.032 and this administrative regulation shall have the right to request and inspect his or her criminal history record and to request correction of any inaccurate information.

Section 8. Pardons, Diversions, and Expungements. An applicant, classified employee, unclassified employee, federally funded time-limited employee, or contract employee who has received a pardon for a disqualifying offense, has had a disqualifying offense dismissed after successful completion of a diversion program, or has had a disqualifying offense expunged, shall not be barred from employment in a position with job duties that include access to or use of FTI or confidential taxpayer

information, for reasons related to the underlying disqualifying offense(s).

DANIEL P. BORK, Commissioner

WILLIAM M. LANDRUM III, Secretary

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for fingerprint-based state and national criminal background investigations for prospective and current employees of the Finance and Administration Cabinet or Kentucky Department of Revenue, including contract staff, whose job duties include access to or use of Federal Tax Information (FTI).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the background investigation requirements established by IRS Publication 1075 and HB 262 from the 2017 legislative session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for a fingerprint-based state and national criminal background investigation for prospective and current employees including contract staff whose job duties include access to or use of FTI.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the process and requirements that must be met in order to be in compliance with 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 changes the requirement to complete a background investigation on current Finance & Administration Cabinet and Department of Revenue employees from every ten (10) years to every five (5) years per IRS Publication 1075.

(b) The necessity of the amendment to this administrative regulation: IRS Publication 1075 is currently being revised to require a background investigation to be performed on employees with access to FTI every 5 years instead of the current 10 year requirement in this regulation. This new version is expected to be released in December, 2019.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment complies with new IRS guidelines per statutory requirement.

(d) How the amendment will assist in the effective

administration of the statutes: It will allow the Finance & Administration Cabinet and the Department of Revenue to provide a greater level of protection of taxpayers confidential information by requiring an updated background check of employees more frequently and over a shorter time span (five years) than what is currently afforded under this administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects prospective and current employees, including contract staff, whose job duties include access to or use of FTI in the possession of the cabinet in accordance with IRS Publication 1075 (Rev. 11-2016) and KRS 131.032.

(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 and current employees including contract staff must submit to a fingerprint-based state and national background investigation.

(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 current or prospective employees. The Department of Revenue will absorb the cost of all background investigations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will remain in compliance with current state and federal requirements governing the security of FTI.

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

(a) Initially: Initially, the only cost to the department will be the cost to fingerprint new staff as they are hired by the cabinet and department in years 1-4 (2019-2022) at a cost of \$65 per employee.

(b) On a continuing basis: Those employees who have not had a background investigation in the previous five (5) years will be subject to a new background investigation at a cost of approximately \$65 per employee. Expenditures on a continuing basis are indeterminable because the number of employees that will be investigated each year will change based on need. All costs will be absorbed by the agency budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Budgeted Department of Revenue funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is expected 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 will not establish or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applicable as compliance with this administrative regulation applies equally to all employees affected 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 affects prospective and current agency employees including contract staff whose job duties include access to or use of federal tax information (FTI).

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. IRS Publication 1075 (Rev. 11-2016), KRS 42.014 and KRS 132.032.

3. Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department of Kentucky State Police (KSP) charges \$53 per person for a federal criminal background investigation. Initially, only checking new employees to the agency should result in minimal revenues for KSP.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? By current estimates, approximately 1,000 cabinet and department staff would be expected to submit to a fingerprint investigation every fifth year. Therefore, this administrative regulation could generate approximately \$53,000 in revenue for KSP in 2023 and every 5 years thereafter.

(c) How much will it cost to administer this program for the first year? For the first year after this change is made, there will be minimal background checks needed for new employees only.

(d) How much will it cost to administer this program for subsequent years? On a continuing bases, minimal expense is expected in years 2-4 as only new employees will be checked in those years. However, all employees will be re-checked every fifth year at a cost of approximately \$65,000 (\$53 to KSP and \$12 to FBI), if costs are still \$65 per person at that time.

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

Revenues (+/-): 0.00

Expenditures (+/-): +\$65,000 every 5 years

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. IRS Publication 1075 (Pending Revision. 12-2019), 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103

2. State compliance standards. KRS Chapter 42 and 131.032.

3. Minimum or uniform standards contained in the federal mandate. IRS Publication 1075 (Rev. 11-2016) requires an FBI fingerprint investigation for any individual granted access to Federal Tax Information (FTI).

26 C.F.R. 301.6103(p)(7)-1 allows the Internal Revenue Service (IRS) to terminate or suspend disclosure of returns and return information to any authorized recipient if the IRS determines that:

(a) The authorized recipient has allowed an unauthorized inspection or disclosure of returns or return information and the authorized recipient has not taken adequate corrective action to prevent the recurrence of an unauthorized inspection or disclosure; or

(b) The authorized recipient does not satisfactorily maintain the safeguards for protecting returns and return information, and has made no adequate plan to improve its system to maintain the safeguards satisfactorily.

26 U.S.C. 6103 pertains to the confidentiality and disclosure of returns and return 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 stricter requirements than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 8:160. Valuation of municipal solid waste landfill facilities.

RELATES TO: KRS 132.020, 132.200, 224.1-010

STATUTORY AUTHORITY: KRS 131.130, 132.202

NECESSITY, FUNCTION, AND CONFORMITY: KRS 132.202 requires the department to promulgate an administrative regulation to implement a valuation methodology for the taxation of property used as a landfill, also known as a municipal solid waste disposal facility. This administrative regulation establishes a uniform system of ad valorem valuation for a municipal solid waste disposal facility as defined in KRS 224.1-010(15).

Section 1. Definitions. (1) "Compaction ratio" means the ratio that expresses the relationship of the number of tons (2,000 pounds) of waste that will fill one (1) cubic yard of landfill capacity. For example, a compaction ratio of 0.60 means that sixty (60) percent of one (1) ton (1,200 pounds) of waste can be compacted into one cubic yard of landfill capacity.

(2) "Cover materials" means soil or other suitable material that is spread and compacted on the top and side slopes of disposed waste in order to control disease vectors, gases, erosion, fires, and infiltration of precipitation or run-on; support vegetation; provide trafficability; or assure an aesthetic appearance.

(3) "Department" means Department of Revenue, Finance and Administration Cabinet, Commonwealth of Kentucky.

(4) "Discount rate" means a pre-tax percentage rate used to discount the annual royalty income over the projected remaining economic life of the landfill to a present value.

(5) "Effective tipping fee" means the average net dollar amount collected per ton for depositing waste into the landfill being assessed not including surcharges, host fees, and related taxes collected and received in gross revenue by the landfill owner or operator.

(6) "General administrative expenses" means the product of two (2) percent \times (net revenue of the landfill owner or operator \times fifteen (15) percent). Net revenue shall include other landfill income. Net revenue shall not include host fees, surcharges and remediation fees.

(7)(6) "Landfill" means a municipal solid waste disposal facility as defined by KRS 224.1-010(15) but does not include construction and demolition debris (CDD) landfills of less than one (1) acre.

(8)(7) "Landfill valuation method" means a discounted cash flow, also known as yield capitalization, which is a valuation methodology used to determine the fair cash value of a landfill's real property.

(9)(8) "Other landfill income" means the five (5) year average of gross income generated by a landfill from sources other than effective tipping fees, net of applicable expenses.

(10)(9) "Present value" means the sum of the discounted projected annual royalty income over the remaining life of the landfill. The present value formula is:

$$PV = \frac{CF_1}{(1+Y)^1} + \frac{CF_2}{(1+Y)^2} + \frac{CF_3}{(1+Y)^3} + \frac{CF_4}{(1+Y)^4} + \frac{CF_5}{(1+Y)^5} + \dots + \frac{CF_n}{(1+Y)^n}$$

CF = the annual projected royalty income

Y = the annual pre-tax discount rate

N = the number of annual periods in the projection

PV = the present value of landfill

(11)(10) "Remaining permitted capacity" means the volume of permitted airspace remaining for the placement of waste materials.

(12)(11) "Reversionary value" means the potential future market value of a landfill after all post-closure regulatory requirements, including a required minimum post-closure monitoring period of at least thirty (30) years, have been fulfilled by the owner or operator.

(13)(12) "Royalty income" means that portion of effective

tipping fees and other landfill income that would be paid pursuant to a presumed comparable market lease agreement by the landfill operator to the real property owner in consideration for the right to use the real property for landfill purposes.

(14)(13) "Royalty rate" means a percentage rental rate to real property applied to the sum of the annual effective tipping fee revenue and other landfill income that results in the estimated royalty income for each year of the estimated remaining economic life of the landfill.

(15)(14) "Tax year" means a calendar tax year.

(16)(15) "Ton" means 2,000 pounds.

(17)(16) "Tons of waste" means the five (5) year average of annual tons of waste received by the landfill, as determined utilizing information submitted to the Division of Waste Management for the Kentucky Department for Environmental Protection on Form DEP 7046, as incorporated by reference in 401 KAR 47:110, Section 5(1)(h).

(18)(17) "Waste" means waste as defined by KRS 224.1-010(31)(a).

(19) "Waste boundary" means the outermost perimeter of the landfill waste (projected in the horizontal plane) as it would exist at completion of the disposal activity.

Section 2. Landfill valuation methodology formula. (1) The department shall determine the fair cash value of a landfill's real property in compliance with the landfill valuation method established in this subsection.

(a) The department shall estimate the remaining permitted economic life of the landfill by dividing the estimated annual cubic yards of waste deposited into the landfill into the total remaining permitted capacity within the waste boundary of the landfill.

1. The compaction ratio shall be calculated by taking the average of the five (5) most recent compaction ratios from the Solid Waste Landfill Annual Survey submitted to the Division of Waste Management for the Kentucky Department for Environmental Protection on Form DEP 8059, available at <http://dep.ky.gov/formslibrary/Documents/DEP8059.doc>. Form DEP 8059 is the form to be submitted by a municipal solid waste landfill permittee in conjunction with the annual survey report required by 401 KAR 47:190, Section 8. When calculating the average, consideration shall be given to factors that alter the five (5) year average as an appropriate estimate.

2. The remaining permitted capacity within the waste boundary shall include the reported ~~shall be as reported on the~~ remaining airspace line item in the most recent Solid Waste Landfill Annual Survey submitted to the Division of Waste Management for the Kentucky Department for Environmental Protection on Form DEP 8059 for the landfill being assessed. The volume shall be adjusted for the capacity consumed from the date of the survey used to prepare the calculation, until the end of the tax year with no annual intake volume growth over the remaining forecasted permitted life of the landfill. Actual tons for the applicable dates shall be converted to permitted cubic yards using the compaction ratio and the result shall be subtracted from the remaining permitted capacity as presented in Form DEP 8059. If cover materials are used at the landfill, the total remaining permitted capacity shall be multiplied by .85 to account for a standard reduction of remaining permitted capacity for cover materials.

3. The estimated annual cubic yards of waste deposited into the landfill shall be equal to the average of the annual cubic yards of waste deposited into the landfill for the five (5) tax years prior to the current tax year. The landfill operator shall report to the department the annual cubic yards of waste deposited into the landfill for the five (5) tax years prior to the current tax year by April 30 of the current tax year. When calculating the average, consideration shall be given to factors that alter the five (5) year average as an appropriate estimate.

4. The remaining economic life of the landfill shall be calculated as follows: remaining permitted capacity (cubic yards) divided by the estimated annual cubic yards of waste deposited equals the remaining permitted economic life of the landfill.

5. The landfill operator shall provide the department with copies of the annual surveys and all quarterly reports filed by the

landfill operator with the Division of Waste Management pursuant to 401 KAR 47:190 during the five (5) years on or before April 30 of the current tax year and a copy of its current operating permit.

(b) The effective tipping fee shall be calculated by dividing landfill historical gross tipping fee revenue (excluding surcharges, host fees, and related taxes collected and received in gross revenue by the landfill owner or operator) collected for the five (5) most recent tax years by landfill related historical tonnage for the five (5) most recent tax years as demonstrated by the records of the landfill operator.

1. The landfill operator shall provide the department with its calculation of the effective tipping fees for the five (5) tax years prior to the current tax year, together with its annual operating financial statements for each tax year, that shall include tipping fee revenue, expenses for surcharges, host fees and related taxes, and other landfill income.

2. The department shall review the effective tipping fees calculation submitted by the landfill operator and shall estimate the forecasted effective tipping fee for the current tax year. Increases in forecasted effective tipping fees shall be determined by an indexed factor not to exceed the annual Consumer Price Index (CPI), as defined by KRS 154.30-010(11), for the year prior to the current tax year.

3. In estimating the annual effective tipping fee, the department shall consider any facts or circumstances that exist that may have an impact on current or future effective tipping fees.

(c) The department shall estimate the other landfill income for the current tax year based upon the records of the landfill operator for the five (5) tax years prior to the current tax year.

1. The landfill operator shall provide the department with its calculation of other landfill income for the five (5) tax years prior to the current tax year, together with its annual operating financial statements provided pursuant to this section.

2. The department shall review the other landfill income submitted by the landfill operator and included in the operating financial statements submitted and shall estimate other landfill income for the current tax year and any annual increase in the other landfill income.

3. In estimating other landfill income, the department shall consider all relevant facts or circumstances that exist that may have an impact on current or future other landfill income.

(d) If the landfill does not have five (5) years of operating data, due to its date of first operation being less than five (5) years prior to the current tax year, the department shall determine the landfill's compaction ratio, consumed landfill capacity, estimated annual cubic yards of waste deposited, effective tipping fees, and other landfill income as a rolling average of the number of years for which operating data exists for the landfill.

(e) The department shall estimate an annual royalty income for each year of the landfill's remaining economic life by the following calculation:

$((\text{effective tipping fee} \times \text{tons of waste}) + \text{other landfill income}) \times \text{royalty rate} - \text{general administrative expenses} = \text{royalty income}.$

(f) The department shall determine the present value of the royalty income of the landfill for all remaining years of its remaining permitted economic life by applying the discount rate to each year's royalty income as determined pursuant to paragraph (e) of this subsection.

(g) The discount rate shall be twenty (20) percent unless the landfill operator or the department establishes a higher or lower discount rate based upon applicable market factors and the applicable facts and circumstances attributable to the landfill.

(h) The present value of the royalty income for all remaining years of the landfill's remaining economic life shall be the landfill real property valuation to be used as a tax basis.

(i) The royalty rate shall be fifteen (15) percent unless the landfill operator or the department establishes a higher or lower royalty rate based upon applicable market factors and the applicable facts and circumstances attributable to the landfill.

(j) The department shall estimate a reversionary value, if any, as of the date that all post closure regulatory monitoring requirements of federal, state, or local governments are completed. The reversionary value shall be discounted to its present worth as

of January 1 of the current tax year and the resulting value shall be added to the sum of all year's present values as calculated pursuant to paragraph (f) of this subsection.

(2) The fair cash value of any other real property, including improvements, not already included in the valuation of the landfill through the landfill valuation method shall be assessed by the department in the same manner as real property of all other taxpayers under KRS Chapter 132.

(a) State and local real property taxes shall be applied to the assessed value of the other real property and shall be added to the taxes assessed on the real property value determined by the landfill valuation method.

(b) The landfill operator shall provide the department with a summary statement of the total acreage of land owned and leased by the landfill company, the total acreage of the permitted landfill area, the total acreage of permitted disposal area, the total acreage closed and covered and the total acreage held for non-landfilling purposes including buffer ~~of the active contained landfill~~.

(3) Any information required to be supplied by the landfill owner or operator in connection with this administrative regulation shall be held in strict confidence by the department unless otherwise required by law.

(4) The allocation of value of tangible personal property incorporated into a landfill and certified as pollution control pursuant to KRS 132.020(1)(k) shall be determined by taking the present value of landfill royalty income, as determined in subsection (1) of this section and subtracting out the value attributable to undeveloped land and the value attributable to real property structures (i.e., demonstrative and nonexclusive examples of which include maintenance buildings, perimeter fencing, etc.) not certified as pollution control. The remaining value shall constitute the value allocation attributable to certified pollution control tangible personal property incorporated into the landfill.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on December 27, 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 at least 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation clarifies areas of ambiguity concerning the valuation system for municipal solid waste disposal facilities ("landfills") and provides better guidance to taxpayers.

(b) The necessity of this administrative regulation: KRS 132.202 mandates the Department of Revenue to promulgate an administrative regulation outlining a valuation methodology for landfills.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The amended administrative regulation provides further guidance and clarity to taxpayers and the Department in the value of a municipal landfill for property tax purposes as required by KRS 132.202.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes a uniform and consistent methodology for valuing municipal solid waste landfills using a discounted cash flow analysis.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds definitions and clarifies ambiguous terminology to provide clearer guidance to the taxpayer concerning the valuation of municipal solid waste landfills.

(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: This administrative regulation will affect all permitted landfills in Kentucky. There are currently 26 landfills operating in the state.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are required as the amended guidance is merely clarifying the existing regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are expected as a result of complying with the updated guidance provided herein.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Municipal solid waste landfill owners will now have greater clarity concerning their assessments, as the value calculated by the methodology herein is based on information and records that are readily available to them and identifies how the information is to be used.

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

(a) Initially: Current staff and budgeted funding will absorb any cost associated with implementation.

(b) On a continuing basis: The Department of Revenue will not incur additional costs on an ongoing basis as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be done with existing funds and personnel primarily through the Department of Revenue, Office of Property Valuation.

(7) Provide an assessment of whether an 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? Tiering is not applied. This administrative regulation establishes the uniform valuation methodology for all municipal solid waste landfills in Kentucky and will be applied equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and

Administration Cabinet, Department of Revenue, Office of Property Valuation, and counties or municipalities which may own and/or operate a municipal solid waste disposal facility ("landfill").

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.100, KRS 131.130(1), and KRS 132.202.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenues 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? None that is currently known.

(c) How much will it cost to administer this program for the first year? No additional costs to the Department of Revenue 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 18:150. Employer's withholding reporting requirements.

RELATES TO: KRS 131.155, 141.330

STATUTORY AUTHORITY: KRS 131.130, 131.155, 141.330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.155(3)(c) requires the department to promulgate administrative regulations establishing electronic fund transfer payment requirements for the payment of taxes and fees administered by the department. KRS 141.330(1) authorizes the department to promulgate administrative regulations to require employers to remit the tax withheld under KRS 141.310 and 141.315 within a reasonable time after the payroll period or other period. This administrative regulation prescribes the reporting and payment requirements for employers withholding Kentucky income tax.

Section 1. Definitions. "Lookback period" means the twelve (12) month period ending on December 31 of the year immediately preceding the current calendar year. For example, the lookback period for calendar year 2020[2018] is the period beginning on January 1, 2019[2017] and ending on December 31, 2019[2017].

Section 2. Reporting and Payment Requirements. Unless otherwise required or allowed by Section 3 of this administrative regulation:

(1)(a) Any employer who withheld income tax of less than \$400 during the lookback period shall report and pay the tax annually using Revenue Form K-3, "Employer's Annual Reconciliation Return."

(b) Revenue Form K-3 and the income tax withheld shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(2)(a) Any employer who withheld income tax of \$400 or more, but less than \$2,000 during the lookback period shall report and pay the tax quarterly using Revenue Form K-1, "Employer's Return of Income Tax Withheld."

(b) Revenue Form K-1 and the income tax withheld each quarter shall be filed and paid on or before the last day of the month following the close of each of the first three (3) quarters of the calendar year (April 30, July 31, and October 31).

(c) Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the fourth quarter shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(3)(a) Any employer who withheld income tax of \$2,000 or more, but less than \$50,000 during the lookback period shall report and pay the tax monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld."

(b) Revenue Form K-1 and the income tax withheld each month shall be filed and paid on or before the 15th day of the following month for each of the first eleven (11) months of the calendar year.

(c) Revenue Form K-3, "Employer's Annual Reconciliation Return," and the income tax withheld for the last month shall be filed and paid on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(4)(a)1. Except as provided in paragraph (b) of this subsection, any employer who withheld income tax of \$50,000 or more during the lookback period shall report and pay the tax twice monthly using Revenue Form K-1, "Employer's Return of Income Tax Withheld."

2. Revenue Form K-1 and the income tax withheld during the first through the 15th day of each month of the calendar year shall be reported and paid on or before the 25th day of that month.

3. Revenue Form K-1 and the income tax withheld during the 16th through the last day of each month of the calendar year shall be reported and paid on or before the tenth day of the following month.

4. However, Revenue Form K-1 and the income tax withheld during the first calendar month shall be filed and paid on or before the tenth of the following month (February 10), and the income tax withheld for the period beginning December 16 and ending on December 31 shall be paid with Revenue Form K-3, "Employer's Annual Reconciliation Return," which shall be filed on or before the last day of the month following the close of the calendar year in which the tax was withheld (January 31).

(b) Any employer who withheld income tax during the lookback period of \$50,000 or more and whose average monthly income tax withheld during the lookback period is more than \$25,000 shall pay the tax withheld by electronic funds transfer.

(5) The department shall provide written notification of the reporting and payment requirements to any employer who does not have a lookback period.

(6) For periods beginning on or after January 1, 2021, twice monthly and monthly filers shall electronically file and pay the income tax withheld.

(7) For periods beginning on or after January 1, 2022, all filers shall electronically file and pay the income tax withheld.

Section 3. Electronic Fund Transfers. (1) If, on any day during a reporting period, an employer accumulates \$100,000 or more of total income tax withheld before a current electronic transaction is otherwise due, the employer shall pay the tax withheld by electronic funds transfer. The employer shall electronically transfer the tax withheld as provided by 103 KAR 1:060 by the close of the first banking day after the first day the employer accumulates \$100,000 or more of income tax withheld.

(2)(a) Any employer not required to pay the tax by electronic funds transfer may make a written request to the department and, if approved by the department, shall be subject to the same requirements as those employers required to electronically transfer the tax.

(b) Any employer who may pay by electronic funds transfer shall continue to pay the tax withheld by electronic funds transfer until the department authorizes the employer in writing to change his reporting and payment method.

Section 4. Authority to Change Reporting and Payment Requirements. Pursuant to the provisions of Section 2 of this administrative regulation:

(1) The department may change annually the reporting or payment requirements of any employer upon written notice to the employer.

(2) Upon written request by any employer and approval by the department, the department may change the reporting or payment frequency prescribed by this administrative regulation.

Section 5. Penalties and Interest. Any employer who fails to comply with the provisions of this administrative regulation shall be subject to penalties as provided in KRS 131.180 and interest as provided in KRS 131.183.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation will be held on December 27, 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 will be accepted through December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides rules for determining employer withholding tax reporting and remittance requirements.

(b) The necessity of this administrative regulation: This regulation is necessary to provide employers with requirements for the timely reporting and remitting of withholding tax.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes require that the Department of Revenue provide rules to employers regarding the filing and remittance requirements for withholding tax.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will reduce errors by employers and reduce compliance efforts and time for the Department of Revenue.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds new language to explain electronic filing and payment requirements by filing frequencies.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clear up confusion that taxpayers currently have regarding what is required to be filed electronically with the department in relation to income tax withheld.

(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 employers required to withhold and remit tax are affected by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions, other than reporting electronically on or after January 1, 2021 or January 1, 2022 depending on the filing frequency.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown. However, there are no additional costs from the department.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By following the new guidelines, employers will comply with withholding reporting and remittance requirements and receive fewer letters and potential penalties from the department for late filing.

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

(a) Initially: There will be no additional expenses incurred outside the current department funding and staff to implement this administrative regulation.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budgetary funding.

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

(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 is not applied since all employers will follow the same requirements will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1), 131.155 and 141.330.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 the department or any other government agency.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 31:020. Records.

RELATES TO: KRS 131.180, 139.010, 139.200, 139.270, 139.620, 139.720

STATUTORY AUTHORITY: KRS 131.130[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 [To interpret] the sales and use tax law as it applies to the records required to be maintained to support sales and use tax reports.

Section 1. Every seller, retailer, and person storing, using, or otherwise consuming in the state tangible personal property, digital property, or services included in KRS 139.200 purchased from a retailer, shall keep adequate and complete records showing:

(1) The gross receipts from the sales of tangible personal property, digital property, and services included in KRS 139.200 (including any services that are a part of the sale) made within Kentucky.

(2) All deductions allowed by law and claimed in filing returns.

(3) The total purchase price of all tangible personal property, digital property, and services included in KRS 139.200 purchased for sale or consumption in Kentucky.

Section 2. These records ~~shall~~[must] include:

(1) ~~The normal books of account ordinarily maintained by the business engaged in the activity in questions; [the normal books of account ordinarily maintained by the average prudent business man engaged in the activity in question, together with]~~

(2) All bills, receipts, invoices, cash register tapes, cancelled checks, bank statements, or other documents of original entry supporting the entries in the books of account; ~~[, as well as]~~

(3) All schedules or working papers used in connection with the preparation of tax returns; and

(4) All ~~["resale certificates", "agricultural certificates", and]~~ other approved certificates or standard data elements from an electronic form that correspond to the information provided on exemption certificates minus the signature received from purchasers.

Section 3. All ~~[such]~~ records for any period shall be preserved until the statutory limitation relating to the assessment of additional tax for that period has expired pursuant to KRS 139.620, unless the department provides written authorization to destroy the records prior to the expiration of the statute of limitations ~~[in writing sooner authorizes their destruction]~~. An agreement between the taxpayer and the department, extending the period of limitation upon assessment, shall automatically extend the period for which preservation of the records is required. Failure to maintain such records ~~shall~~ [will] be considered evidence of negligence or intent to evade the tax, and may result in the imposition of appropriate penalties.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to the records required to be maintained to support sales and use tax reports.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the sales and use tax law as it applies to the records required to be maintained to support sales and use tax reports.

(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.

(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 updating statutory references within the "RELATES TO" section and body of the regulation, updating the promulgation statement with the "NECESSITY, FUNCTION, AND CONFORMITY" section, adding digital property and services included in KRS 139.200 per statute, including language regarding standard data elements, and updating language within the body of the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated and accurate information regarding guidance on the sales and use tax law as it applies to the records required to be maintained to support sales and use tax reports.

(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 assists in the effective and accurate administration of the statutes by updating statutory references within the "RELATES TO" section and body of the regulation, updating the promulgation statement with the "NECESSITY, FUNCTION, AND CONFORMITY" section, adding digital property and services included in KRS 139.200 per statute, including language regarding standard data elements, and updating language within the body of the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every seller, retailer, and person storing, using, or otherwise consuming in the state tangible personal property, digital property, or services included in KRS 139.200 purchased from a retailer

(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 identified in Question 3 shall keep adequate and complete records related to the gross receipts,

deductions and total price related to tangible personal property, digital property and services included in KRS 139.200.

(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 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.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 31:080. Coupons or redemption certificates.

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 administration and enforcement of Kentucky tax laws. This administrative regulation interprets [To interpret] the sales and use tax law as it applies to coupons and redemption certificates.

Section 1. Definitions. (1) "Cash discounts" means the exchange value of coupons or redemption certificates issued by the retailer, not a wholesaler or other third party, and are taken by the retailer from customers.

(2) "Coupon" and "redemption certificate" [Definition. As used in this administrative regulation, a coupon or redemption certificate (excluding premium or trading stamps)] means a certificate [in writing] vesting in a customer, upon the purchase of certain tangible personal property, digital property, or services included in KRS 139.200, the right to a reduction in the sales price of the property or service.

Section 2. A retailer shall include within their [his] gross receipts the exchange value of coupons or redemption certificates taken from their [his] customers if the retailer redeems such certificates from their [his] wholesaler or other third party [person]. The exchange value shall be included in gross receipts under either of the following methods:

(1) The retailer may include the exchange value in their [his] gross receipts for the period during which the coupons or redemption certificates were taken from their [his] customers; or

(2) The retailer may include the exchange value in his gross receipts for the period during which the coupons or redemption certificates are redeemed from his wholesaler or other third party [person].

(3) In either event, the retailer shall collect from customers the tax applicable to the coupon or redemption certificate exchange value.

Section 3. Cash discounts shall [The exchange value of coupons or redemption certificates issued by the retailer (and not by his wholesaler or other person) and which are taken by the retailer from his customers are "cash discounts" and will] not be included in the retailer's gross receipts. The retailer shall not collect tax from customers on the exchange value of such coupons or redemption certificates.

Section 4. Coupons or redemption certificates that [which] represent combinations of those described in Sections 2 and 3 of this administrative regulation shall be taxable on that portion of the coupon or redemption certificate value that [which] may be redeemed from the retailer's wholesaler or other third party [person]. The ["cash discount"] portion of such coupons or redemption certificates shall not be [is not] subject to tax.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to coupons and redemption certificates.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the tax treatment of coupons and redemption certificates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with the formatting requirements of KRS 13A and updates to KRS 139.200.

(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 updating statutory references within the "RELATES TO" section and body of the regulation, updating the authorizing statement in the "NECESSITY, FUNCTION, AND CONFORMITY" section, adding definitions for cash discount, coupon and redemption certificate, adding digital property and services included in KRS 139.200 per statute, removing sex-based language, and updating language within the body of the regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to provide updated and accurate information regarding guidance on the sales and use tax law as it applies to the coupons and redemption certificates.

(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 sellers and purchasers of tangible personal property, digital property, and services included in KRS 139.200.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional 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(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 revenues are expected to be generated by updating this administrative regulation.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 31:090. Tax-paid purchases resold.

RELATES TO: KRS 139.010, 139.200, 139.290, KRS 139.310

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 tax-paid purchases resold.

Section 1. Definition. "Tax-paid purchases resold" means a

sales and use tax deduction taken by a retailer on the sales tax return in the amount of the purchase price of property where the retailer:

(1) Sells the property before making any use thereof, other than retention, demonstration, or display while holding it for sale in the regular course of business;

(2) Reports the sale and remits applicable sales and use tax on the sales price of the property; and

(3) Has previously paid the Kentucky sales or use tax on the purchase price of the property [A retailer who resells tangible personal property before making any use thereof (other than retention, demonstration, display while holding it for sale in the regular course of business) may take a deduction of the purchase price of the property if, with respect to its purchase, he has reimbursed his vendor for the sales tax or has paid the use tax. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property].

Section 2. The tax-paid purchases resold deduction[procedure] described in Section 1 of this administrative regulation may[should] be used in any of the following circumstances:

(1) The retailer, when making the purchase, intends to use the property rather than resell it but later resells it before making any use thereof;[-]

(2) The particular property is not of a kind[not] ordinarily sold or stocked by the retailer and not customarily covered by resale certificates given to their vendors[-his vendors and is the subject of an unusual sale, such as a sale for the accommodation of a customer, employee, etc.]

(3) The particular property is generally for the use of the retailer, but a small portion is incidentally resold; or[-]

(4) Through error, sales[tax reimbursement] or use tax is paid by the retailer with respect to the purchase price of property purchased for resale in the regular course of business.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to tax-paid purchases resold.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance on the tax treatment of tax-paid purchases resold deductions.

(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.

(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 adding statutory references to the "RELATES TO" section, adding an authorizing statement, defining tax-paid purchases resold, and updating the language within the body of the regulation based upon KRS 13A.

(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 retailers doing business in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 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 department 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.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 by the department in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 31:200. Energy efficiency projects.

RELATES TO: KRS 139.010, 139.518, 139.720

STATUTORY AUTHORITY: KRS 131.130(1), 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and administration of taxes. KRS 139.518 establishes the sales and use tax refund provisions for energy efficiency products used at manufacturing plants. This administrative regulation establishes requirements for a sales and use tax refund relating to an energy efficiency project.

Section 1. Definitions. (1) "Energy efficiency project" is defined by KRS 139.518(1).

(2) "Manufacturing" is defined by KRS 139.010(16).

(3) "Plant facility" is defined by KRS 139.010(21).

Section 2. Efficiency Requirements. To calculate the fifteen (15) percent reduction of energy or energy-producing fuels, the decrease in energy consumption shall be based on the total energy consumed within all combined manufacturing at one (1) plant facility.

Section 3. Refund Application Requirements. (1) The applicant shall file a completed Application for Preapproval for Energy Efficiency Machinery or Equipment, Form 51A300, with the Department of Revenue along with energy and energy producing fuel consumption documentation within the timeframe required under KRS 139.518(4).

(2) Requests for the sales and use tax incentive shall be filed within the timeframe required by KRS 139.518(6)(a). The following completed documentation demonstrating achievement of the fifteen (15) percent energy efficiency threshold shall be submitted:

(a) Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive, Form 51A351;

(b) Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive, Form 51A350. This agreement

shall be completed and signed by the manufacturer, the vendor, and the contractor as applicable; and

(c) Purchase invoices for the machinery and equipment for which a refund is being requested.

(3) To be considered valid, all applications and other documents required shall be post-marked, electronically submitted, or if delivered by messenger, hand-stamped by the department by the date required.

(4) The applicant shall keep adequate and complete records supporting its refund request for periods not less than four (4) years as provided for in KRS 139.720. The department may audit part or all of the records of all parties involved as necessary to verify the refund request and to ensure compliance with KRS 139.518.

Section 4. 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: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for a sales and use tax refund relating to an energy efficiency project.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements for a sales and use tax refund relating to an energy efficiency project.

(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.

(d) 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 updating statutory references within "Definitions" and clarifying that the efficiency requirements relate to energy efficiency projects.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update statutory references and clarify that the efficiency requirements relate to energy efficiency projects.

(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 statutory references within "Definitions" and clarifies that the efficiency requirements relate to energy efficiency projects.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All entities potentially applying for a sales and use tax refund relating to an energy efficiency project.

(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? (Explain why or why not): 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.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 40:010. Maintaining Records.

RELATES TO: KRS 244.150

STATUTORY AUTHORITY: KRS 131.130[(4)], 244.150

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, under the authority of KRS 244.150, is authorized by KRS 244.150 and specifies the length of time that records must be accessible[maintained on the premises].

Section 1. All records of a licensee trafficking in alcoholic beverages must be accessible upon demand for inspection by agents of the Department of Revenue~~[maintained on the immediate premises of the licensee]~~ for a period of at least four ~~(4)~~~~(three-3)]~~ years.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the length of time that a licensee trafficking in alcoholic beverages must have records accessible to the Department of Revenue for inspection.

(b) The necessity of this administrative regulation: The amendment is necessary to improve consistency of the

Department's audit procedures between the taxes the Department administers. Statutory references are also updated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 13A, 131.130, 131.131 and 244.150.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to provide more consistency in audit procedures and processes that the Department administers.

(2) If 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 time period in which records must be accessible from three years to four years. Also adds KRS 244.150 to the "STATUTORY AUTHORITY" section, and clarifies that records are to be accessible on premises instead of maintained on premises.

(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: Approximately 358 licensed businesses will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will need to maintain records for one additional year than previously required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Any cost associated with complying to this amended regulation is unknown, but should be minimal, if any.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will provide consistent audit periods and records retention among the taxes the Department administers. The amended regulation will allow for more clarity to the taxpayers allowing for better compliance.

(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 13A, 131.130, 131.131 and 244.150.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenues are expected to be generated by the provisions of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs will be incurred as normal operating expenditures of the Department of Revenue.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years. Once implemented, these requirements will stay in effect until amended in the future.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)**

103 KAR 41.040. Cigarette~~[Subjobbers,]~~ vending machine operators~~[and unclassified acquirers]~~.

RELATES TO: KRS 138.130, 138.195

STATUTORY AUTHORITY: KRS 131.130~~[(4)], 138.195~~

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, under authority of KRS 138.195, outlines license requirements for cigarette vending machine operators~~[interprets the statute and outlines procedures for securing cigarette subjobber license, cigarette vending machine operator license and cigarette unclassified acquirer license].~~

Section 1. ~~[Application for Cigarette Subjobber License. (1) Any person desiring to secure a license as a subjobber of cigarettes on which tax evidence has been previously affixed must file an application with the Department of Revenue, Frankfort, Kentucky, on forms prescribed by the department. A separate application must be filed for each place of business from which tax-paid cigarettes are made available to retailers. The application must state the name and address of the business, the nature of the business, the owners or principal officers, the names of other states in which the applicant intends to distribute cigarettes, and include a list of at least five (5) Kentucky retail locations with whom the applicant has made firm arrangements to regularly supply Kentucky tax-paid cigarettes for resale in the regular course of business. If the applicant is a nonresident of the state, the name of a process agent must be designated.~~

~~(2) Upon issuance by the Department of Revenue, the license must be displayed in the place of business for which the license was issued.~~

~~Section 2. Application for Cigarette Vending Machine Operator License. (1) Any person responsible for stocking a vending machine with cigarettes and accounting for receipts from the sale thereof must file an application for a license as a vending machine operator. The application must be filed with the Department of Revenue, Frankfort, Kentucky, and must state the name and principal address of the business, the nature of the business, the owners or principal officers, the approximate number of machines to be operated, the area of Kentucky in which the machines will be operated, and the names of other states in which cigarettes are to be distributed by the applicant.~~

~~(2) Upon issuance of a cigarette vending machine operator's license by the Department of Revenue, the license shall~~~~[must]~~ be retained at the principal address of the vending machine operator. If a change of address occurs, written notification ~~shall~~~~[must]~~ be given the department. The license number along with the name and address of the operator ~~shall~~~~[must]~~ be affixed to each machine in operation in such a manner as to be visible at the time of the purchase of cigarettes.
[Section 3. Application for Cigarette Unclassified Acquirer License. (1) Any person desiring to secure a license as an unclassified acquirer of cigarettes must file an application with the Department of Revenue, Frankfort, Kentucky, on forms prescribed by the department. The application must state the name and address of the person receiving the untax-paid cigarettes, the nature of the business conducted by the applicant, the anticipated source of supply for cigarettes, and the intended distribution of any cigarettes to be received.

~~(2) Upon issuance by the Department of Revenue, the license must be retained at the address given on the application. If the unclassified acquirer has a change of address, written notification must be given the cabinet.]~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative amendment regulation outlines license requirements for cigarette vending machine operators.

(b) The necessity of this administrative regulation: The amendment is necessary under KRS 138.195 4(e) which requires the Department to specify the manner in which the information shall be affixed to the vending machine.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 13A, 131.130, 131.131 and 138.195.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: The proposed amendment updates regulatory language no longer needed due to the filing of the new 103 KAR 4:220 regulation. This will provide more clarity to the licensee holders.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds KRS 138.195 to the "STATUTORY AUTHORITY" section and removes language in Sections 1, 2, and 3 that were no longer needed due to the filing of 103 KAR 41:220.

(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: Approximately 200+ licensed businesses will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are required as a result of this amendment. Existing requirements were not changed.

(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): The amended regulation will allow for more clarity to the taxpayers allowing for better compliance.

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

(a) Initially: There is no expected costs 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 13A, 131.130, 131.131 and 138.195.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? No new revenues are expected to be generated by the provisions of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs will be incurred as normal operating expenditures of the Department of Revenue.

(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 41:100. Segregation of cigarettes.

RELATES TO: KRS 138.146

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 KRS 138.146 as it applies to the segregation of cigarettes and the maintaining of records by persons licensed as cigarette dealers under KRS 138.195.

Section 1. Inventories of cigarettes held by persons licensed under KRS 138.195 must be maintained in the following manner:

(1) Untax-paid cigarettes must be stored in a separate area from cigarettes bearing tax evidence. Kentucky tax evidence, or that of another state must be affixed to all packages within the required time, pursuant to KRS 138.146(2), unless the cigarettes are distributed within the same period of time into states not using tax evidence. Any receipt and distribution records deemed necessary by the Department of Revenue must be established and maintained by all licensees authorized to receive untax-paid cigarettes.

(2) Cigarettes stamped with the tax evidence of another state must be stored in a separate and distinct area from cigarettes bearing Kentucky tax evidence. These tax paid cigarettes must be either shipped by the wholesaler directly into the state for which the packages were stamped or transferred to persons licensed to receive and distribute cigarettes for resale into the said state.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides guidance on the segregation of cigarettes and maintaining of records by persons licensed as cigarette dealers under KRS 138.195.

(b) The necessity of this administrative regulation: The amendment is necessary to clarify the regulatory language for better compliance by taxpayers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 13A, 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 provide clarity of the intent of the authorizing statutes to the persons or entities regulated by it.

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

(a) How the amendment will change this existing administrative regulation: This amendment adds an authorizing statement to the NECESSITY, FUNCTION and CONFORMITY STATEMENT to conform with KRS 13A requirements, and adds a reference to statutory language in Section 1 that clarifies that cigarettes must have the tax paid prior to shipping into another state.

(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: Approximately 65 licensed cigarette wholesalers 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 new actions are required by the regulated entities listed in question 3. The process being clarified in (2)(a) is already in place.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional expenses are known.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amended regulation will allow for more clarity to the taxpayers allowing for better compliance.

(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 13A, 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 new revenues are expected to be generated by the provisions of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None that is known.

(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 will be incurred as normal operating expenditures of the Department of Revenue.

(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 41:110. Sample of cigarettes.

RELATES TO: KRS 138.135, 138.140, 138.155

STATUTORY AUTHORITY: KRS 131.130 [(+)], 138.155

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, under authority of KRS 138.155, describes the procedure for payment of tax on sample cigarettes on a reporting basis in lieu of affixing cigarette tax evidence to individual packages.

Section 1. In lieu of the affixture of stamps, tax on cigarettes packaged and distributed by manufacturers as a complimentary gift to consumers shall be paid on a monthly reporting basis. The report and tax remittance shall must be submitted to the Department of Revenue, Frankfort, Kentucky, by the manufacturer on or before the 20th of the month following the month in which the cigarettes are shipped from the factory. The report shall must set forth the number of cigarettes distributed and the method by which these cigarettes were distributed to consumers.

Section 2. All packages tax-paid by the manufacturer on a monthly reporting system ~~shall~~must bear an inscription beneath the cellophane wrapper indicating that the cigarettes contained therein are "not for sale."

Section 3. The records of the manufacturer relative to the distribution of sample cigarettes ~~shall~~must be retained for a period of ~~four (4)~~two (2) years and subject to audit by agents of the department.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative amendment regulation updates the regulation to conform to statutory language of KRS 138.135 requiring records to be kept for four (4) years instead of two (2). Updates the "RELATES TO" statutory references.

(b) The necessity of this administrative regulation: The amendment is necessary to update 103 KAR 41:110 to conform to recent statutory changes in KRS 138.135.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 13A, KRS 131.130, KRS 131.131 and KRS 138.135.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language that conflicts with the current KRS 138.135 statute. This will provide clarity to the license holders.

(2) If 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 language to conform with the current KRS 138.135 statute per KRS 13A requirements.

(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: Tobacco manufacturers who provide sample cigarettes to consumers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are required. (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are expected, but minimal, if any.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amended regulation will allow for more clarity to the taxpayers allowing for better compliance.

(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 13A, 131.130, 131.131, and 138.135.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 the provisions of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs will be incurred as normal operating expenditures of the Department of Revenue.

(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 43:010. Accountable Losses.

RELATES TO: KRS 138.210[(4)], 138.220

STATUTORY AUTHORITY: KRS 131.130[(4)], 138.226

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, under authority of KRS 138.226, interprets the statute dealing with accountable losses and excludes non[other than]licensed dealers.

Section 1. No allowance for losses of gasoline or special fuels on which the Kentucky tax has been paid can be made on gasoline or special fuels held in retail filling stations or in tanks other than bulk plant or distribution tanks by licensed dealers and gasoline or special fuels held in any tanks by parties other than licensed dealers. Such gasoline or special fuels having passed the statutory process of "receiving," the act of use, sale, distribution or delivery, on which the tax is levied, has already occurred.

Section 2. An allowance may be made by the department for a loss of "received" gasoline or special fuels held in bulk and distribution tanks by licensed dealers from which sale or delivery is made, provided an affidavit signed by the licensed gasoline or special fuels dealer is furnished the department.

Section 3. If, after investigation, the losses are proved to the satisfaction of the department to have occurred the dealer will be advised to make a deduction from subsequent monthly reports equal to the amount of such approved losses.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets KRS 138.226 dealing with accountable losses and excludes non-licensed dealers

(b) The necessity of this administrative regulation: This amendment is necessary to update 103 KAR 43:010 to add authorizing statutory references to conform to 13A requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 13A, KRS 131.130, KRS

131.131 and KRS 138.226.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will insure that the Department of Revenue is in compliance with KRS 13A.

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

(a) How the amendment will change this existing administrative regulation: Updates the "STATUTORY AUTHORITY" and "RELATES TO" references to include applicable statutory references.

(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: 428 Licensed Motor Fuel businesses could be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are known.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no costs to the entities as a result of adding statutory authority references to this administrative regulation.

(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 the administrative body to implement this administrative regulation:

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted agency 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 13A, KRS 131.130, KRS 131.131 and KRS 138.226.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 the provisions of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? 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:

BOARDS AND COMMISSIONS Board of Landscape Architects (Amendment)

201 KAR 10:050. Fees.

RELATES TO: KRS 323A.040, 323A.050, 323A.060, 323A.070, 323A.100(1), (4), ~~(5)~~, 323A.105

STATUTORY AUTHORITY: KRS 323A.060, 323A.100(1), 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.060 requires the board to promulgate ~~[an]~~ administrative ~~regulations~~[regulation] to establish ~~[application, reinstatement, reactivation, and duplicate license]~~ fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following nonrefundable fees shall apply:

(1) Renewal fees:

(a) Active license: ~~\$250~~[\$200]

(b) Inactive license: ~~\$150~~[- or]

(c) Retired license: twenty-five (25) percent of the active license renewal fee established in paragraph (a) of this subsection;

(2) Duplicate license: twenty-five (25) dollars~~[-]~~

(3) Application fee: ~~\$250~~[-]

(4) Reinstatement fee:

(a) Within thirty (30) days of expiration: 120 percent of the~~active~~ license renewal fee established in subsection (1)(a) or (1)(b) of this section;

(b) Between thirty-one (31) and sixty (60) days of expiration: 140 percent of the~~active~~ license renewal fee established in subsection (1)(a) or (1)(b) of this section;

(c) Between sixty-one (61) days and one (1) year of expiration: 200 percent of the~~active~~ license renewal fee established in subsection (1)(a) or (1)(b) of this section; or

(d) Beyond one (1) year of expiration: 300 percent of the~~active~~ license renewal fee established in subsection (1)(a) or (1)(b) of this section; and

(5) Reactivation fee: equal to the active license renewal fee established in subsection (1)(a) of this section.

JANE ALEXANDER, Executive Director

For BROCK M. MACKAY, President

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 30, 2019 at 10:00 a.m. at the Board's office, 2365 Harrodsburg Road, Lexington, Kentucky 40507. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky 40504; phone (859) 246-2753; email ky.labd@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jane Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends fees.

(b) The necessity of this administrative regulation: This regulation is necessary to apprise interested individuals of the fees charged by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 323A.060 which requires the Board to promulgate administrative regulations to establish fees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation appraises interested individuals of the fees charged by the board & provides adequate revenues for the Board to fulfill its obligations.

(2) If 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 states the cost of renewing an Active license in the Commonwealth for individuals who currently hold a license in the Commonwealth.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to generate additional revenue by increasing an existing fee.

(c) How the amendment conforms to the content of the authorizing statutes: The statute allows the Board to establish fees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will generate revenue to meet the Board's increasing expenses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates this regulation will affect approximately 150 Kentuckians and 150 licensees who live in other states while affecting no businesses, organizations, state or local governments.

(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 individuals affected will annually pay \$50 more than they currently do to renew an Active license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$50 per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals will continue to be served by a fiscally responsible Board.

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

(a) Initially: No new costs will be incurred by the change.

(b) On a continuing basis: No new costs will be incurred by the change.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: As this regulation establishes fees, no additional funding is required for 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 is required 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 will increase the Active renewal fee for licensees.

(9) TIERING: Is tiering applied? Tiering is not applied as the regulation is applicable to all licensees equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact current Kentucky landscape architects who renew a license to practice landscape architecture in the Commonwealth.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323A.060 authorizes the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not affect the expenditures of the agency, but could increase revenues by as much as \$15,000 annually.

(a) How much 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 exact amount is not known, as it depends upon license renewals, but it could increase annual revenues as much as \$15,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment to the administrative regulation could generate as much as \$15,000 annually.

(c) How much will it cost to administer this program for the first year? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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

Revenues (+/-): +\$15,000

Expenditures (+/-): \$0

Other Explanation:

BOARDS AND COMMISSIONS Board of Landscape Architects (Amendment)

201 KAR 10:080. Continuing education.

RELATES TO: KRS 323A.100(1), 323A.210(2)(a)

STATUTORY AUTHORITY: KRS 323A.100(1), 323A.210(2)(a), (b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.100(1) requires a landscape architect to complete the approved continuing education hours established by an administrative regulation promulgated by the board. KRS 323A.210(2)(a) authorizes the board to promulgate administrative regulations to establish a program of continuing education for licensees[registrants]. This administrative regulation establishes the continuing education requirements for a landscape architect.

Section 1. Definitions. (1) "Annually" or "continuing education year" means a twelve (12) month period from July 1 of a calendar year through June 30 of the following calendar year.

(2) "Board" is defined as[by] KRS 323A.010(1).

(3) "Continuing education hour" means a minimum of fifty (50) minutes of actual instruction.

(4) "Self-directed study" means a course of study in which a licensee[registrant] takes and passes an examination offered by the sponsor after the licensee[registrant] reviews material including the Internet, views a video, or listens to an audio tape.

(5) "Sponsor" means an individual, organization, association, institution, or other entity that provides educational activity for the purpose of fulfilling the continuing education requirements of this administrative regulation.

(6) "Tour" means a review or inspection of a landscape architectural element specified in the definition of "practice of landscape architecture" established by KRS 323A.010(3).

Section 2. General Statement. Continuing education obtained by a licensee[registrant] shall maintain, improve or expand skills and knowledge obtained prior to initial licensure or develop new and relevant skills and knowledge.

Section 3. Continuing Education Requirements. (1) A licensee[registrant] shall acquire twelve (12)[fifteen (15)] hours of continuing education annually.

(2) A licensee[registrant] may be credited for a maximum of six 6[seven and one-half (7 1/2)] hours of continuing education for a tour annually.

(3) A licensee[registrant] may carry forward a maximum of twelve (12)[fifteen (15)] hours of continuing education to meet the subsequent year's requirements. Tour hours may[shall not] be carried forward into subsequent years.

Section 4. Approval of Continuing Education Programs. (1) The board shall:

(a) Approve a continuing education program that it determines:

1. Is relevant to the practice of landscape architecture; and

2. Furthers the competence of a licensee[registrant]; and

(b) Determine the number of continuing education hours allowed.

(2)(a) Before the continuing education program is offered, a sponsor shall submit a Continuing Education Preapproval Request and Affidavit (Form #CE-2) with a copy of the hand-out materials and agenda and a description of the presenter, teacher, or speaker.

(b) A sponsor shall not offer, present, or advertise a program as a continuing education program that meets the continuing education requirements for a licensee[registrant] unless it has obtained the approval of the board.

(3) A licensee[registrant] who completes an educational program that has not been submitted to the board for prior approval shall receive continuing education credit if:

(a) The licensee[registrant] submits to the board a Continuing Education Preapproval Request and Affidavit (Form #CE-2) with a copy of the course materials, agenda, a description of the course, qualifications of the presenter, examination if one (1) was given; and

(b) The board determines that the program meets the requirements of a continuing education program.

(4) Continuing education credits shall be given for one-half (1/2) the number of hours, not to exceed six[seven and a half (7 1/2)] hours, of a tour if the licensee[registrant] has:

(a) Submitted to the board:

1. A description of the tour; and

2. The board determines that the tour meets the requirements of a continuing education program.

Section 5. (1) Continuing education activities may include a college or university course:

(a) The conversion of university credits to continuing education hours shall be:

1. One (1) university quarter hour of credit shall equal thirty

(30) continuing education hours.

2. One (1) university semester hour of credit shall equal forty-five (45) continuing education hours.

(2)(a) A landscape architect who prepares and teaches a continuing education course shall be credited with twice the number of hours equal to the time spent teaching the course.

(b) Credit shall not be given for repeated instruction of the same course.

Section 6. Reporting of Continuing Education Activities. (1) Upon license renewal, a licensee[registrant] shall report continuing education activities for the continuing education period ending June 30.

(2) The report of continuing education activities shall include:

- (a) Name of activity;
- (b) Date of activity;
- (c) Location of activity; and
- (d) Continuing education hours earned.

(3) The report of continuing education activities shall be made on a "Continuing Education Approval Request and Affidavit Form (Form #CE-1)."

(4) The report of continuing education activities shall be:

- (a) Signed by the licensee[registrant]; and
- (b) Affixed with the licensee[s]registrant[s] seal.

(5) A licensee[registrant] shall maintain for two (2) continuing education years documentation verifying successful completion of the annual requirement.

Section 7. Verification of Continuing Education Activities. (1) Following each renewal period, the board shall require between five (5) and fifteen (15) percent of the licensees[registrants], chosen randomly, to furnish documentation of the completion of the appropriate number of continuing education hours for the previous renewal period, including hours carried forward from the previous year.

(2) Documentation of attendance and participation in a continuing education activity shall be made by submission of an official document, including a:

- (a) Transcript;
- (b) Certificate of attendance;
- (c) Affidavit signed by the instructor;
- (d) Receipt for a fee paid to a sponsor; or
- (e) A written summary of attendance and participation.

(3) If not previously approved, the board shall determine whether the continuing education program submitted is relevant to the practice of landscape architecture and furthers the competence of the licensee[registrant].

(a) If the activity qualifies as continuing education, the board shall include the number of hours earned for that activity in determining if the applicant obtained the required twelve (12)[fifteen (15)] hours of continuing education.

(b) If the activity does not qualify as continuing education, the board shall deduct the number of hours claimed for that activity from the total number of hours earned by the licensee[registrant]. After this calculation, if a licensee[registrant] does not have the required twelve (12)[fifteen (15)] hours of continuing education, the board shall send written notification to the licensee[registrant] that:

1. The licensee[registrant] did not meet the continuing education requirements because an activity listed on the applicant's form as a continuing education activity did not qualify for continuing education credit; and

2. The board shall suspend his license if the requirements of subsection (4) of this section are not met.

(4) The license of the licensee[registrant] shall be suspended if the licensee[registrant] fails to:

- (a) Complete the required number of continuing education hours within sixty (60) days of the notification from the board; and
- (b) Submit to the board a completed and updated "Continuing Education Approval Request and Affidavit Form" (Form #CE-1) within sixty-five (65) days of the notification from the board.

Section 8. Reciprocity. Credit for continuing education earned by a licensee[registrant] who does not reside in Kentucky shall be

granted if the licensee[registrant] meets all the requirements of this administrative regulation.

Section 9. Exempt Licensee[Registrant]. (1) A licensee[registrant] shall be exempt from the continuing education requirements:

- (a) For the period of initial licensure;
- (b) During the period of time in which the licensee[registrant] has an inactive license in accordance with the provisions of Section 10 of this administrative regulation; or
- (c) If the board approves a written request for an exemption submitted by the licensee[registrant] in accordance with the provisions of subsection (2) of this section.

(2) A licensee[registrant] may request an exemption from the continuing education requirements by submitting written document that the licensee[registrant] was:

- (a) Employed or assigned to duty outside the United States for a period exceeding 120 consecutive days during the calendar year; or
- (b) Unable to complete the requirements because of:
 - 1. Physical disability;
 - 2. Personal illness; or
 - 3. Illness of a family member or dependent.

Section 10. Inactive License. (1) A licensee[registrant] may choose to inactivate his license.

(2) During the period a license is inactive, a licensee[registrant] shall:

- (a) Be exempt from the provisions of this administrative regulation; and
- (b) Not practice landscape architecture.

Section 11. Reinstatement of Suspended or Inactive License.

(1) Prior to reinstatement of a suspended or inactive license, a licensee[registrant] shall complete the number of continuing education hours required for the annual renewal of the license times the number of years the license was suspended or inactive.

(2) The number of continuing education hours required by subsection (1) of this section shall not exceed twenty-four (24)[thirty (30)] hours.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Continuing Education Approval Request and Affidavit Form" (Form #CE-1), May 2002 edition; and
- (b) "Continuing Education Preapproval Request and Affidavit Form" (Form #CE-2), May 2002 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky[State] Board of ~~Examiners and Registration of~~ Landscape Architects, 2365 Harrodsburg Road, B350[301—East—Main—Street], Lexington, Kentucky 40504[40507], Monday through Friday, 8 a.m. to 4:30 p.m.

JANE ALEXANDER, Executive Director

For BROCK M. MACKAY, President

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING and PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 30, 2019 at 10:00 a.m. at the Board's office, 2365 Harrodsburg Road, Lexington, Kentucky 40504. Individuals interested in attending this hearing shall notify this agency in writing by five workdays prior to this 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. Send written notification of intent to

attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky 40504; phone (859) 246-2753; email ky.labd@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jane Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation reduces the annual requirement of continuing education hours for licensees and replaces "registrant" with "licensee" to conform to the recent Board name change in KRS 323A.

(b) The necessity of this administrative regulation: This regulation is necessary to apprise interested individuals of the required number of continuing education hours per year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 323A.210(2)(a) which requires the Board to promulgate administrative regulations necessary to maintain a program of continuing education for licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation appraises licensees of the annual continuing education requirement.

(2) If 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 reduces the annual number of continuing education hours required to maintain a license.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to bring the annual continuing education requirement in line with surrounding states' and similar design professions' continuing education requirement.

(c) How the amendment conforms to the content of the authorizing statutes: The statute allows the Board to set the continuing education requirement.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will reduce unnecessary continuing education currently required.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates this regulation will affect approximately 150 Kentuckians and 150 out of state licensees while affecting no businesses, organizations, state or local governments.

(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 individuals affected will need to complete fewer continuing education courses each year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): On average, it will save each licensee \$60 annually.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The individuals will be required to maintain ongoing education in the field, yet not be required to complete more courses than seems necessary to the Board.

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

(a) Initially: No new costs will be incurred by the change.

(b) On a continuing basis: No new costs will be incurred by the change.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As this regulation reduces the number of continuing education courses required by licensees annually, no additional funding is required for 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 is required 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 will not increase fees for licensees, but will indirectly REDUCE fees for licensees.

(9) TIERING: Is tiering applied? Tiering is not applied as the regulation is applicable to all licensees equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact current Kentucky landscape architects who renew a license to practice landscape architecture in the Commonwealth.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323A.210(2)(a)(b) authorizes the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will affect neither the revenues nor the expenditures of the agency.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? \$0

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? \$0

(c) How much will it cost to administer this program for the first year? \$0

(d) How much will it cost to administer this program for subsequent years? \$0

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

Revenues (+/-): +\$0

Expenditures (+/-): \$0

Other Explanation:

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

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

RELATES TO: KRS 150.170, 150.180, 150.370, 150.399, 150.415, 150.416, 150.990, 150.995

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(7), (9), 150.360, 150.400, 150.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals. This administrative regulation establishes seasons, bag limits, legal

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methods of take, and checking and recording requirements for hunting and trapping furbearers.

Section 1. Definitions. (1) "Body-gripping trap" means a commercially manufactured spring-loaded trap designed to kill an animal upon capture.

(2) "Dry land set" means a trap that is placed[set] so that no portion of the trap touches the water of a river, stream, pond, lake, wetland, or other water course.

(3) "Foothold trap" means a commercially manufactured spring-loaded trap with smooth, metallic or rubber soft-catch jaws that close upon an animal's foot.

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

(5) "Hunter" means a person legally taking furbearers by means other than trapping.

(6) "Otter Zone 1" means the following counties: Anderson, Ballard, Bath, Boone, Bourbon, Bracken, Breckinridge, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Daviess, Fayette, Fleming, Franklin, Fulton, Gallatin, Grant, Graves, Grayson, Hancock, Hardin, Harrison, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McCracken, McLean, Meade, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Pendleton, Robertson, Rowan, Scott, Shelby, Spencer, Trigg, Trimble, Union, Webster, and Woodford.

(7) "Otter Zone 2" means all Kentucky counties not included in subsection (6) of this section.

(8) "Snare" means a wire, cable, or string with a knot, loop, or a single piece closing device, the deployment of which is or is not spring-assisted, but any spring-assisted device is not for the purpose of applying tension to the closing device.

(9) "Squaller" means a hand-operated, mouth-operated, or electronic call capable of mimicking the vocalizations of furbearers.

(10) "Trap" means a body-gripping trap, box trap, deadfall, foothold trap, snare, or wire cage trap used to catch furbearers, in the set or unset position.

(11) "Water set" means a trap placed[set] in the water of a river, stream, pond, lake, wetland, or other water course so that a portion of the trap body is underwater.

(12) "Youth" means a person under the age of sixteen (16) by the date of the hunt or the trapping date.

Section 2. License Requirements. Unless exempted by KRS 150.170, a person shall carry on his or her person[proof of purchase of] a:

- (1) Valid hunting license while hunting furbearers; or
- (2) Valid trapping license while trapping furbearers.

Section 3. Furbearer Hunting Seasons. Except as established in 301 KAR 2:049, a person shall only take furbearers by hunting during the seasons established in subsections (1) through (5) of this section:

(1) Bobcat, from one-half (1/2) hour before sunrise on the fourth Saturday in November through the last day of February;

(2) Coyote, year-round;

(3) Raccoon and opossum, October 1 through the last day of February;

(4) All other furbearers except as established in subsection (5) of this section, from one-half (1/2) hour before sunrise on the third day of modern gun deer season through the last day of February; and

(5) Furbearers taken by falconry, September 1 through March 30.

Section 4. Furbearer Trapping Season. Except as established in 301 KAR 2:049, a person shall only take furbearers by trapping from one-half (1/2) hour before sunrise on the third day of the modern gun deer season through the last day of February.

Section 5. License-Exempt Youth Season. For seven (7) consecutive days beginning on the Saturday after Christmas, a

youth may hunt or trap furbearers without a license, but all other statewide requirements shall apply.

Section 6. Legal Hunting Weapons. Except as established in Section 7(8) of this administrative regulation, a hunter shall only use the weapons established in subsections (1) through (7) of this section to hunt furbearers:

- (1) Centerfire gun;
- (2) Rimfire gun;
- (3) Shotgun;
- (4) Muzzleloader;
- (5) Bow and arrow;
- (6) Crossbow; or
- (7) An air gun using pellets at least .22 caliber in size.

Section 7. Hunter Restrictions. (1) Furbearers may be taken during daylight hours only, except for the following, which may also be taken after daylight hours:

- (a) Coyote;
- (b) Opossum; or
- (c) Raccoon.

(2) A person shall not take a raccoon or opossum during daylight hours during the modern gun deer season, as established in 301 KAR 2:172.

(3) A person hunting from a boat shall not use a light in conjunction with taking a raccoon or opossum.

(4) A person shall not use the following while chasing a raccoon or opossum from noon on March 1 through September 30:

- (a) A firearm;
- (b) Slingshot;
- (c) Tree climber; or

(d) Any device to kill, injure, or force a raccoon or opossum from a tree or den.

(5) A person may use a squaller year-round.

(6) There shall not be a closed season on:

(a) Chasing red and gray foxes during daylight hours for sport and not to kill; or

(b) Chasing raccoons or opossums for sport and not to kill.

(7) A hunter may use a hand or mouth-operated call, electronic call, or any other attracting device during a furbearer hunting season.

(8) A person may take a coyote after daylight hours, except that:

(a) It shall not be allowed in a county or area where a deer or elk firearm season is open;

(b) A person shall not use artificial light or other means designed to make wildlife visible at night from June 1 through November 30[January 31];

(c)(b) Any artificial light or other means designed to make wildlife visible at night shall not be connected to or cast from a mechanized vehicle;

(d)(e) A person shall not use any weapon other than a shotgun on public land;[and]

(e)(d) A person shall not use any weapon other than a shotgun or rifle of .243 caliber or smaller on private land from December 1 through March 31;[a shell with a single projectile]

(f) A person using a shotgun shall not use a shell with a single projectile; and

(g) Hunters shall not hunt on private land without carrying written permission from the landowner from December 1 through March 31.

Section 8. Legal Traps. (1) A person who is trapping with a dry land set shall only use traps as established in paragraphs (a) through (e) of this subsection:

- (a) Deadfall;
- (b) Wire cage or box trap;
- (c) Foothold trap with a maximum inside jaw spread of six (6) inches measured perpendicular to the hinges;
- (d) A snare; or
- (e) Except as established in 301 KAR 2:049, a body-gripping trap with a maximum inside jaw spread of seven and one-half (7 1/2) inches measured parallel with the trigger.

1. In the center of the trap; and
2. In the unset position.

(2) There shall be no restrictions on the size or type of trap used as a water set, except that any body-gripping trap greater than twenty (20) inches in width shall be set so that the trap is completely submerged underwater.

Section 9. Trapper Restrictions. (1) A person trapping on private land shall not place traps used as dry land sets any closer than ten (10) feet apart unless possessing written permission from the landowner or the landowner's designee, except that there shall not be more than three (3) traps placed[set] within any ten (10) foot spacing.

(2) The trap spacing requirement established in subsection (1) of this section shall not apply to:

- (a) Box or cage live traps; or
- (b) Properties of five (5) acres or less.

(3) A trap shall not be set in a trail or path commonly used by a human or a domestic animal.

(4) A trapper may use lights from a boat or a vehicle in conjunction with trapping furbearers.

Section 10. Trap Tags. (1) Each trap shall have a metal tag attached to it that clearly shows:

(a) The name and address of the person setting, using, or maintaining the trap; or

(b) A wildlife identification number issued by the department and the 1-800-25ALERT department hotline phone number.

(2) A person applying for a wildlife identification number shall apply by:

(a) Completing the Wildlife Identification Number for Trap Tags – Application available on the department's Web site at fw.ky.gov; or

(b) Calling the department's information center at 1-800-858-1549.

(3) The following information shall be required for a person to apply for a wildlife identification number:

- (a) Name;
- (b) Current home address;
- (c) Social Security number;
- (d) Current phone number;
- (e) Date of birth; and
- (f) Driver's license number, if available.

(4) A person shall:

(a) Not use a trap tag that has an inaccurate or outdated address;

(b) Not use a trap tag that has a wildlife identification number that corresponds to an inaccurate or outdated address or phone number; and

(c) Contact the department to provide updated address and phone number.

(5) A wildlife identification number shall be valid for the life of the holder.

Section 11. Bag Limits. (1) There shall not be a bag limit on furbearers, except as established in subsections (2) through (6) of this section.

(2) A person shall not take more than five (5) bobcats per season, no more than three (3) of which shall be taken with a gun.

(3) A person shall not take more than ten (10) river otters per season in Otter Zone 1.

(4) A person shall not take more than six (6) river otters per season in Otter Zone 2.

(5) The total river otter bag limit per season shall be ten (10) per person, only six (6) of which can be taken from Otter Zone 2.

(6) A falconer hunting within the falconry season, but outside the dates specified in Section 3(3) and (4) of this administrative regulation, shall not take more than two (2) of any furbearer per day.

Section 12. Harvest Recording. (1) Immediately after harvesting a river otter or bobcat, and prior to moving the carcass, a person shall record in writing the:

- (a) Species;
- (b) Date;
- (c) County where taken; and
- (d) Sex of the river otter or bobcat.

(2) The information required by subsection (1)(a) through (d) of this section shall be documented on:

(a) The hunter's log section on the reverse side of a license or permit;

(b) A hunter's log printed from the department's Web site at fw.ky.gov;

(c) A hunter's log available from any KDSS agent; or

(d) An index card or similar card.

(3) A person shall retain and possess the completed hunter's log while hunting or trapping during the current season.

Section 13. Checking a River Otter or Bobcat. (1) A person who harvests a river otter or bobcat shall check each animal by:

(a) Completing the telecheck process after calling 800-245-4263 or completing the check-in process on the department's Web site at fw.ky.gov:

1. Before midnight on the day the river otter or bobcat is recovered;

2. Prior to processing the carcass; and

3. Prior to transporting the raw fur, pelt, or unskinned carcass out of Kentucky; and

(b) Writing the check-in confirmation number on the hunter's log as established in Section 13 of this administrative regulation.

(2) A person who intends to sell the raw fur of a river otter or bobcat to a licensed fur processor, fur buyer, or taxidermist or wishing to export a river otter or bobcat pelt outside the United States shall:

(a) Contact the department and request a Convention on International Trade of Endangered Species of Flora and Fauna (CITES) tag by providing:

1. A valid check-in confirmation number as established in subsection (1) of this section; and

2. A street address where the tag is to be mailed; or

(b) Complete the CITES tag request form on the department's Web site at fw.ky.gov.

(3) A person who is transferring a river otter or bobcat that does not have an attached CITES tag shall attach to the carcass a handmade tag that contains the:

(a) Confirmation number;

(b) Hunter or trapper's name; and

(c) Hunter or trapper's phone number.

(4) A person shall not knowingly provide false information when:

(a) Completing the hunter's log;

(b) Checking a river otter or bobcat;

(c) Completing a CITES tag request form; or

(d) Creating a handmade carcass tag.

(5) A CITES tag shall be attached to the raw fur, pelt, or unskinned carcass upon receipt of the tag from the department per the instructions provided by the department and remain attached until it is processed or exported outside the United States.

(6) Possession of an unused CITES tag issued by the department shall be prohibited.

Section 14. Transporting and Processing a River Otter or Bobcat. (1) A person shall not sell the raw fur of a river otter or bobcat except to a licensed:

(a) Fur buyer;

(b) Fur processor; or

(c) Taxidermist.

(2) A taxidermist, fur buyer, or fur processor shall:

(a) Not accept a river otter or bobcat carcass or any part thereof without a proper carcass tag or CITES tag established in Section 14 of this administrative regulation; and

(b) Retain the information established in subparagraphs 1. through 4. of this paragraph from a hunter or trapper:

1. Name;

2. Address;

3. Confirmation number or CITES tag number; and

4. Date received for each river otter or bobcat.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Wildlife Identification Number for Trap Tags – Application", 2014 edition; and

(b) "CITES Tag Request" form, 2014 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. Eastern time.

RICH STORM, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 30, 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 December 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jessica Tyler, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone: (502) 564-3400, 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: This regulation establishes furbearer hunting and trapping seasons, bag limits, legal methods of take, and other furbearer hunting and trapping requirements.

(b) The necessity of this administrative regulation: This regulation is necessary to provide adequate furbearer hunting and trapping opportunities and to properly manage furbearer populations in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses, permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will fulfill the purposes of KRS 150.025 and 150.410 by defining the seasons, bag limits, and methods of take used to manage furbearers 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 amendment will allow the use of lights and night vision devices for the taking of coyotes from December 1 to May 31. Additionally, this amendment will allow the use of rifles to take coyotes at night from December 1 to March 31 on private land with written permission of the landowner.

(b) The necessity of the amendment to this administrative regulation: This amendment will further increase the efficacy of coyote removal and provide an increased level of hunter opportunity.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All legal hunters could pursue coyotes at night with more effective weapons than were allowed in the past. Additionally, farmers and others experiencing coyote nuisance issues can use this amendment to better control coyote numbers and protect their agricultural interests.

(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: Hunters may pursue coyotes at night with a rifle from December 1 to March 31 using lights and night vision equipment. Hunters using any weapon to pursue coyotes at night must have written permission of the landowner on their person from December 1 to March 31.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to licensed hunters.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Hunters will have more opportunity to pursue coyotes at night.

(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 cost to the department to implement this administrative regulation.

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

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: 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 all hunters of coyotes in Kentucky must comply with the requirements of this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.175(7), (9) authorizes the department to issue licenses,

permits, and tags for hunting and trapping. KRS 150.360 requires restrictions on the taking of wildlife and authorizes the department to promulgate administrative regulations establishing the requirements for hunting coyotes at night. KRS 150.400 authorizes the department to establish the types of traps that can legally be used by trappers. KRS 150.410 authorizes the department to regulate trap tags, trap visitation, and trap placement to protect domestic animals.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue will be generated by this administrative regulation during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue will be generated by this administrative regulation during subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be 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 (+/-): None; see 3(a) and (b) above.

Expenditures (+/-): None; see 3(b) and (c) above.

Other Explanation:

**DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing
(Amendment)**

302 KAR 15:010. Administration; state aid to local fairs.

RELATES TO: KRS 247.220

STATUTORY AUTHORITY: KRS 247.220

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.220(2) authorizes the Fair Council and the Commissioner of Agriculture to promulgate administrative regulations regarding grants for local fair facilities. This administrative regulation establishes requirements for administration of and participation in the local fairs program.

Section 1. General Administration. (1) The County Fair Coordinator[~~Director~~] of the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] in the Department of Agriculture shall only make premium allocations to the authorized agent of an incorporated local fair board that conducts a qualified local agricultural fair in compliance with KRS 247.220.

(2) Fair officials for local fair boards applying for state funds shall make a reasonable effort to develop a program that will supplement agricultural educational and promotional activities.

(3) Local fair boards seeking state assistance shall plan and conduct a qualified local agricultural fair with educational exhibits running for at least three (3) consecutive days (thirty-six (36) hours of exhibition). All fair events shall be held on consecutive days with the following exceptions:

(a) A fair may be closed on Sundays, if the local board desires; and

(b) A fair may conduct certain events, such as harness horse racing, on separate dates if:

1. The local board files a request to conduct the event with the Shows and Fairs Division[~~Division of Show and Fair Promotion~~];

2. The request is approved by the Kentucky Fair Council at the next regular meeting and thereafter transmitted to the Commissioner of Agriculture for the Commissioner's approval or

rejection of the local board's request; and

3. The Commissioner of Agriculture approves the request.

(4) A local fair board shall establish classes and premiums related to the economic importance of the commodity in the area, the relative value of the exhibit and the difficulty in preparing for and showing the entry.

(5) Ribbon colors at each local fair shall be as follows:

(a) Blue for first place;

(b) Red for second;

(c) White for third;[;]

(d) ~~Pink for fourth;~~

(e) ~~Yellow for fifth;~~

(f) ~~Green for sixth;~~

(g) ~~Light green for seventh;~~

(h) ~~Brown for eighth;~~

(i) ~~Gray for ninth; and~~

(j) ~~Light blue for tenth.]~~

(6) A local fair board seeking state funds shall comply with local and state health regulations for exhibitors tending exhibits and for fair attendants.

(7) A fair event held at a location other than the fairgrounds shall qualify for aid if publicized in the fair's catalog as being a fair event.

Section 2. Records. (1) A local fair board shall make a request for state assistance annually on an Initial Request for State Aid to Local Agricultural Fairs Form, and shall mail it to the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] by March 1 of the year in which the fair is conducted. The Commissioner of Agriculture shall allow a fair to enter the program after the application deadline has passed for good cause shown.

(2) A local fair board shall mail an Open Class Livestock Show Information Form Packet[~~a Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Show and Fair Promotion, Open Class Dairy and Beef Show Information Form (1995)~~] concerning the fair's livestock[~~beef and dairy~~] shows to the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] by April 1[~~May 4~~] of the year in which the fair is conducted.

(3) A complete financial statement for events previously requesting state funds shall be submitted to the Department of Agriculture. This annual financial statement shall cover all crops, foods, domestic livestock, poultry, harness horse racing, other horse events, and other agricultural classes that may qualify for aid. It shall be complete and prepared in detail showing receipts and disbursements as well as the number of exhibitors and premiums awarded by fair departments. This certified, notarized statement shall be presented to the County Fair Coordinator[~~Director~~] of the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] within forty-five (45) days following the event and no financial statement shall be accepted for payment after December 1 of the year in which the fair is conducted without approval from the Kentucky Fair Council, based on budgetary considerations.

Section 3. Entries. (1)(a) A Fair qualifying for state funds shall provide for adult and youth divisions.

(b) Youth exhibits shall include 4-H, FFA, FHA, and shall include other official groups recognized by the extension service or the Office of Secondary Vocational Education. All projects approved by these official groups may be approved for state funds. Fair boards may restrict youth participation to a particular district, county, or trade area.

(2) All exhibitors, adult and youth, shall have equal opportunity to enter open classes.

(3) A local fair board receiving state money shall assure that exhibits eligible in more than one (1) class or section are exhibited only in the class or section for which it best qualifies. An exhibitor shall not show the same kind of animal or the same entry in both FFA and 4-H classes or in classes for other organized junior organizations.

(4) All domestic livestock, poultry, and horse entries shall meet the specifications of the health administrative regulations of the

State Board of Agriculture[as set forth in 302 KAR 20:065] relating to the exhibition of livestock in Kentucky.

Section 4. Catalog. (1) A qualified fair shall have an official fair catalog. A draft copy of the catalog including premium lists and classes, excluding advertisements, shall be submitted to be approved by the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] at least forty-five (45) days prior to the opening of the fair. The finished catalog shall be submitted to the County Fair Coordinator[~~Director~~] of the Department of Agriculture's Shows and Fairs Division[~~Division of Show and Fair Promotion~~] no later than thirty (30) days before the fair is held.

(2) Classes advertised in the catalog shall be reviewed annually by the local fair board to make certain that competitive events are being held and that premiums offered are not out of balance with entries.

(3) The official fair catalog shall contain the following information:

(a) A list of fair officials and their assigned responsibilities with the following organizations being represented on the agriculture advisory board:

1. Vocational Agriculture;
2. Extension Service;
3. Farm Bureau;
4. Local Livestock Association (if one exists); and
5. Local Horsemen's Association (if one exists);

(b) A schedule of events planned as a part of the fair;

(c) Local fair rules and administrative regulations including a statement to the effect that "open classes are open to all exhibitors unless otherwise specified;"

(d) General information by fair departments showing classes and premium lists;

(e) Animal health administrative regulations[, 302 KAR 20:040 and 302 KAR 20:065]; and

(f) A rule to the effect that "entries made in 4-H, FFA and FCCLA classes shall have been produced in conjunction with an approved project sponsored by these organizations."

(4) Catalogs shall be mailed and distributed by the local fair board no later than thirty (30) days prior to the opening of the fair.

Section 5. Judges. (1) To assist with the educational objectives of each event a local fair shall encourage, judges to present reasons for their evaluations and decisions.

(2) A person shall not be an exhibitor or act as an agent in any division or department for which he or she serves as a judge.

Section 6. State Allocation. (1)(a) The Department of Agriculture's agricultural premium money shall be allocated to all approved local fairs on the basis of total money offered for approved classes in the catalog and total money spent in approved classes taken from the fair's financial statement available as indicated by fair records including catalogs. The total agricultural premium payment for one (1) or more fairs held annually in a single county shall not exceed \$4,500. In addition, state money for each class shall not exceed fifty (50) percent of the total premiums awarded.

(b) The first agricultural premium payment to each fair shall be made after the printed catalog is received and may be up to one-fourth (1/4) of the amount of money offered in approved classes by the local fair up to a maximum of \$2,250.

(c) The second agricultural premium payment shall be made after the fair's financial statement is received, if all remaining requirements have been met and the necessary records submitted, and shall be based on the amount of money paid for premiums and awards in approved agricultural classes up to a maximum of \$4,500 less the amount of the first agricultural premium payment.

(d) The combination of county fairs or community fairs of a number of counties shall not be approved to justify a larger state premium payment.

(2) An additional \$2,000 grant may be made to a qualified local agricultural fair to be used for horse events' premiums and awards. This grant shall be made on an equal matching fund basis and shall be based completely on the amount of money paid in

premiums and awards for horse events' classes. The payment of this grant shall come after the financial statement of the fair is received by the Department of Agriculture and shall be included in the fair's second fair payment. The qualified fair shall submit with its financial statement, records of premiums paid, number of exhibitors, and number of entries for these horse events.

(3)(a) The Department of Agriculture shall make available to a qualified agriculture fair up to \$7,000 on an equal matching basis for harness horse racing, with a maximum of \$750 per race being matched by the department. To qualify, a fair shall meet the requirements set forth in 811 KAR 1:220.

(b) Harness racing payments shall also be disbursed in two (2) payments:

1. The first payment shall be one-fourth (1/4) the amount of purses offered in the printed catalog, up to a maximum of \$3,500. This payment shall be combined with the fair's first agricultural payment.

2. The second harness racing payment shall be based on the amount of money spent in harness racing purses, up to a maximum of \$7,000 less the first harness racing payment. It shall be included in the second fair payment, if the fair has included sufficient information on the financial statement in regard to the harness racing results.

(4) The County Fair Coordinator[~~Director~~] of the department's show and fair program shall provide from the appropriation for county fairs a trophy that will be rotated and engraved and presented annually to the local fair that has made the most progress in twelve (12) months. In addition, appropriate engraved plaques shall be presented to the first, second, and third placed fairs making the most progress in the twelve (12) months period and also for the most outstanding new fair in the program for that year. The presentation shall be made by the Department of Agriculture's Fair Council based on records submitted to the department. [Section 7. Building Program.

(1) A qualified local agricultural fair may apply for an additional \$3,000 grant of state funds to be used for the establishment of new buildings and facilities or for improvement to existing facilities. Grants shall be on an equal matching basis with the local fair board matching the amount of the state grant. Payments for facilities shall not result in a decrease in the approved agricultural classes or premiums being offered in the fair catalog.

(2) The buildings and facilities shall be used primarily in conjunction with the qualified local agricultural fair and shall either be constructed on land for which owned by the local fair board or on land the fair group holds a renewable lease.

(a) The following shall be examples of items that may qualify for the building program;

1. The purchase of land for a fairground or the purchase of land adjoining the original grounds;
2. The construction of new buildings;
3. Repair of any existing facilities on the fairgrounds;
4. Grandstands or bleachers used to seat people during the fair;
5. Grading and improvement work done to an existing track or show ring; or
6. Loading chutes, wash racks or tie-outs for livestock.

(b) An item not listed in paragraph (a) of this subsection may qualify for state assistance if the local fair provides evidence to the Department of Agriculture that the item meets the minimum application requirements.

(3) A qualified local agricultural fair shall apply for the building program by submitting the form Request for State Aid for the Building Program, after the fair has submitted its Initial Request for State Aid to Local Agricultural Fairs Form. The building program application shall be submitted to the Division of Show and Fair Promotion Department of Agriculture, by June 1 of the year that the work is to be completed. The application shall include a description of the proposed buildings or improvements to be made, use to be made of these improvements, itemized list of approximate cost, and the date to be completed. Applications shall be available from the Department of Agriculture, Division of Show and Fair Promotion and shall be distributed after fair program applications are received or upon request.

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~~(4) Upon acceptance of a qualified local fair's request for assistance by the Department of Agriculture, the local fair shall be supplied a Financial Report of the Building Program. The financial report shall contain a description of the buildings or improvements and an itemized cost. This report shall be notarized and presented to the Division of Show and Fair Promotion within forty-five (45) days following the completion of the building or repair work. A report shall not be accepted for payment after December 1 of the year that the work is completed without approval from the Kentucky Fair Council, based on budgetary considerations.~~

~~(5) Building program payments shall be disbursed in two (2) payments:~~

~~(a) The first payment shall represent one-fourth (1/4) of the total amount submitted on the fair's building report up to a maximum of \$1,500.~~

~~(b) The second building program payment shall be made after all financial statements and building reports have been received in the office of the Division of Show and Fair Promotion and the total amount required for all grants is known. The second building payment amount shall be adjusted on an equal basis to bring the total grants in line with the funds available in the Aid to Fairs Program budget.]~~

Section 7[8]. Grant Program. (1) ~~A~~[In addition to the Building Program established in Section 7 of this administrative regulation, a] qualified local agricultural fair may apply to the Grant Program yearly for[and acquisition,] capital construction of new buildings and facilities, infrastructure improvement to existing facilities, or the purchase of nonpermanent tangible items (i.e. bleachers, restaurant equipment, etc.) A fair shall submit the Application[~~to~~ Qualify] for County Fair Grant[and the Grant Project application] to the Shows and Fairs Division[~~Division of Show and Fair Promotion~~]. The applications shall be postmarked by October 1st of each year. Grant applications shall meet the following criteria:

(a) Grants shall made on a matching basis. The Kentucky Department of Agriculture shall provide seventy-five percent (75) percent, and the local fair shall provide twenty-five percent (25) percent, in either a monetary or in-kind match.

(b) The minimum amount eligible to be received shall be in \$10,000 [~~\$20,000~~]. The maximum amount received shall be \$100,000;

(c) The Fair Board shall be required to execute a Memorandum of Agreement with the Kentucky Department of Agriculture for the use of state funds;

(d) The Fair Board shall own the land or hold a long-term lease on the property (twenty (20) years for capital construction and improvements or ten (10) years for non-permanent tangible items). A copy of the deed or lease agreement shall be submitted;

(e) Grant applications shall be accompanied by a development plan for capital construction and infrastructure. Applications for non-permanent tangible items shall be accompanied by a statement of cost from the vendor;

(f) Changes to development plans[~~capital construction/infrastructure after a grant is awarded~~] shall have prior approval from the Kentucky Department of Agriculture;

(g) All building/health permits (local and state) shall be obtained and provided to the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] for capital construction/infrastructure when a grant is awarded. If none are required an affidavit signed by local officials shall be provided;

(h) Awarded projects shall be started within ninety (90) days, of the date the project is awarded and completed within nine (9) months. Project extensions shall be made on a case by case basis, based on reasonable assurance of project completion;

(i) Fairs shall make a full accounting of all expenditures and receipts of the completed project within ninety (90) days of completion;

(j) A fair that has been awarded a grant shall be ineligible to apply another grant for three (3) years from the date the previous grant was awarded.

(2) The grants program shall be administered by the Kentucky Department of Agriculture's Shows and Fairs Division[~~Division of Show and Fair Promotion~~]. The County Fair Coordinator shall

review all applications for compliance. The grants shall then be presented to the Kentucky Fair Council for selection. The Fair Council shall select grant recipients until the yearly budget allocations have been met. The Fair Council may reject a grant that does not meet the requirements established in this administrative regulation. The Shows and Fairs Division[~~Division of Show and Fair Promotion~~] shall monitor implementation of awarded grants. Fairs that are awarded grants and fail to execute the projects shall be required to repay the grant.

Section 9. Effect of Overspending of Fair Program Budget. If the local agricultural fair program payments exceed the amount of money budgeted for the total fair program, reductions shall be made in payments as recommended by the Fair Council and as determined by the Commissioner of Agriculture.

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

(a) "Initial Request for State Aid to Local Agricultural Fairs Form" (1995);

(b)[~~"Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Show and Fair Promotion, Open Class Dairy and Beef Show Information Form" (1995);~~

(c) ~~"Financial Report of the Building Program" (November 2006);~~

(d) ~~"Request for State Aid for the Building Program" (November 2006);~~

(e) ~~"Application [to Qualify] for County Fair Grant" (August 2019[November 2006]); and~~(f) ~~"Grant Project Application" (November 2006).]~~

(c) "Open Class Livestock Show Information Form Packet" (August 2019).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Department of Agriculture, Shows and Fairs Division[~~Division of Show and Fair Promotion~~], 111 Corporate Drive[~~100 Fair Oaks 5th Floor Frankfort~~], Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 11, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 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 establishes the guidelines for assistance to county fair organizations.

(b) The necessity of this administrative regulation: This regulation is necessary to establish and clarify the rules that govern assistance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 247.220 commands the KDA to establish administrative regulations for county fair assistance, 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 county fairs seeking potential aid.

(2) If 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 streamlines the requirements and makes changes to comply with drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This filing streamlines the requirements and makes changes to comply with drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This filing streamlines the requirements and makes changes to comply with drafting requirements.

(d) How the amendment will assist in the effective administration of the statutes: This filing streamlines the requirements and makes changes to comply with drafting requirements, making administration more effective.

(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 and potentially 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: 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 247.220

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

(a) How much 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? 2018 program costs were \$821,368.24 with \$455,000 in grants, \$366,368.24 in financial aid and \$44,778.96 salary.

2017 program cost were \$836,460.11 with \$455,043.75 in grants, \$381,416.36 in financial aid, and \$44,778.96 in salary.

2016 program costs were \$1,017,395.20 with \$621,527.40 in grants, \$395,867.81 in financial aid, and salary of approximately \$40,000.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue unless revised by future budgets.

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:

DEPARTMENT OF AGRICULTURE Office of Agricultural Marketing (Amendment)

302 KAR 15:020. Dairy cattle shows and sales.

RELATES TO: KRS 246.250

STATUTORY AUTHORITY: KRS 246.250

NECESSITY, FUNCTION, AND CONFORMITY: To establish requirements for state-supported purebred dairy cattle shows and sales.

Section 1. General Requirements for Shows and Sales. (1) All animals exhibited in the show shall be consigned and sold in the sale. [(2) No exhibitor may consign more than three (3) females and one (1) male or four (4) females to the show and sale.]

(2)[(3)] No more than two (2)[four (4)] bulls may be consigned to a show and sale. Young bulls which have not been proved must have a pedigree showing that they are out of dams having milk and butterfat production records exceeding the national breed average by at least sixty (60) percent and classified very good or better. Sires of young bulls should be at least plus proven for milk and butterfat. [(4) A minimum of forty (40) animals shall be consigned to each event. Consignments must be made from at least five (5) states.]

(5) Cosponsors of state-supported shows and sales shall set the highest possible objectives and plans for each event and, in almost all instances, they shall exceed those set by the usual consignment sale.]

(3)[(6)] Each cooperating agency shall select, in cooperation with the department, an auctioneer and sales manager experienced in conducting sales of national scope.

(4)[(7)] The judge or judges for the show shall be of national prominence and selected in cooperation with the department [from approved lists that may be published by the breed associations].

(5)[(8)] All females entered in the show and sale must be sired by plus proven sires or sons of plus proven sires. Plus for milk, fat, or dollars will qualify a sire.

(6)[(9)] All females over three (3) years of age and entered in the show and sale shall be of "very good" or "excellent" type either officially or in the opinion of the individual making the selection. Nonclassified two (2) year old cows and uncalved heifers may qualify by being from dams that are officially classified "very good" or "excellent" or from dams classifying less than "very good" or "excellent" or from dams classifying less than "very good" with production records fifty (50) percent above breed average.

(7)[(40)] Animals considered unsound in any manner shall not

be accepted by show and sale officials. ~~[(41) All milking animals three (3) years old or older entered in the show and sale must have an official (DHIA-DHIR) completed record with at least one (1) record above herdmates for milk or fat. Two (2) year-olds that have not completed a record may qualify on their dams production provided the dam has at least one (1) completed record above herdmates for milk or fat. Heifers (uncalved) must be from dams with one (1) or more records above herdmates.]~~

~~[(8)][(42)]~~ The cooperating agency shall prepare and present to the department adequate records pertaining to the show and sale prior to final settlement on advertising.

~~[(9)][(43)]~~ The records mentioned in subsection ~~8[(42)]~~ of this section shall include:

(a) A record of the transfer of ownership of each animal from the breed association;

(b) A list of consignors, animals sold, premiums awarded, selling price, name and address of purchaser;

(c) Sample copies of printed advertisements and promotional material and copies of invoices covering advertising costs; and

(d) Financial statement showing the total receipts and disbursements for the event.

~~[(10)][(44)]~~ Dates for state-supported purebred shows and sales shall be selected in cooperation with the department and shall not conflict with similar events. Consideration shall be given to marketing patterns, seasons, and the possibility of tying the show and sale in with other major national and state activities.

~~[(11)][(45)]~~ The location of these national events shall be selected in cooperation with the department after due consideration is given to the following:

(a) Facilities for showing and selling high quality cattle;

(b) Housing accommodations for exhibitors and buyers;

(c) Transportation, air travel and highway network;

(d) Arrangements for handling online~~[wire]~~ bids; and

(e) Added attractions in the area.

~~[(12)][(46)]~~ Show and sale planning committees appointed by each state breed association shall include a representative~~[the Director]~~ of the Department of Agriculture's Livestock Show Program and representatives of the national and state breed association. Representatives from other groups and organizations, such as Chamber of Commerce, tourist commission, and farm organizations shall be added to the committees when they are willing and able to make a contribution to the success of the show and sale. The committee chairman and other officers for the event shall be elected by the committee.

~~[(13)][(47)]~~ All persons attending a consignment show or sale do so at their own risk.

~~[(14)][(48)]~~ All records on pedigree information shall cover the three (3) preceding generations (including the consignment) and be presented to the show and sale officials when consignment is made.

~~[(15)][(49)]~~ The cooperating agency may charge an entry fee up to but not to exceed the amount of premium offered by the department. A sales commission may be charged by the cooperating agency to cover the actual cost of the sale but in no case shall the commission exceed twenty-five (25) percent of the gross sales.

~~[(16)][(20)]~~ Sales practices and procedures recommended by the Purebred Dairy Cattle Association shall apply as minimum requirements to all matters pertaining to the sale not otherwise covered by departmental policy or law.

Section 2. Terms and Conditions of Sale. (1) Terms of the sale in addition to those recommended by the Purebred Dairy Cattle Association shall be established by the cooperating agency with the approval of the department.

(2) The auctioneer shall be responsible for settling disputes as to bids and his decision on such matters shall be final.

(3) All payments shall be made to the individual designated by the cooperating agency.

(4) The purchaser assumes all risk for animals as soon as they are struck off; however, the cooperating agency shall care for the animals free of charge for a period of at least twenty-four (24) hours.

(5) Arrangements shall be made by the cooperating agency for adjustments or refunds on sales that fail to comply with rules and administrative regulations.

Section 3. Health Requirements. (1) All animals consigned to the show and sale must comply~~[be accompanied by an official health certificate from the state of origin which bears the approval of the livestock sanitary official of the state of origin showing compliance]~~ with Kentucky's exhibition and sale requirements. Current animal health administrative regulations shall be published in the catalog.

(2) All records qualifying animals for the show and sale must be presented to the cooperating agency or their representatives when the entry is made.

Section 4. Catalog Requirements. (1) The consignment show and sale catalog shall be prepared by the sales committee and shall contain a list of all show classes and the premiums allocated in addition to the information pertaining to the sale. Show classes shall conform to the standards adopted by the Purebred Dairy Cattle Association.

(2) Each animal listed for sale in the catalog shall be identified in as much detail as possible. All production records along with the pedigree,~~[calfood vaccination for Bang's disease (brucellosis), classification information,]~~ and other information relating to its breeding and show honors shall be listed.

(3) Both consignor and breeder shall be listed on the pedigree of each animal in the catalog.

(4) The names of consignors and~~[and complete addresses of all consignors and the]~~ lot number of the animals they consign shall be given.

(5) The catalog shall contain information on:

(a) Location of show and sale headquarters;~~[(b) Hotel or motel room reservations;]~~

~~[(b)][(e)]~~ Shipping arrangements;

~~[(c)][(d)]~~ Provisions for handling wire and mail bids;

~~[(d)][(e)]~~ Sponsors; ~~and [(f) Entertainment; and]~~

~~[(e)][(g)]~~ Educational activities. ~~[(6) No commercial advertisements shall appear in the catalog.]~~

~~[(7) Catalogs shall be ready for distribution not later than fifteen (15) days in advance of the event.]~~

~~[(8) The catalog shall feature a section on the location of the event in relation to other major towns, major highways, and tourist attractions.]~~

Section 5. Advertising Requirements. (1) All advertising for shows and sales shall be planned and contracted in cooperation with the department, and all shows and sales shall be advertised as state-supported events cosponsored by the national and state associations and the department.

(2) The cost of the show and sale catalog may be considered advertising costs to be paid by the department and may be considered as a sale expense.~~[(3) Initial advertising, nationwide shall begin at least four (4) months in advance of the sale.]~~

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 11, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on December 23, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 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 establishes the guidelines for assistance to dairy show and sales from the KDA.

(b) The necessity of this administrative regulation: This regulation is necessary to establish and clarify the rules that govern assistance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 246.250 commands the KDA to establish administrative regulations for purebred assistance, 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 shows and sales seeking potential aid.

(2) If 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 streamlines the requirements and makes changes to comply with drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This filing streamlines the requirements and makes changes to comply with drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This filing streamlines the requirements and makes changes to comply with drafting requirements.

(d) How the amendment will assist in the effective administration of the statutes: This filing streamlines the requirements and makes changes to comply with drafting requirements, making administration more effective.

(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 and 5 current dairy show and sales.

(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 246.250

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? KDA staff time will be required for record keeping and assistance with the program. Costs for one staff person would be an approximation.

(d) How much will it cost to administer this program for subsequent years? KDA staff time will be required for record keeping and assistance with the program. Costs for one staff person would be an approximation.

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:

DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing
(Amendment)

302 KAR 15:030. Beef cattle shows and sales.

RELATES TO: KRS 246.250

STATUTORY AUTHORITY: KRS 246.250

NECESSITY, FUNCTION, AND CONFORMITY: To establish requirements for state-supported purebred beef cattle shows and sales.

Section 1. General Requirements for Shows and Sales. (1) All animals exhibited in the show shall be consigned and sold in the sale. ~~[(2) No exhibitor may consign more than four (4) females and four (4) male or eight (8) females to the show and sale.]~~

~~[(2)]~~ ~~[(3)]~~ A minimum of twenty-five (25) ~~[thirty (30)]~~ animals shall be consigned to each event.

~~[(3)]~~ ~~[(4)]~~ Any show, exhibition, and sale of purebred cattle to be eligible to receive the aforesaid appropriations must provide that the entries in all classes must be open upon equal terms to the breeders of such cattle in all of the states of the United States, and the Dominion of Canada may be included. ~~[The commissioner shall determine with respect to each of the aforesaid breeds of cattle which show, exhibition and sale is the largest to be held in Kentucky in each year and, in making such determination, he may consider such shows, exhibitions and sales as may have been held in Kentucky in any previous two (2) year period.]~~

~~[(5) Cosponsors of state-supported shows and sales shall set the highest possible objectives and plans for each event and, in almost all instances, they shall exceed those set by the usual consignment sale.]~~

~~[(4)]~~ ~~[(6)]~~ Each cooperating agency shall select, in cooperation with the department, an auctioneer and sales manager experienced in conducting sales of national scope.

~~(5)[(7)]~~ The judge or judges for the show shall be of national prominence and selected in cooperation with the department ~~[from approved lists that may be published by the breed associations].~~

~~(6)[(8)]~~ Animals considered unsound in any manner shall not be accepted by show and sale officials.

~~(7)[(9)]~~ The cooperating agency shall prepare and present to the department adequate records pertaining to the show and sale prior to final settlement on advertising. These records shall include:

(a) A list of consignors, animals sold, premiums awarded, selling price, name and address of purchaser;

(b) Sample copies of printed advertisements and promotional material and copies of invoices covering advertising costs; and

(c) Financial statement showing the total receipts and disbursements for the event.

~~(8)[(40)]~~ Dates for state-supported purebred shows and sales shall be selected in cooperation with the department and shall not conflict with similar events. Consideration shall be given to marketing patterns, seasons, and the possibility of tying the show and sale in with other major national and state activities.

~~(9)[(44)]~~ The location of these national events shall be selected in cooperation with the department after due consideration is given to the following:

(a) Facilities for showing and selling high quality cattle;

(b) Housing accommodations for exhibitors and buyers;

(c) Transportation, air travel and highway network;

(d) Arrangements for handling online~~[wire]~~ bids; and

(e) Added attractions in the area.

~~(10)[(42)]~~ Show and sale planning committees appointed by each sponsoring~~[state breed]~~ association shall include a representative of the Department of Agriculture~~[Director of the Department of Agriculture's Livestock Show Program]~~ and representatives of the national and state breed association. Representatives from other groups and organizations, such as Chamber of Commerce, tourist commission, and farm organizations shall be added to the committees when they are willing and able to make a contribution to the success of the show and sale. The committee chairman and other officers for the event shall be elected by the committee.

~~(11)[(43)]~~ All persons attending a consignment show or sale do so at their own risk.

~~(12)[(44)]~~ Official registration papers for each registered animal consigned shall be presented to the show and sale officials when consignment is made.

~~(13)[(45)]~~ The cooperating agency may charge an entry fee up to but not to exceed the amount of premium offered by the department. A sales commission may be charged by the cooperating agency to cover the actual cost of the sale but in no case shall the commission exceed fifteen (15) percent of the gross sales.

~~(14)[(46)]~~ Sales practices and procedures recommended by the individual breed association shall apply as minimum requirements to all matters pertaining to the sale not otherwise covered by departmental policy or law.

Section 2. Terms and Conditions of Sale. (1) Terms of the sale in addition to those recommended by the individual breed association shall be established by the cooperating agency with the approval of the department.

(2) The auctioneer shall be responsible for settling disputes as to bids and his decision on such matters shall be final.

(3) All payments shall be made to the individual designated by the cooperating agency.

(4) The purchaser assumes all risk for animals as soon as they are struck off; however, the cooperating agency shall care for the animals free of charge for a period of at least twenty-four (24) hours.

(5) Arrangements shall be made by the cooperating agency for adjustments or refunds on sales that fail to comply with rules and administrative regulations.

Section 3. Catalog Requirements. (1) The consignment show and sale catalog shall be prepared by the sales committee and shall contain a listing of all show classes and the premiums

allocated in addition to the information pertaining to the sale.

(2) Each animal listed for sale in the catalog shall be identified in as much detail as possible. All production records along with the pedigree,~~[callhood vaccination for Bang's disease (brucellosis), classification information,]~~ and other information relating to its breeding and show honors shall be listed.~~[(3) Both consignor and breeder shall be listed on the pedigree of each animal in the catalog.]~~

~~[(4) The names and complete addresses of all consignors and the lot number of the animals they consign shall be given.]~~

~~(3)[(5)]~~ The catalog shall contain information on:

(a) Location of show and sale headquarters;~~[(b) Hotel or motel room reservations;]~~

~~(b)[(e)]~~ Shipping arrangements;

~~(c)[(d)]~~ Provisions for handling online~~[wire and mail]~~ bids;

~~(d)[(e)]~~ Sponsors; and~~(f) Entertainment; and]~~

~~(e)[(g)]~~ Educational activities.~~[(6) No commercial advertisements shall appear in the catalog.]~~

~~[(7) Catalogs shall be ready for distribution not later than fifteen (15) days in advance of the event.]~~

~~[(8) The catalog shall feature a section on the location of the event in relation to other major towns, major highways, and tourist attractions.]~~

Section 4. Advertising Requirements. (1) All advertising for shows and sales shall be planned and contracted in cooperation with the department, and all shows and sales shall be advertised as state-supported events cosponsored by the national and state associations and the department.

(2) The cost of the show and sale catalog may be considered advertising costs to be paid by the department and may be considered as a sale expense.~~[(3) Initial advertising, nationwide shall begin at least four (4) months in advance of the sale.]~~

Section 5. Health Requirements. (1) All animals consigned to the show and sale must comply~~[be accompanied by an official health certificate from the state of origin which bears the approval of the livestock sanitary official of the state of origin showing compliance]~~ with Kentucky's exhibition and sale requirements. Current animal health administrative regulations shall be published in the catalog.

(2) All records qualifying animals for the show and sale must be presented to the cooperating agency or their representatives when the entry is made.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 11, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 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

establishes the guidelines for assistance to beef show and sales from the KDA.

(b) The necessity of this administrative regulation: This regulation is necessary to establish and clarify the rules that govern assistance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 246.250 commands the KDA to establish administrative regulations for purebred assistance, 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 shows and sales seeking potential aid.

(2) If 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 streamlines the requirements and makes changes to comply with drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This filing streamlines the requirements and makes changes to comply with drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This filing streamlines the requirements and makes changes to comply with drafting requirements.

(d) How the amendment will assist in the effective administration of the statutes: This filing streamlines the requirements and makes changes to comply with drafting requirements, making administration more effective.

(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 and 13 current beef show and sales.

(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 246.250

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? KDA staff time will be required for record keeping and assistance with the program. Costs for one staff person would be an approximation.

(d) How much will it cost to administer this program for subsequent years? KDA staff time will be required for record keeping and assistance with the program. Costs for one staff person would be an approximation.

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 CABINET Department of Agriculture Office of Consumer and Environmental Protection (Amendment)

302 KAR 31:040. Storage and handling of pesticides and bulk fertilizer.

RELATES TO: KRS Chapter 217B, 40 C.F.R., 49 C.F.R.

STATUTORY AUTHORITY: KRS 217B.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050(1) authorizes the department to promulgate administrative regulations prescribing the methods of storing fertilizers and pesticides. This administrative regulation regulates the storage and handling of pesticides and bulk fertilizers at commercial facilities.

Section 1. Definitions. (1) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. Best management practices also includes treatment requirements, operating procedures, practices to control facility run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(2) "Bulk fertilizer" means dry or liquid fertilizer in any unpackaged quantity.

(3) "Bulk pesticide" means a pesticide that is held in a nonmobile container in an undivided quantity greater than:

(a) 300 U.S. gallons of liquid measure; or

(b) 300 U.S. pounds of net dry weight.

(4) "Commercial purposes" means selling a pesticide or fertilizer for compensation or other consideration.

(5) "Commercial storage facility" means a site used for a commercial purpose that, in a year, sells, uses, stores, mixes, repackages, or transfers from one (1) container to another more than:

(a) 300 U.S. gallons of liquid pesticide;

(b) 300 U.S. pounds of a dry pesticide;

(c) 5,000 U.S. gallons of a liquid bulk fertilizer; or

(d) Twenty-five (25) tons of dry bulk fertilizer.

(6) "Elephant ring" means a temporary operational containment device:

(a) With an open top that has a storage capacity of:

1. Not less than twenty-five (25) U.S. gallons; and

2. Not more than 100 U.S. gallons; and

(b) Used for recovering spillage and leakage from a transfer connection or pump.

(7) "Fertilizer" is defined in KRS 217B.040, but for purposes of this administrative regulation shall not include anhydrous ammonia fertilizer material or fertilizer packaged for household use.

(8) "Impervious" means restricting the passage of water at a rate greater than 1 x 10⁻⁶ centimeters per second.

(9) "Impregnation" means the application of a pesticide onto fertilizer.

(10) ~~"Lead agency" means the agency that shall be responsible for the enforcement of this administrative regulation.~~ "Liquid fertilizer" means fertilizer in fluid form, including solutions, emulsions, suspensions, and slurries.

(11) "Liquid pesticide" means any pesticide in fluid form.

(12) "Load" means the transfer of pesticide in an open storage container or bulk fertilizer from the storage facility to transport vehicles, application equipment, or mobile containers. ~~[(14) "Low pressure nitrogen solutions" means an aqueous solution of ammonium nitrate, urea, or other nitrogen carriers, containing various quantities of free ammonia exceeding two (2) percent by weight. It does not include aqua ammonia and non-pressure nitrogen solutions commonly referred to as twenty-eight (28), thirty (30), or thirty-two (32) percent nitrogen solutions.~~

~~(15) "Minibulk pesticides" means an amount of:~~

~~(a) Liquid pesticide in an undivided quantity in a mobile container designed for handling and transport that is:~~

~~1. Greater than fifty-five (55) U.S. gallons; and~~

~~2. Less than 300 U.S. gallons; or~~

~~(b) Dry pesticide held in an undivided quantity in a mobile container designed for handling and transport that is:~~

~~1. Greater than 100 U.S. pounds; and~~

~~2. Less than 300 U.S. pounds.]~~

(13) "Mobile container" means a container designed and used for transporting a pesticide or fertilizer.

(14) "Operational area" means a site at a facility where the following occurs:

(a) Loading, unloading, repackaging, mixing, impregnation, or transferring of a pesticide or fertilizer; or

(b) Rinsing, washing, or cleaning of pesticide or fertilizer application equipment.

(15) "Operational area containment" means any structure or system designed and constructed to effectively intercept and contain operational spills of fertilizer and pesticides, including rinsate or rain water resulting from any operational activity in an operational area.

~~[(19) "Package pesticide" means a pesticide not defined as bulk or minibulk pesticide.]~~

(16) "Pesticide" is defined in KRS 217B.040(2), but for purposes of this administrative regulation, shall not include a pesticide packaged for household use.

(17) "Primary containment" means any storage container or device used to contain a bulk pesticide, fertilizer, or rinsate at a storage facility.

(18) "Repackaging" means the transfer of bulk pesticides[, minibulk pesticides, or package pesticides] from one (1) storage container to another storage container.

(19) "Rinsate" means water or other liquid resulting from the washing of equipment, operational areas, or containers used in the application, loading, unloading, mixing, transferring or storing of any fertilizer or pesticide.

(20) "Roofed" means protected from precipitation.

(21) "Secondary containment" means a dike, liner, structure, or other device used to:

(a) Contain a product spill from a primary bulk storage container; and

(b) Prevent runoff or leaching.

(22) "Storage container" means a container used for the storage of fertilizer or pesticides. A storage container includes a rail car, nurse tank, or other mobile container used for the storage of bulk fertilizers or pesticides. The definition of a "storage container" shall not include:

(a) A mobile container storing fertilizer or pesticide at a storage facility for less than fifteen (15) days if this storage is incidental to

the loading or unloading of a storage container at the storage facility.

(b) A container used solely for temporary emergency storage of leaking fertilizer or pesticide containers.

(23) "Storage facility" means a commercial storage facility.

(24) "Temporary operational containment" means any structure or system designed and constructed with the capability of movement between operational areas and designed to intercept and contain discharges from operational activities including the loading, unloading, repackaging, impregnation, and transfer of pesticides or fertilizer or the rinsing, washing or cleaning of pesticide and fertilizer application equipment.

(25) "Unload" means the transfer of pesticide in an open storage container or bulk fertilizer from the transport vehicle into the storage facility.

Section 2. Scope and Application. (1) A commercial storage facility shall register with the Kentucky Department of Agriculture, Division of Pesticide Regulation~~[The Kentucky Department of Agriculture, Division of Pesticide Regulation shall be the designated lead agency].~~

(2) A commercial storage facility shall comply with this administrative regulation.

(3) A commercial storage facility shall have a written emergency response plan to be followed in the event of an emergency. A plan required by another regulatory program may be used. The plan shall be available upon request of the KDA.

~~[(4) A commercial storage facility shall register with the Kentucky Department of Agriculture, Division of Pesticide Regulation.~~

~~[(5) A commercial storage facility shall define the scope of the existing operation and facility at the time of registration.~~

~~[(5) A commercial storage facility shall be subject to SARA Title III (42 U.S.C.A. Sec. 9601) and shall:~~

~~(a) Be in full compliance by the required dates; and~~

~~(b) Promptly and accurately complete the required annual reporting form[s].~~

~~[(6) Unless[After August 2003, unless] performed in the field of application, the loading, unloading, mixing and handling of dry bulk fertilizer shall be performed in accordance with Section 8 of this administrative regulation.~~

Section 3. Operational Area Site Specifications. (1) New permanent operational area containment located in a flood plain shall be protected from inundation by floods.

(2) New permanent operational area containment shall be located a minimum of 100 feet from on-site wells and sinkholes, 200 feet from private domestic wells, and 400 feet from any community wells used as a public water source.

Section 4. Primary Containment of Liquid Pesticides and Liquid Fertilizer. (1) Basic requirements.

(a) A storage container and all equipment, including hoses, fittings, valves, clamps, and pumps~~[appurtenances]~~ shall be constructed, installed and maintained so as to prevent the release of liquid fertilizer or pesticides.

(b) Storage containers and all equipment, including hoses, fittings, valves, clamps, and pumps~~[appurtenances]~~ shall be constructed of materials which are resistant to corrosion, puncture, or cracking and shall be compatible with the product being stored.

(c) A storage container and all equipment, including hoses, fittings, valves, clamps, and pumps~~[appurtenances]~~ used for the storage of a liquid fertilizer containing potassium chloride (muriate of potash) may be constructed of ferrous materials if the following provisions are met:

1. The container and all equipment, including hoses, fittings, valves, clamps, and pumps~~[appurtenances]~~ are coated or treated with protective substances; and

2. The container or all equipment, including hoses, fittings, valves, clamps, and pumps~~[appurtenances]~~ is used for a storage period of not more than six (6) months, is completely emptied between storage periods, and is cleaned and inspected for leaks prior to being refilled.

(d) Metals used for valves, fittings, or repairs on metal containers shall be compatible with the materials used in the construction of the storage container so the combination of metals does not cause or increase corrosion which may weaken the storage container or its all equipment, including hoses, fittings, valves, clamps, and pumps[appurtenances] or create a risk of release.

(e) Storage containers and all equipment, including hoses, fittings, valves, clamps, and pumps[appurtenances] shall be designed to handle all operating stresses, taking into account static head, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage containers and all equipment, including hoses, fittings, valves, clamps, and pumps[appurtenances] may be subjected to in the foreseeable course of operations.

(f) Storage containers shall be properly labeled during active use of the container.

(2) Prohibition against underground storage and plumbing.

(a) The storage of liquid fertilizer or pesticide in an underground storage container shall be prohibited unless an impervious catch basin is used for the temporary collection of run-off or rinsate from containment or operational areas and it is emptied within seventy-two (72) hours of use.

(b) Underground plumbing shall be restricted to the use of concentric piping.

(3) Abandoned containers.

(a) Storage containers and other containers used at a storage facility to hold liquid bulk fertilizer or pesticide, or pesticide and fertilizer rinsate shall be considered abandoned if they have been out of service for more than six (6) months due to a weakness or leak, or have been out of service for any reason for more than two (2) years and no integrity tests have been performed.

(b) Abandoned aboveground containers shall be thoroughly cleaned. All hatches on the containers shall be secured and all valves or connections shall be severed or sealed.

(c) A secondary containment facility shall not be considered abandoned for the sole reason that there have been no releases into the secondary containment.

(4) Prohibited materials.

(a) Storage containers and[appurtenances] shall not be constructed of copper, brass, zinc, or copper base alloys.

(b) Storage containers and[appurtenances] used for the storage of liquid fertilizers containing phosphate or chlorides shall not be constructed of aluminum alloys.

(c) Storage containers and[appurtenances] used for the storage of low pH (<5) liquid fertilizers shall not be constructed of ferrous materials other than stainless steel unless the materials are coated or treated with protective substances.

(d) Storage containers and[appurtenances] used for the storage of low-pressure nitrogen solutions shall not be constructed of mild steel, fiberglass, polyolefins, or plastic. This prohibition shall not extend to nonpressure solutions commonly referred to as twenty-eight (28), thirty (30), or thirty-two (32) percent nitrogen solutions. This prohibition against the use of mild steel shall not extend to aqua ammonia.

(e) Storage containers and[appurtenances] used for the storage of phosphoric acid shall not be constructed of ferrous materials other than stainless steel unless the container is lined with a suitable substance.

(5) Filling storage containers. Storage containers shall not be filled beyond the capacity for which they are designed.

(6) Pipes and fittings. Pipes and fittings shall be adequately supported to prevent sagging and possible breakage due to gravity and other forces which may be encountered in the ordinary course of operations. Underground plumbing shall be prohibited except as specified in subsection (2)(b) of this section.

(7) Liquid level gauging device.

(a) Every storage container shall be equipped with a liquid level-gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level-gauging device shall not be required if the level of liquid in a storage container can be readily and reliably measured by other means.

(b) Liquid level gauging devices shall be secured in a safe manner to protect against breakage or vandalism.

(c) External sight gauges shall be prohibited.

(8) Venting. Storage containers shall be vented to manufacturer's specifications for the product being stored in the container.

(9) Facility inspection and maintenance by owner or operator. Inspections by the operator shall be conducted quarterly to assure the early detection of cracks and other defects that may compromise the integrity of the primary containment. Repairable defects that occur in a primary containment shall be sealed or repaired immediately.

Section 5. Secondary Containment of Liquid Bulk Pesticide and Liquid Bulk Fertilizer. (1) A nonmobile storage container for liquid bulk pesticides and liquid bulk fertilizer shall be located within a secondary containment.

(2) Basic requirements shall include:

(a) The floor and walls of a secondary containment structure shall be constructed of:

1. Concrete;

2. Concrete block that has been capped and filled with concrete;

3. Steel; or

4. Another impervious material compatible with the product being stored.

(b) The floor and walls of a secondary containment structure which contains a pesticide shall be constructed of material which will maintain structural integrity under fire conditions.

(c) Secondary containment structures shall not have relief outlets or release valves.

(d) Underground plumbing shall be prohibited except as provided in Section 4(2)(b) of this administrative regulation.

(e) Secondary containment may provide for the separation between bulk pesticides and bulk fertilizer to the extent that a common wall or curbing exists between the fertilizer and pesticide areas and shall provide for the interception and recovery of materials including clean-up of pesticide releases. The entire secondary containment area shall meet or exceed the total capacity requirements specified in this section.

(f) Secondary containment structures shall be cleaned and rinsed within seventy-two (72) hours after any release into the secondary containment.

(g) An inspection shall be conducted quarterly by the owner or operator to assure the early detection of cracks or other defects that may compromise the integrity of the secondary containment. Repairable defects that occur in a secondary containment shall be sealed or repaired immediately. Inspections shall be documented in a legible and accurate form.

(h) Containers, pipes, hoses and valves shall be protected against anticipated risks of damage by trucks and other moving vehicles.

(i) Clay, natural soil clay mixtures, or clay and bentonite mixtures shall not be used to contain any bulk pesticide.

(j) Temporary operational containment or elephant rings shall not be used as secondary containment for any bulk pesticide.

(k) Secondary containment structures shall include a sump or collection point for collection of spillage, leakage, rinsate, or other residues. A sump or collection point shall not be greater than two (2) feet deep and shall not contain more than 109 U.S. gallons. A sump shall be cleaned and rinsed within seventy-two (72) hours of use.

(3) Secondary containment structures shall provide the following capacity:

(a) If not roofed, the containment shall have a minimum containment volume that equals ~~110[a six (6)-inch rain storm in a twenty-four (24) hour period, plus 100]~~ percent of the capacity of the largest tank and the volume displaced by the bases of the other tanks located within the secondary containment structure.

(b) If roofed, the containment shall have a minimum containment volume of 100 percent of the capacity of the largest tank plus the volume displaced by the bases of the other tanks located within the secondary containment structure.

(c) If tanks are plumbed together without valves, any connected tanks shall be considered a single tank for calculation purposes.

(4) Basic requirements for the secondary containment of liquid fertilizer.

(a) Secondary containment shall be provided which meets or exceeds the requirements in subsection (2) of this section.

(b) Secondary containment shall be constructed to a water permeability rate of 1×10^{-6} centimeters per second and maintained so that liquid movement through the walls and base does not exceed a rate of 1×10^{-5} centimeters per second permeability rate. The secondary containment structure shall be designed and maintained to withstand a full hydrostatic head of any contained liquid.

(c) Synthetic materials or liners may be used as secondary containment if they are compatible with the substances being contained and are installed according to manufacturer's recommendations. These directions and recommendations shall be maintained at the storage facility.

(d) Earthen walls used for secondary containment of fertilizer shall be protected against erosion. Side slopes shall not exceed a three (3) to one (1) ratio of horizontal to vertical. The top width of earthen walls shall not be less than two and one-half (2 1/2) feet.

(e) Provisions shall be made for safe emergency access and exit to and from the secondary containment structure.

(f) Floors shall be constructed to allow the safe and expeditious removal of precipitation or any spilled liquid to a collection point.

(g) A soil liner used for secondary containment of fertilizer shall be constructed of suitable soil or soil treated with bentonite clay or other comparable material, with a minimum depth of twelve (12) inches, if the other requirements stated in this section are met. The liner shall be covered by a soil or smooth aggregate layer not less than six (6) inches thick and shall be maintained to prevent cracking or puncture.

(h) Prefabricated secondary containment devices shall be constructed of a rigid prefabricated basin having both a base and walls constructed of steel, reinforced concrete, synthetic liner, or synthetic materials which are resistant to corrosion, puncture, or cracking.

(5) Exemptions from secondary containment.

(a) A liner shall not be required to be installed directly under a storage container having a capacity of 100,000 gallons or more which has been constructed on site and put into use prior to August 1998 if all the following conditions are met:

1. A second bottom made of steel shall be constructed for the storage container. The second bottom shall be placed over the original bottom and a layer of smooth fine gravel or coarse sand having a minimum thickness of three (3) inches shall be installed between the layers;

2. The original bottom of the storage container is tested for leaks before the sand layer or second bottom is installed. A record of the test shall be maintained at the storage facility;

3. The newly constructed bottom is tested for leaks before any liquid fertilizer is stored on the newly constructed bottom. A record of the test shall be maintained at the storage facility; and

4. There is a method by which leaks from the newly constructed bottom into the sand layer may be readily detected unless the storage containers are constructed of nonferrous materials which have a protection system in place consisting of synthetic liners and monitoring system.

(b) The secondary containment requirements under this section shall not apply to railcars which are periodically transferred to and from storage.

(6) A storage facility with existing secondary containment on site and in place on August 17, 1998, shall be exempt from this section if the following conditions are met:

(a) All requirements specified in Section 4 of this administrative regulation are met; and

(b) All requirements specified in subsection (2) of this section are met; and

(c) A minimum secondary containment capacity of 110 percent of the largest container plus the volume displaced by the other tanks located within the secondary containment structure exists.

Section 6. Operational Containment For Pesticides and Liquid Fertilizer. (1) The transfer of a pesticide or liquid fertilizer between storage containers at a commercial facility shall be performed within impervious operational containment designed to intercept, retain, and recover an accidental release or leakage of rinsate and residue. Transfer shall include the following:

- (a) Loading;
- (b) Unloading;
- (c) Repackaging;
- (d) Impregnating;
- (e) Mixing; or
- (f) The cleaning of equipment.

(2) Temporary operational area containment may be used in lieu of impervious operational containment for loading or unloading of rail cars or barges.

(3) The basic requirements for permanent operational containment structures for a pesticide and a liquid fertilizer shall include:

(a) The construction and the design of a containment structure shall be compatible with the products handled and be maintained in a condition to retain recovered material until it is properly disposed of or used.

(b) Operational containment shall be constructed of reinforced concrete or other impervious materials compatible with the products being handled.

(c) The owner or operator, to assure the early detection of cracks and other defects that may compromise the integrity of the operational containment structure shall conduct inspections at least quarterly. Repairable defects that occur in an operational containment structure shall be sealed or repaired immediately. Inspections shall be documented in a legible and accurate form.

(d) Stormwater drainage shall be diverted away from all operational containment structures.

(e) Operational containment shall include a sump or collection point for the temporary collection of spillage, leakage, rinsate, or other residues. A sump or collection point shall not be greater than two (2) feet deep nor contain more than 109 U.S. gallons. A sump shall be cleaned and rinsed within seventy-two (72) hours of use.

(f) Operational containment shall not have a relief outlet or release valve.

(g) Operational containment shall be large enough in area to prevent spillage onto unprotected areas and to prevent any release to the surrounding environment.

(h) The use of underground plumbing shall be prohibited except as provided in Section 4(2)(b) of this administrative regulation.

(4) Operational containment shall provide the following capacity:

(a) Operational area containment for a roofed permanent structure shall have a volume sufficient to contain a minimum of 1,000 U.S. gallons. Containment capacity of the sump shall be figured in addition to the containment capacity of the structure.

(b) Operational area containment for an unroofed permanent structure shall have a volume sufficient to contain a minimum of 1,250 U.S. gallons. Containment capacity of the sump shall be figured in addition to the containment capacity of the structure.

(5) Temporary operational containment may be utilized to meet the requirements of this section if the following conditions are met:

(a) The capacity of temporary operational containment shall not be less than 1,250 U.S. gallons; and

(b) The temporary operational containment shall be constructed of material which is compatible with products handled and a written copy of the manufacturer's installation directions, compatibility statement, and expected life expectancy is maintained at the storage facility; and

(c) All requirements specified in subsection (3) of this section are met.

(6) An elephant ring may be utilized to meet the requirements of this section if a minimum capacity of twenty-five (25) U.S. gallons is provided for the use of recovering spillage and leakage from the transfer connections and pumps associated with the unloading of a truck, barge, or railcar into a storage facility.

(7) A combination of an elephant ring and concentric piping may be utilized to meet the requirements of this section if a minimum capacity of twenty-five (25) U.S. gallons is provided for the use of recovering spillage and leakage from the transfer connections and pumps associated with the loading or unloading of a railcar or barge.

Section 7. Containment of Dry Bulk Pesticides. (1) A nonmobile storage container for dry bulk pesticides shall be located within secondary containment.

(2) Dry bulk pesticide storage shall be segregated from other containment areas and be segregated by a six (6) inch curb of an area that extends at least two (2) feet beyond the perimeter of the walls of the storage container.

Section 8. Dry Bulk Fertilizer Storage and Handling. (1) Dry bulk fertilizer material shall be stored and handled using best management practices.

(2) Dry bulk fertilizer shall be stored inside a structure or device having a cover or rooftop, sidewalls and base sufficient to prevent contact with precipitation and surface waters.

(3) The loading, unloading, mixing, or handling of dry bulk fertilizer, unless performed in the field of application, shall be conducted in a manner to provide for the collection and reuse of any spilled fertilizer.

Section 9. Containment Management. (1) A pesticide, fertilizer, pesticide residue, fertilizer residue, or rinsate recovered from secondary or operational containment shall be field applied at agronomic rates, used in a liquid mixing operation, or otherwise recycled or disposed of in accordance with the product label. A pesticide residue or rinsate that is to be land applied shall be handled in accordance with the product labels. Rinsates may be used to make up the total spray mixture if the mixture does not exceed the pesticide label application rates.

(2) Best management practices shall be used to keep rinsate and other recovered material segregated by compatible uses.

(3) Uncontaminated precipitation collected shall be discharged from containment areas. Contaminated precipitation shall be field applied pursuant to subsection (1) of this section.

(4) Recovered or rinsate material collected in a containment system shall not be considered a hazardous waste unless it is determined that the rinsate or other recovered material cannot be applied to a labeled target area. ~~Section 10. Field Mixing and Transferring. (1) The following shall be performed at a field site or within operational area containment:~~

- ~~—(a) Field mixing of a pesticide or fertilizer;~~
- ~~—(b) Transferring of a pesticide or fertilizer; or (c) Rinsing of a pesticide container.~~
- ~~—(2) The following shall not be conducted on a public high-way, road, or street:~~
- ~~—(a) Mixing of a pesticide or fertilizer;~~
- ~~—(b) Transferring of a pesticide or fertilizer; or~~
- ~~—(c) Rinsing of pesticide or fertilizer equipment.]~~

Section 10[14]. Distribution. (1) Sale by weight or meter shall be the approved method of resale for pesticides and fertilizer. Both methods shall meet the specifications, tolerances and other technical requirements for weighing and measuring devices as determined by the Kentucky Department of Agriculture.

(2) A separate meter shall be required for each product distributed for sale if the product is sold through a meter.

Section 11. Incorporation by Reference. (1) The "Pesticide and/or Fertilizer Bulk Storage Facilities Registration form" (October 2019) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes rules pertaining to bulk fertilizer and pesticide storage in the Commonwealth.

(b) The necessity of this administrative regulation: This regulation is necessary to establish and clarify the requirements for bulk storage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217B in its various sections direct the KDA to regulate both use and storage of pesticides. This filing conforms to the statute by creating rules for the unique circumstance of bulk storage.

(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 the pesticide and fertilizer industry 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 amendment modernizes terms and requirements, clarifies other vague terms, and removed redundant language.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make the filing easier to read and understand.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217B in its various sections direct the KDA to regulate both use and storage of pesticides. This filing conforms to the statute by creating rules for the unique circumstance of bulk storage. This filing makes the requirements much easier to understand and read.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making rules clear for the pesticide and fertilizer industry in Kentucky.

(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 and all places or entities with qualifying bulk storage Commonwealth. The KDA currently has 15 registered entities.

(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. Step vary based on what type of storage they have.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is impossible for the KDA to calculate costs, as these facilities are built already it would likely be the costs associated with maintenance of their individual items or components.

(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 facilities.

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

(a) Initially: None for implementation, as this program is ongoing. The KDA estimates less than 1% of our agriculture pesticides workload. The KDA would estimate this marginal cost to be less than \$1,000 annually.

(b) On a continuing basis: Minimal costs of inspection time at facilities.

(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 217B

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? KDA staff time will be required for record keeping and inspection. Costs will be very minimal as new structures are not built frequently.

(d) How much will it cost to administer this program for subsequent years? KDA staff time will be required for record keeping. Costs will be very minimal.

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

Revenues (+/-): None

Expenditures (+/-): Less than \$1,000 annually.

Other Explanation:

GENERAL GOVERNMENT Department of Agriculture Office of Agricultural Marketing (Amendment)

302 KAR 37:010. Forage Testing Program~~[Standard Hay Grading Program]~~.

RELATES TO: KRS 260.010

STATUTORY AUTHORITY: KRS 260.033

NECESSITY, FUNCTION, AND CONFORMITY: To define terms used in the administration of the Kentucky Forage Testing~~[Standard Hay Grading Program]~~ Program and establish methods of sampling and~~[.]~~ testing forage~~[and grading hay]~~ to be applied to the Kentucky Forage Testing~~[Standard Hay Grading]~~ Program.

Section 1. Terms used in the administration of the hay marketing law and administrative regulations and not otherwise defined shall have the following meaning:

(1) The term "acid detergent fiber" means the portion of hay that is highly indigestible.

(2) The term "available protein" means an adjustment in crude protein value determined by subtracting the degree of heat damage from the crude protein level.

(3) The term "crude protein" means the portion of hay that contains true protein and nonprotein nitrogen.

(4) The term "department" means the Kentucky Department of Agriculture.

(5) The term "digestible dry matter" means the estimated percent of hay that is digestible.

(6) The term "dry matter" means the portion of hay which is not water.

(7) The term "dry matter intake" means an estimate of the maximum amount of hay a lactating cow will eat.~~[(8) The term "grading" means to classify hay by its relative feed value and physical characteristics.]~~

~~[(8)]~~~~[(9)]~~ The term "hay" means grass, alfalfa, clover or other forage crops cut and dried for use as livestock feed.

~~[(9)]~~~~[(40)]~~ The term "heat damage protein" means the portion of hay chemically linked to carbohydrates to form an indigestible compound.

~~[(10)]~~~~[(44)]~~ The term "injurious foreign material" means anything which has infected hay to make it undesirable or unfit to eat, such as noxious weeds, rocks, wires, or glass matter.

~~[(11)]~~~~[(42)]~~ The term "kind" means one (1) or more related species or subspecies which singularly or collectively is known by one (1) common name, for example, alfalfa, red clover and timothy.

~~[(12)]~~~~[(43)]~~ The term "lot" means hay taken from the same cutting at the same stage of maturity, the same kind, the same field and harvested within forty-eight (48) hours.

~~[(13)]~~~~[(44)]~~ The term "mold" means a downy growth on the surface of hay caused by the presence of dampness or decay.

~~[(14)]~~~~[(45)]~~ The term "neutral detergent fiber" means the portion of hay that is only partially digestible and limits intake.~~[(16) The term "probe" means a hollow, metal tube used to extract samples from hay.]~~

~~[(15)]~~~~[(47)]~~ The term "relative feed value" means a combination of digestible dry matter and dry matter intake that is used to evaluate the feed value of hay under a calculation of multiplying the percentage of digestible dry matter times the percentage of dry matter intake and then dividing that number by 1.29.~~[(18) The term "sampler" means an individual who takes samples of hay for testing.]~~

~~[(16)]~~~~[(49)]~~ The term "total digestible nutrients" means the digestible components of fiber, protein, fat and nitrogen-free extract in the diet.~~[(20) The terms used in reference to mineral content in hay shall be the official feed terms adopted by the Association of American Feed Control Officials and published in its official publication.]~~

Section 2. The method of sampling hay shall be the following:

(1) Forages shall be sampled in accordance with the

procedures set forth in the National Forage Testing Association's "Recommended Principles for Proper Hay Sampling".

(2) Compliance with the sampling procedures set forth in the National Forage Testing Association's "Recommended Principles for Proper Hay Sampling" shall be the sole responsibility of the person submitting the sample for testing. (1) For rectangular bales, probe shall be inserted in the end of the bale at a point approximately one-half (1/2) the distance from the center to the outside of the bale and drilled or pushed horizontally at least eleven (11) inches into the bale.

(2) For round bales, probe shall be inserted in the end of the bale at a point approximately one-half (1/2) the distance from the center to the outside of the bale and drilled or pushed at least eleven (11) inches into the bale.

(3) At least twenty (20) bales shall be sampled and composited to develop one (1) sample per lot. If a lot contains less than twenty (20) bales, all bales shall be sampled.

(4) Bales within a lot of hay shall be sampled at random by taking into account vertical and horizontal positions within the lot.

(5) Each bale sampled shall be tagged or marked with colored chalk or vegetable dye.

(6) Samples from a lot of hay shall be composited and placed in a plastic freezer bag and sealed tightly.

(7) The department shall keep samples from a lot of hay for a period of at least one (1) year.]

Section 3. The testing of forage[hay] shall be performed in accordance with the procedures set forth in [by procedures adopted by] the National Forage Testing Association's "Forage Analyses Procedures". [National Alfalfa Hay Testing Association and published at page 17 in its "Hay Testing Laboratory Certification Manual, Publication No. 2, February 10, 1986,"] which is hereby adopted by reference. A copy of the Hay Testing Laboratory Certification Manual may be obtained at the Division of Hay and Grain, 106 West Second Street, Frankfort, Kentucky 40601. The manual may be inspected or copied at the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday.

Section 4. The grading of hay shall be based on the findings of a test performed by Near Infrared Reflectance Spectroscopy, or any other procedure which has the approval of the Association of Official Agricultural Chemists, and] The test result shall include analysis under the categories of "As Received Basis" and "Dry Matter Basis" of the following:

- (1) Moisture;
- (2) Dry matter;
- (3) Crude protein;
- (4) Heat damaged protein;
- (5) Available protein;
- (6) Digestible protein;
- (7) Acid detergent fiber;
- (8) Neutral detergent fiber;
- (9) Relative feed value;
- (10) Phosphorous (P);
- (11) Calcium (Ca);
- (12) Potassium (K);
- (13) Magnesium (MG).

Section 5. The grading of hay also shall be based on a physical description of the hay provided by those who take samples for testing; the description shall be listed on the test result and shall include the following:

- (1) Color;
- (2) Foreign material;
- (3) Injurious foreign material;
- (4) Odor;
- (5) Mold.

Section 6. Testing results shall be stated in a uniform manner as prescribed by the department.

Section 7. The grade of "Triple Crown" shall apply to hay in which the physical description is "light green", "green" or "dark

green" in color, the odor is "fresh" and there is no mold and no injurious foreign material that is identifiable by a visual inspection.

Section 8. The grade "Kentucky Pride" shall apply to hay in which the test analysis for crude protein exceeds fourteen (14) percent on a dry matter basis and the test analysis for relative feed value exceeds 124 and the physical description indicates no visible injurious foreign material.

Section 9. The grade "Kentucky Feeder" shall apply to hay in which the test analysis for crude protein is between eight (8) percent and fourteen (14) percent or the test analysis for relative feed value is between seventy-five (75) and 124 and the physical description includes no visible injurious foreign material.

Section 10. No grade shall be applied to hay that is not graded as "Triple Crown" or "Kentucky Pride" or "Kentucky Feeder."

Section 11. All hay testing laboratories used in the Kentucky Standard Hay Grading Program may annually run a series of samples which will then be analyzed by wet chemistry by the University of Kentucky, College of Agriculture, Department of Agronomy to insure consistent readings for Kentucky forages.

Section 12. All persons who take samples of hay for testing under the Kentucky Standard Hay Grading Program shall be certified by the department and shall receive a certification card issued by the department after having successfully completed the following:

(1) The taking of samples from ten (10) lots of hay according to the procedures outlined by the National Hay Association in its publication at page 9, "Hay Testing Laboratory Certification Manual, Publication No. 2, February 10, 1986."

(2) At least forty (40) hours of instruction, from the director of the department's Hay and Grain Division or a person who has been certified to sample, on properly recognizing the physical characteristics (color, mold, foreign material, type, stage of maturity) of hay.

Section 13. Upon application to the department, individuals who want to take samples of hay on behalf of hay growers' associations and cooperatives may be certified by the department and issued a certification card.

Section 14. The department may allow laboratories that are certified by the National Hay Association to test hay under the guidelines of the Kentucky Standard Hay Grading Program.

Section 15. The director of the department's Hay and Grain Division or the Commissioner of Agriculture may revoke certification of samplers and laboratories which do not follow the sampling and testing procedures of the Kentucky Standard Hay Grading Program. Certification may be revoked for failure to follow the procedures and requirements outlined in this administrative regulation, provided that the certification holder is given ten (10) days written notice of the reason for revocation.

Section 16. Any party aggrieved by a notice of revocation of certification may appeal the department's decision to revoke the certification by filing an appeal with the Department of Agriculture, Division of Hay and Grain, within ten (10) days of the date of notification of revocation.

(1) There will be a hearing committee available within the Division of Hay and Grain at all times to hear complaints by aggrieved parties and to decide whether to revoke a certification for violation of procedures or requirements set forth in the administrative regulations.

(2) The hearing committee will hear each appeal and rule upon each cause for revocation.

Section 17. Hay that is sampled and tested shall be stored in the Commonwealth of Kentucky.

(1) Hay that is sampled and tested shall have recorded by the

department the date of cutting and the date of sampling.

—(2) Hay that is sampled and tested shall be grouped in a lot that does not exceed a weight of fifty (50) tons.

—(3) Upon application by a producer, a second test on a "lot" of hay shall be performed under the following guidelines: A certified sampler who did not take the first sample from the lot of hay shall take the second sample from at least the bales that were previously sampled and tagged or marked with colored chalk.

—Section 18. Within ten (10) working days after a sample is taken, the department or any laboratory certified by the department to test hay shall mail to the producer an analysis report containing the test results, an identification of the hay's producer and type of hay and its location and the date the hay was tested.

—(1) The most recent analysis report on a lot of hay shall be the report of record.

—(2) The department or any laboratory certified by the department to test hay shall keep for a period of one (1) year, records of the analysis report for each lot of hay tested.

—Section 19. If hay meets the requirements for the grades of "Triple Crown", "Kentucky Pride", or "Kentucky Feeder", the department or any laboratory certified by the department to test hay shall affix a label to the analysis report indicating that the hay is graded as such.

—Section 20. Individuals who are certified to take samples of hay for testing under the Kentucky Standard Hay Grading Program shall collect a fee of ten (10) dollars for each lot of hay sampled and tested at the time the hay is sampled for testing. The ten (10) dollar fee shall be refunded to the producer if the hay is not tested within ten (10) working days after the hay is sampled.]

Section 4. Testing Fee. The testing fee shall be ten (10) dollars per sample. The fee shall accompany Forage Sample Analysis Request Form and be submitted with the sample.

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

(a) "Recommended Principles for Proper Hay Sampling" July 2019;

(b) "Forage Analyses Procedures" July 1993; and

(c) "Forage Sample Analysis Request Form" August 2019.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Forage Testing Program, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, phone (502) 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 establishes the guidelines for forage testing in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish and clarify the rules that govern the testing program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.110 commands the KDA to establish administrative regulations for a hay grading program. The hay industry has shifted from hay grading to testing for analytics, and has abandoned grading as a marketing tool years ago.

(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 forage testing 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 filing streamlines the requirements and makes changes to comply with drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This filing streamlines the requirements and makes changes to comply with drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This filing streamlines the requirements and makes changes to comply with drafting requirements.

(d) How the amendment will assist in the effective administration of the statutes: This filing streamlines the requirements and makes changes to comply with drafting requirements, making administration more effective.

(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, and farmers wishing to submit samples for forage testing.

(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 instructions in each section and pay the fee to have a sample tested.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fees are listed for each sample at ten (10) dollars each sample.

(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: Program costs of approximately \$178,000.

(b) On a continuing basis: Program costs should remain stable with adjustments for retirement costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated by participants, and the 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: No increases in fees are necessary at this time.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established directly.

(9) TIERING: Is tiering applied? Yes, in state and out of state dealers pay different fee rates.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 260.110

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$8,000 was generated in the last fiscal year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue is expected to relate stable.

(c) How much will it cost to administer this program for the first year? 2018 program costs were \$178,000 for staff and testing materials and training.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue unless revised by future budgets.

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

Revenues (+/-): 8,000

Expenditures (+/-): Approximately \$178,000

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

704 KAR 3:303. Required Academic Standards.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.6453, 160.290

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645 and 158.6451. KRS 158.6453 requires the revision of academic content standards. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the required academic standards, which contain the general courses of study and academic content standards for use in Kentucky's common schools unless specifically incorporated in another administrative regulation in Title 704, Chapter 8.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the required academic standards.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards", August~~March~~ 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained,

subject to applicable copyright law, at the Division of Program Standards, Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Monday through Friday, 8:00 a.m. through 4:30 p.m.

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

WAYNE D. LEWIS, Commissioner of Education
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 23, 2019, at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the minimum content standards in certain subject areas for use in Kentucky's common schools.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected outcomes for students and schools established in KRS 158.6451.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 158.6453 requires the revision of academic content standards. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the Kentucky Academic Standards, which contain certain courses of study and academic content standards for use in Kentucky's common schools pursuant to KRS 158.6451.

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

(a) How the amendment will change this existing administrative regulation: This regulation will amend the document incorporated by reference in 704 KAR 3:303 to remove the standards related to K-12 vocational studies, as new standards have been developed and are incorporated by reference in new administrative regulation 704 KAR 8:080.

(b) The necessity of the amendment to this administrative regulation: This regulation will amend the document incorporated

by reference in 704 KAR 3:303 to remove the standards related to K-12 vocational studies, as new standards have been developed and are incorporated by reference in new administrative regulation 704 KAR 8:080.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education.

(d) How the amendment will assist in the effective administration of the statutes: This regulation will amend the document incorporated by reference in 704 KAR 3:303 to remove the standards incorporated by reference in 704 KAR 8:080. This will increase the efficiency of the review and revision process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include: The Kentucky Department of Education and local districts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendment will impact schools and districts and the Kentucky Department of Education by providing the administrative procedures and guidance necessary to ensure consistent application of accountability by schools and districts as required by KRS 158.6453. Local school districts will be required to conform to the contents of the academic standards incorporated by reference in this and other regulations.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Local school districts will be required to conform to the contents of the academic standards incorporated by reference in this and other regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Kentucky Department of Education staff time will be impacted to revise the document incorporated by reference. No cost is anticipated for local school districts.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will increase the efficiency of the Kentucky Department of Education once standards are revised by having them in their own regulations. Public schools and the public at large will be able to easier locate and navigate standards documents by having content areas separated into different regulations.

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

(a) Initially: Minimal staff time at the Kentucky Department of Education will be required to implement this amendment.

(b) On a continuing basis: Minimal staff time at the Kentucky Department of Education will be required to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Education and public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not have any impact on expenditure or revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? Minimal staff time at the Kentucky Department of Education will be required to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? Amendment adds no additional costs. Minimal staff time at the Kentucky Department of Education will be required to implement this amendment.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

780 KAR 2:040. Live work projects.

RELATES TO: KRS 156.802(3)[454B-025(3)]

STATUTORY AUTHORITY: KRS 156.802(3), 156.852 [454B-025(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.802(3)[454B-025(3)] gives the Kentucky Department of Education[~~Office of Career and Technical Education~~] the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area vocational education and technology centers. This administrative regulation establishes the procedures for accepting live work projects in a Kentucky TECH facility.

Section 1. Definitions. (1) "Kentucky TECH" means the system of state-operated secondary technical education programs.

(2) "Live work" means a project, which meets a curriculum requirement, completed for an individual or organization.

Section 2. A Kentucky TECH school may accept live work projects if the administrative and instructional staffs deem them

appropriate for training purposes.

Section 3. A Kentucky TECH school that accepts live work shall adhere to the requirements established in this section. (1) All services performed shall be documented on a completed Work Order - Agreement[Work Order] form.

(2) The school administrator shall be responsible for all unused work order forms and assigning and recording all services performed in a work order log[book].

(3) An individual or organization requesting live work shall be provided a copy of the school's policy for accepting and performing live work. A person committing live work shall sign the Work Order - Agreement form[policy form] indicating that he or she understands the policies and agrees with them.

(4) A live work order shall be approved and initiated by the school administrator and by the instructor of the class. Live work shall not be approved for an instructor in his or her program for his or her own personal use.

(5) If a live work project requires more than one (1) hour labor, the individual or organization requesting the live work shall pay the fee established in 780 KAR 2:140, Section 8[9].

(6)(a) Except as provided in paragraph (b) of this subsection, a person or organizations for whom live work is accepted shall purchase the necessary materials for the job to be completed.

(b) With the permission of the person or organization, the school may purchase the materials and recover the costs of the materials plus twenty (20) percent for handling.[The Kentucky TECH school may require the students participating in the live work project to reimburse or purchase the materials required for the project].

(7) A payment shall not be handled by an instructor. Live work orders shall not be released until payment for parts, supplies, and other cost items has been made and documented by authorized personnel in the school.

(8) Projects of a family member or other individual shall not be accepted in the name of a student or the instructor.

(9) A school employee shall not:

(a) Guarantee or be liable for live work; or

(b) Be responsible for the theft or loss of an article left in a school.

Section 4. A Kentucky TECH school shall not be obligated to accept live work projects. Live work of a production nature and in competition with business or industry or for the purpose of making a profit shall not be done.

Section 5. Incorporation by Reference. (1) "[Education]Work Order - Agreement form", August 2019[July 2008], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education[Office of Career and Technical Education], 300 Sower Boulevard, 5th Floor[Capital Plaza Tower, 20th Floor, 500 Mero Street], Frankfort, Kentucky 40601, Monday through Friday, 8 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 of Education

HAL HEINER, Chairperson

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 23, 2019, at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person

who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures for accepting live work projects in a Kentucky TECH facility (also known as an area technology center). Specifically, the regulation defines live work projects and establishes the requirements for the acceptance and completion of such projects by a Kentucky TECH school.

(b) The necessity of this administrative regulation: KRS 156.802(3) gives the Kentucky Department of Education (KDE) the responsibility for all administrative functions in relation to the management, control and operation of state-operated secondary area vocational education and technology centers.

(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation establishes the procedures for accepting live work projects in a Kentucky TECH facility (also known as an area technology center). Because the Kentucky TECH system of area technology centers is governed by the KDE, such regulations are necessary to ensure proper management, control and operation of these centers. Additionally, pursuant to KRS 156.852, the Kentucky Board of Education (KBE) is vested with the authority to carry out the purposes of career and technical education programs and is given all necessary power and authority in promulgating administrative regulations and carrying out the provisions of the acts relating thereto.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines live work projects and establishes the requirements for the acceptance and completion of such projects by a Kentucky TECH school. The "Work Order - Agreement" form is incorporated by reference into the regulation, ensuring consistency in the documentation of such projects.

(2) If 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 provide clarity to the requirements and revise the document incorporated by reference in 780 KAR 2:040 to bring its contents up-to-date.

(b) The necessity of the amendment to this administrative regulation: Amendments to the regulation revise outdated terminology, as well as update old and former statutory references.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.802(3) gives the Kentucky Department of Education (KDE) the responsibility for all administrative functions of the state in relation to the management, control and operation of state-operated secondary area vocational education and technology centers.

(d) How the amendment will assist in the effective administration of the statutes: Pursuant to KRS 156.852, the Kentucky Board of Education (KBE) is vested with the authority to carry out the purposes of career and technical education programs and is given all necessary power and authority in promulgating administrative regulations and carrying out the provisions of the acts relating thereto. Such requirements are necessary in order to carry out the work of the area technology centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: Those affected by this regulation include: area technology centers and the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments will impact area technology centers and the Kentucky Department of Education by providing the administrative procedures and guidance necessary to ensure consistent application of live work projects within the 53 state-operated schools.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: These amendments will create a new and revised form (document incorporated by reference) to be utilized by all schools. The Kentucky Department of Education will notify staff in area technology centers of the new form to be used as well as changes to the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Kentucky Department of Education staff time will be impacted to revise the document incorporated by reference and notify staff in area technology centers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments will increase the efficiency among the area technology centers and ensure accurate documentation and data is being collected for live work projects.

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

(a) Initially: Minimal staff time at the Kentucky Department of Education will be required to implement this amendment.

(b) On a continuing basis: Minimal staff time at the Kentucky Department of Education will be required to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does establish direct fees that may be charged by the school to the client for whom the live work is being completed. Pursuant to 780 KAR 2:140, a \$15.00 fee shall be required for any live work project requiring more than one (1) hour of labor. Additionally, a 20% handling fee may be charged for a school who manages the purchase of project materials and supplies.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Area technology centers and the Kentucky Department of Education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.802(3) gives the Kentucky Department of Education (KDE) the responsibility for all administrative functions in relation to the management, control and operation of state-operated secondary area vocational education and technology centers.

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

regulation does create potential revenue for area technology centers that perform live work projects.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? A \$15.00 fee shall be required for any live work project requiring more than one (1) hour of labor. Additionally, a 20% handling fee may be charged for a school who manages the purchase of project materials and supplies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? A \$15.00 fee shall be required for any live work project requiring more than one (1) hour of labor. Additionally, a 20% handling fee may be charged for a school who manages the purchase of project materials and supplies.

(c) How much will it cost to administer this program for the first year? Minimal staff time at the Kentucky Department of Education will be required to implement the regulation.

(d) How much will it cost to administer this program for subsequent years? Minimal staff time at the Kentucky Department of Education will be required to implement the regulation 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 (+/-): Rates and fees are identified in 3(a) and 3(b).

Expenditures (+/-): N/A

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(Amendment)

780 KAR 2:060. Discipline of students.

RELATES TO: KRS 156.802(3)[154B.025(3)], 158.150, 158.444

STATUTORY AUTHORITY: KRS 156.802(3)[154B.025(3)], 156.852 [154B.150]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.802(3)[154B.025(3)] gives the Kentucky Department of Education[Office of Career and Technical Education] the responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area technology centers. KRS 156.852[154B.150] authorizes the Kentucky Board of Education[Executive Director of the office] to promulgate administrative regulations to implement career and technical education in Kentucky. KRS 158.150 establishes the grounds and procedures for discipline from the state's common schools. This administrative regulation establishes the procedure for the suspension and expulsion of students from Kentucky TECH schools for disciplinary reasons following the grounds and procedures established in KRS 158.150 for the common schools.

Section 1. Definition. "Kentucky TECH" means the system of state-operated secondary career and technical education programs in the area technology centers.

Section 2. Teachers and administrators employed in or assigned to work in a Kentucky TECH school shall be responsible for the supervision and discipline of students during the time the students are in attendance at a state-operated career and[vocational-] technical facility.

Section 3. All students shall comply with the policies of the Kentucky TECH school in which they are enrolled. The following actions shall constitute[be] cause for disciplinary suspension or expulsion:

(1) Willful disobedience or defiance of the authority of a

teacher or administrator;

(2) Assault, battery or abuse of another student or school personnel;

(3) Threat of force or violence;

(4) Use or possession of illicit drugs or alcohol;

(5) Stealing, destroying or defacing school or personal property;

(6) Possessing or using a dangerous weapon or instrument; or

(7) Other incorrigible bad conduct on school property or at school-sponsored activities.

Section 4. (1) Except as provided in subsection (2) of this section, any secondary student subject to disciplinary action shall be referred by the school administrator of a Kentucky TECH school to the principal of the sending[parent] school in which the student is enrolled, where pursuant to KRS 158.444, the incident must be recorded within the student information system.

(2) The Kentucky TECH school administrator or his/her designee shall have the authority to immediately suspend secondary students from the area technology center[for a maximum of three (3) days,] without action by the sending[parent] school, to:

(a) Protect persons or property; or

(b) Avoid disruption of the ongoing academic programs.

(3) The Kentucky TECH school administrator shall submit in writing to the principal of the sending[parent] high school the reason for disciplinary action and recommend any further action.

(4) The principal of the sending[parent] high school shall respond to the Kentucky TECH school administrator as to the action to be taken.

(5) The due process procedures outlined in KRS 158.150(5) shall follow the suspension as soon as practicable, but no later than three (3) school days after the suspension.

Section 5. A secondary student who is suspended~~[er-expelled]~~ from a participating local high school or expelled from a participating local school district shall be suspended or expelled from the Kentucky TECH school in which the student is enrolled.

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

WAYNE D. LEWIS, Commissioner

HAL HEINER, Chairperson

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 23, 2019, at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the suspension and expulsion of students from Kentucky TECH schools (also known as Area Technology Centers or ATCs) for disciplinary reasons following the grounds and procedures established in KRS 158.150 and ensures compliance with discipline data reporting requirements outlined in KRS 158.444.

(b) The necessity of this administrative regulation: KRS 156.802(3) gives the Kentucky Department of Education (KDE) the responsibility for all administrative functions of the state in relation to the management, control and operation of state-operated secondary area vocational education and technology centers.

(c) How this administrative regulation conforms to the content of the authorizing statute: This regulation establishes the procedures for the suspension and expulsion of students from a Kentucky TECH school. Because the Kentucky TECH system of ATCs is governed by the KDE, such regulations are necessary to ensure proper management, control and operation of these centers. Additionally, pursuant to KRS 156.852, the Kentucky Board of Education (KBE) is vested with the authority to carry out the purposes of career and technical education programs and is given all necessary power and authority in promulgating administrative regulations and carrying out the provisions of the acts relating thereto.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures proper action is taken when a student is suspended from an ATC for disciplinary reasons.

(2) If 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 provide clarity to the procedures for suspension, bring its contents up-to-date with current statutory references, inserts gender neutral language, ensures compliance with due process procedures for the student being suspended and requires the sending high school to record the behavior/discipline even within the student information system, pursuant to KRS 158.444.

(b) The necessity of the amendment to this administrative regulation: Amendments to the regulation are aimed at providing greater clarity to the roles and responsibilities of the ATC personnel, as well as the student's sending high school, when a student suspension occurs.

(c) How the amendment conforms to the content of the authorizing statute: KRS 156.802(3) gives the Kentucky Department of Education (KDE) the responsibility for all administrative functions in relation to the management, control and operation of state-operated secondary area vocational education and technology centers.

(d) How the amendment will assist in the effective administration of the statutes: Pursuant to KRS 156.852, the Kentucky Board of Education (KBE) is vested with the authority to carry out the purposes of career and technical education programs and is given all necessary power and authority in promulgating administrative regulations and carrying out the provisions of the acts relating thereto. Such requirements are necessary in order to carry out the work of the area technology centers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this regulation include: area technology centers and public school districts.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendments will impact area technology centers and the Kentucky Department of Education by providing the administrative procedures and guidance necessary to ensure consistent application of the suspension protocols within the 53 state-operated area technology centers.

(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: Area technology centers will be required to implement the procedures outlined in the administrative regulation when suspending a student from the center. School districts will be required to report the behavior incident within the student information database system.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost involved in complying with this administrative regulation and its new amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): These amendments will increase the efficiency among the area technology centers and ensure consistent protocols, and that accurate documentation and data is being collected in relation to student suspensions from these state-operated schools.

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

(a) Initially: Minimal staff time at the Kentucky Department of Education will be required to implement this regulation.

(b) On a continuing basis: Minimal staff time at the Kentucky Department of Education will be required to implement this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this regulation.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Area technology centers (ATCs) and the Kentucky Department of Education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.802(3) gives the Kentucky Department of Education (KDE) the responsibility for all administrative functions of the state in relation to the management, control and operation of state-operated secondary area vocational education and technology centers.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation does not create revenue or expenditures for the entities involved.

(a) How much 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? Minimal staff time at the Kentucky Department of Education will be required to implement the regulation.

(d) How much will it cost to administer this program for subsequent years? Minimal staff time at the Kentucky Department of Education will be required to implement the regulation 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

PUBLIC PROTECTION CABINET Department of Insurance (Amendment)

806 KAR 13:040. Automobile fleet insurance defined.

RELATES TO: KRS 304.13-121

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner~~[Executive—Director]~~ of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides a uniform definition for purposes of "fleet" insurance on automobiles.

Section 1. ~~For purposes of~~~~[A fleet of automobiles for either]~~ vehicle damage or liability coverage, a fleet of automobiles is defined as five (5) or more private passenger or commercial automobiles owned and operated by an individual partnership, firm, or corporation.

Section 2.~~[For the purposes of this definition,]~~ A leased automobile may be construed as an "owned automobile," if:

(1)~~[provided]~~ There is a written agreement of lease for a term of not less than one (1) year; and

(2)~~[.]~~ The lease agreement stipulates~~[shall stipulate]~~ that lessor shall not enjoy the use or~~[of]~~ control of the leased vehicle during the term of the lease.

Section 3. Buses leased~~[to—and—operated]~~ by the Commonwealth ~~[through any of its agencies or the common school system]~~ may be written as a fleet if~~[even though the period of the lease is for a term of less than one (1) year and notwithstanding the fact that the lessor operates or controls said leased vehicles; however,]~~ the term of the insurance is~~[must]~~ not~~[be—for—a]~~ longer~~[period]~~ than the term of the lease.

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 27, 2019 at 500 Mero 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor, II, Deputy Commissioner, 215 W. Main St., Frankfort, Kentucky 40601, phone (502) 782-5262, fax (502) 564-1453, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor, II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides a uniform definition for purposes of "fleet" insurance on automobiles.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure consistent understanding and treatment of "fleet" automobiles for insurance purposes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides clarity for insurers and consumers regarding the department's understanding of what constitutes a 'fleet' for insurance purposes. It further exempts buses operated by 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 corrects grammatical errors and clarifies the applicability of the definition of 'fleet' for insurance coverage.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct grammatical errors and clarify remaining provisions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help insurers and consumers better understand what constitutes a 'fleet' for purposes of insurance coverage, allowing them to better tailor their policies or needs moving forward.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurers interested in providing coverage for automobile fleets and all fleet owners, including the Commonwealth, may be affected.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will have to limit "fleet" insurance coverage to instances where five (5) or more qualifying vehicles are covered. This reflects current requirements and will not change because of the proposed amendments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Affected entities can negotiate fleet coverage with additional certainty regarding the definition of a fleet for insurance purposes.

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

(a) Initially: There is no cost to the department to implement this administrative regulation.

(b) On a continuing basis: There is no cost to the department to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement or 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 funding is necessary to implement or enforce 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 because the definition and exceptions apply similarly to similarly situated 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? Commonwealth agencies and the common school system will be affected by this administrative regulation if they own or lease vehicles.

(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 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? There is no cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this program for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET
Department of Insurance
(Amendment)**

806 KAR 15:090. Notice of rights as an owner of a life insurance policy.

RELATES TO: KRS 304.14-120, 304.15-075

STATUTORY AUTHORITY: KRS 304.2-110, 304.15-075(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code [as defined in KRS 304.1-010]. KRS 304.15-075(1) requires the commissioner to develop a notice to inform the owner of a policy of life insurance issued in this state of his or her rights as an owner of a life insurance policy. KRS 304.15-075 authorizes[also allows] the

commissioner to promulgate administrative regulations to establish that the notice be made only with respect to policies with a net death benefit that is \$100,000 or greater. This administrative regulation establishes the notice that must be provided to owners of life insurance policies at times specified in KRS 304.15-075(3) and exempts insurers from providing notice to owners whose life insurance policy has a net death benefit that is less than \$100,000.

~~Section 1. When required by KRS 304.15-075(3)[(1) Except as provided in Section 2 of this administrative regulation], an insurer shall provide the [following notice to the] owner of an individual life insurance policy with a net death benefit greater than one hundred thousand dollars (\$100,000) with either of the following[at the times specified in KRS 304.15-075(3)]:~~

- (a) Important Information About Your Life Insurance Policy, Notice 126, 8/2010; or
- (b) A notice developed by the insurer which [shall]:
 1. ~~Meets[Meet]~~ the requirements of KRS 304.15-075(2); and
 2. ~~Has been[Be filed with and]~~ approved by the commissioner.

~~Section 2[in accordance with KRS 304.14-120 and 806 KAR 14:005-~~

~~(2) An insurer may include specific contact information in the notice required pursuant to subsection (1)(a) of this section.~~

~~Section 2. An insurer shall not be required to provide the notice set forth in Section 1 of this administrative regulation if the net death benefit of the owner's life insurance policy, per policy, is less than \$100,000.~~

~~Section—3]. Incorporation by Reference. (1) "Important Information About Your Life Insurance Policy", Notice 126, 8/2010, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 500 Mero St.[215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department web site at <http://insurance.ky.gov>.~~

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 27, 2019 at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main St., Frankfort, Kentucky 40601, phone (502) 782-5262, fax (502) 564-1453, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the notice requirements for life insurance companies when the policyholder meets one of the

conditions established in KRS 304.15-075(3).

(b) The necessity of this administrative regulation: The commissioner is required by KRS 304.15-075 to develop a notice to be submitted to policyholders with specific information alerting them to their rights.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation develops and incorporates the form required under KRS 304.15-075(1), but provides a manner for insurers to use their own form with the approval of the commissioner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation includes the form required by KRS 304.15-075.

(2) If 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 a redundant section from the existing regulation.

(b) The necessity of the amendment to this administrative regulation: The amendment eliminates a redundant section from the existing administrative regulation while conforming to the authorizing statute.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment simply includes the required form, a process to allow an insurer to utilize an internal form, and confirms notice is not required where the death benefit is under \$100,000.

(d) How the amendment will assist in the effective administration of the statutes: The amendment simplifies the administrative by eliminating a redundant provision.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will impact insurance companies authorized to write life insurance in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The entities will not be required to take any action to comply with the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The amendment will not result in any cost to the entities.

(c) As a result of compliance, what benefits will accrue to the entities: The entities will benefit from the simplification of the administrative regulations.

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

(a) Initially: The Department will not have any costs to implement the administrative regulation.

(b) On a continuing basis: The Department will not have any costs to implement the administrative regulation.

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements apply to all life insurance companies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 304.15-075.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? This program will not cost anything to administer.

(d) How much will it cost to administer this program for subsequent years? This program will not cost anything to administer.

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

Revenues (+/-):

Neutral

Expenditures (+/-):

Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
(Amendment)

815 KAR 20:010. Definitions for 815 KAR Chapter 20.

RELATES TO: KRS 132.010[(9), (10)], Chapter 318

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. This administrative regulation establishes definitions for terms used in 815 KAR Chapter 20.

Section 1. Definitions. (1) "ABS" means acrylonitrile-butadiene-styrene.

(2) "Administrative authority" means the Department of Housing, Buildings and Construction or any person or agency authorized by the department to administer and enforce the provisions of the state plumbing code.

(3) "Air break" means a piping arrangement for a drainage system in which a drain from a fixture, appliance, or device discharges indirectly into another fixture, receptacle, or interceptor at a point below the flood level rim.

(4) "Air gap" means, for a drainage system, the unobstructed vertical distance through the free atmosphere between the outlet of waste pipe and the flood level rim of the receptacle into which it is discharging.

(5) "Air gap" means, for a water distribution system, the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level

rim of the receptacle.

(6) "Anchors" means "supports" as defined by this administrative regulation.

(7) "ANSI" means the American National Standards Institute.

(8) "APML" means the "Approved Parts or Materials List."

(9) "Apprentice" is defined by KRS 318.010(7).

(10)[(8)] "Approved" means accepted or acceptable under an applicable specification stated or cited in this code.

(11)[(9)] "Area drain" means a receptacle designed to collect surface or storm water from an open area.

(12)[(40)] "Aspirator" means a fitting or device supplied with water or other fluid under positive pressure, which passes through an integral orifice or "constriction" causing a vacuum. Aspirators are often referred to as "suction" apparatus and are similar in operation to an ejector.

(13) "ASME" means the American Society of Mechanical Engineers.

(14) "ASSE" means the American Society of Sanitary Engineers.

(15)[(44)] "ASTM" means the American Society for Testing and Materials.

(16)[(42)] "Autopsy table" means a fixture or table used for postmortem examination of a body.

(17)[(43)] "Backflow" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source. Back siphonage is one (1) type of backflow.

(18)[(44)] "Backflow connection" means any arrangement whereby backflow may occur (see "cross connection" as defined by this administrative regulation).

(19)[(45)] "Backflow preventer" means a device or means to prevent backflow.

(20)[(46)] "Backflow preventer, reduced pressure zone type" means an assembly of differential valves and check valves, including an automatically opened spillage port to the atmosphere.

(21)[(47)] "Back siphonage" means the flowing back of used, contaminated, or polluted water from a plumbing fixture or vessel or other sources into a potable water supply pipe due to a negative pressure in a pipe.

(22)[(48)] "Basement" means the lowest level of a dwelling unit, which is wholly or partly below the ground level in which the entrance and exit is made by use of a stairway or other mechanical means and which may or may not have an entrance and exit at the basement floor level.

(23)[(49)] "Basement floor drain" means a drain placed in the basement floor of a residence that does or does not receive sanitary waste water.

(24)[(20)] "Battery of fixtures" means any group of two (2) or more similar adjacent fixtures that discharge into a common horizontal waste or soil branch.

(25)[(24)] "Bedpan hopper" means "clinical sink" as defined by this administrative regulation.

(26)[(22)] "Bedpan steamer or boiler" means a fixture used for scalding bedpans or urinals by direct application of steam of boiling water.

(27)[(23)] "Bedpan unit" means a small workroom in the nursing area designed and equipped for emptying, cleaning, and sometimes for steaming bedpans, and for no other purpose.

(28)[(24)] "Bedpan washer and sterilizer" means a fixture designed to wash bedpans and to flush the contents into the sanitary drainage system. It can also provide for disinfecting utensils by scalding with steam or hot water.

(29)[(25)] "Bedpan washer hose" means a device supplied with hot and cold water and located adjacent to a water closet or clinical sink to be used for cleaning bedpans.

(30)[(26)] "Boiler blow-off" means an outlet on a boiler to permit emptying or discharge of sediment.

(31)[(27)] "Boiler blow-off tank" means a vessel designed to receive the discharge from a boiler blow-off outlet and to cool the discharge to a temperature that permits its safe discharge to the drainage system.

(32)[(28)] "Branch" means that part of the piping system that extends horizontally, at a slight grade, with or without lateral or

vertical extensions or vertical arms, from the main to receive fixture outlets not directly connected to the main.

(33)[(29)] "Branch, fixture" means "fixture branch" as defined by this administrative regulation.

(34)[(30)] "Branch interval" means a distance along a soil or waste stack corresponding in general to a story height, but in no case less than eight (8) feet, within which the horizontal branches from one (1) floor or story of a building are connected to the stack.

(35)[(31)] "Branch vent" means a vent connecting one (1) or more individual vents with a vent stack or stack vent.

(36)[(32)] "Building" means a structure having walls and a roof designed and used for the housing, shelter, enclosure, or support of persons, animals or property.

(37)[(33)] "Building classification" means the arrangement of buildings in classes according to occupancy.

(38)[(34)] "Building drain" means that part of the lowest piping of a drainage system that receives the discharge from soil, waste, or other drainage pipes inside the walls of the building and conveys it to the building sewer beginning two (2) feet outside the building wall.

(39)[(35)] "Building drain; combined" means a building drain that conveys both sewage and storm water or other drainage.

(40)[(36)] "Building drain; sanitary" means a building drain that conveys sewage only.

(41)[(37)] "Building drain; storm" means a building drain that conveys storm water or other drainage but not sewage.

(42)[(38)] "Building gravity drainage system" means a drainage system that drains by gravity into the building sewer.

(43)[(39)] "Building sewer" means that part of the drainage system that extends from the end of the building drain and conveys its discharge to a public sewer, private sewer, individual sewage-disposal system, or other point of disposal.

(44)[(40)] "Building sewer; combined" means a building sewer that conveys both sewage and storm water or other drainage.

(45)[(41)] "Building sewer; sanitary" means a building sewer that conveys sewage only.

(46)[(42)] "Building sewer; storm" means a building sewer that conveys storm water or other drainage but no sewage.

(47)[(43)] "Building subdrain" means that portion of a drainage system that does not drain by gravity into the building sewer.

(48)[(44)] "Cesspool" means a lined and covered excavation in the ground that receives a discharge of domestic sewage or other organic wastes from a drainage system, so designed as to retain the organic matter and solids, but permitting the liquids to seep through the bottom and sides.

(49)[(45)] "Circuit vent" means a branch vent that serves two (2) or more traps and extends from the downstream side of the highest fixture connection of a horizontal branch to the vent stack.

(50) "CISPI" means the Cast Iron Soil Pipe Institute.

(51)[(46)] "Clinical sink" or "bedpan hopper" means a fixture for the rinsing of bedpans and soiled linens.

(52)[(47)] "Code" is defined by KRS 318.010(11).

(53)[(48)] "Combination fixture" means a fixture combining one (1) sink and laundry tray or a two (2) or three (3) compartment sink or laundry tray in one (1) unit.

(54)[(49)] "Combined building drain" means "building drain; combined" as defined by this administrative regulation.

(55)[(50)] "Combined building sewer" means "building sewer; combined" as defined by this administrative regulation.

(56)[(51)] "Combination waste and vent system" means a specially designed system of waste piping embodying the horizontal wet venting of one (1) or more sinks or floor drains by means of a common waste and vent pipe adequately sized to provide free movement of air above the free water surface in the drain.

(57)[(52)] "Common vent" means a vent connecting at the junction of two (2) fixture drains and serving as a vent for both fixture drains.

(58)[(53)] "Conductor" means a pipe inside the building that conveys storm water from the roof to a storm or combined building drain.

(59)[(54)] "Continuous vent" means a vertical vent that is a continuation of the drain to which it connects.

(60)[(55)] "Continuous waste" means a drain from two (2) or

more fixtures connected to a single trap.

(61)[(56)] "Cross connection" means any physical connection or arrangement between two (2) otherwise separate piping systems, one (1) of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical whereby there could be a flow from one (1) system to the other, the direction of flow depending on the pressure differential between the two (2) systems. (See "backflow" and "back siphonage" as defined by this administrative regulation.)

(62) "Critical level" or "CL" means the level to which the vacuum breaker may be submerged before backflow will occur, and if the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(63)[(57)] "Dead end" means a branch leading from a soil, waste or vent pipe, building drain, or building sewer, and terminating at a developed length of two (2) feet or more by means of a plug, cap, or other closed fitting.

(64) "Department" means the Department of Housing, Buildings and Construction.

(65)[(58)] "Developed length" means the length of a pipe line measured along the center line of the pipe and fittings.

(66) "Developed travel distance" means the length of a pathway measured along the center line of the path.

(67)[(59)] "Diameter" means the nominal diameter as designated commercially.

(68) "Division" means the Division of Plumbing.

(69)[(60)] "Domestic sewage" means the waterborne wastes derived from ordinary living processes.

(70)[(61)] "Double offset" means two (2) changes of direction installed in succession or series in a continuous pipe.

(71)[(62)] "Downspout" means "leader" as defined by this administrative regulation.

(72)[(63)] "Drain" means any pipe that carries waste water or waterborne wastes in a building drainage system.

(73)[(64)] "Drainage pipe" means "drainage system" as defined by this administrative regulation.

(74)[(65)] "Drainage system":

(a) Means all the piping, within public or private premises, which conveys sewage, rain water, or other liquid wastes to a point of disposal; and

(b) Does not mean:

1. The mains of a public sewer system;
2. A private or public sewage-treatment or disposal plant; or
3. Plumbing appliances.

(75)[(66)] "Drainage system" means, for building gravity, a drainage system that drains by gravity into the building sewer.

(76)[(67)] "Drainage system" means, for a subbuilding, "building subdrain" as defined by this administrative regulation.

(77)[(68)] "Dry well" means "leaching well" as defined by this administrative regulation.

(78)[(69)] "Dual vent" means "common vent" as defined by this administrative regulation.

(79)[(70)] "Durham system" means a soil or waste system in which all piping is of threaded pipe, tube, or other rigid construction, using recessed drainage fittings to correspond to the types of piping.

(80)[(71)] "Dwelling unit" means one (1) or more rooms with provision for living, sanitary, and sleeping facilities arranged for the use of one (1) family or individual.

(81)[(72)] "DWV" means drain, waste, and vent piping as used in common plumbing practice.

(82)[(73)] "Effective opening" means the minimum cross-sectional area at the point of water supply discharge, measured or expressed in terms of diameter of a circle, or if the opening is not circular, the diameter of a circle of equivalent cross-sectional area.

(83)[(74)] "Ejector" means "aspirator" as defined by this administrative regulation.

(84)[(75)] "Existing work" means a plumbing system or any part thereof installed prior to the effective date of this code.

(85)[(76)] "Farm" as associated with "farmstead" as defined by KRS 318.010(8), means property with a bona fide "agricultural land" or "horticultural land" use as defined by KRS 132.010(9) and (10) and qualified by and registered with the PVA in that county.

(86)[(77)] "Fire line" means a system of pipes and equipment used exclusively to supply water for extinguishing fires.

(87)[(78)] "Fixture" means "plumbing fixture" as defined by this administrative regulation.

(88)[(79)] "Fixture branch" means the piping distance between a soil, waste, and vent stack and the fixture trap.

(89)[(80)] "Fixture drain" means the drain from the trap of a fixture to the junction of that drain with any other drain pipe.

(90)[(81)] "Fixture supply" means the water supply pipe connecting a fixture to a branch water supply pipe or directly to a main water supply pipe.

(91)[(82)] "Fixture unit, drainage (d.f.u.)" means a measure of the probable discharge into the drainage system by various types of plumbing fixtures. The drainage fixture-unit valve for a particular fixture depends on its volume rate of drainage discharge, on the time duration of a single drainage operation, and on the average time between successive operations. (Note: In general, on small systems, one (1) drainage fixture unit approximates one (1) cubic foot per minute.)

(92)[(83)] "Fixture unit, supply (s.f.u.)" means a measure of the probable hydraulic demand on the water supply by various types of plumbing fixtures. The supply fixture-unit valve for a particular fixture depends on its volume rate of supply, on the time duration of a single supply operation, and on the average time between successive operations.

(93)[(84)] "Flood level" means "flood level rim" as defined by this administrative regulation.

(94)[(85)] "Flood level rim" means the edge of the receptacle from which water overflows.

(95)[(86)] "Flooded" means the condition that results at the point the liquid in a container or receptacle rises to the flood-level rim.

(96)[(87)] "Floor drain" means a drain placed in the floor of a building for the purpose of receiving sanitary waste water.

(97)[(88)] "Floor pantry" means a workroom in the nursing area designed and equipped to prepare supplemental diets or beverages, and to assemble food trays at meal times if used in conjunction with decentralized food service.

(98)[(89)] "Flow pressure" means the pressure in the water supply pipe near the faucet or water outlet while the faucet or water outlet is wide-open and flowing.

(99)[(90)] "Flush valve" means a device located at the bottom of a tank for slushing water closets and similar fixtures.

(100)[(91)] "Flushing type floor drain" means a drain that is equipped with an integral water supply enabling flushing of the drain receptor and trap.

(101)[(92)] "Flushometer valve" means a device that discharges a predetermined quantity of water to fixtures for flushing purposes and is closed by direct water pressure.

(102)[(93)] "Frost-proof closet" means a hopper with no water in the bowl and with the trap and water supply control valve located below frost line.

(103)[(94)] "Grade" means the fall (slope) of a line of pipe in reference to a horizontal plane. In drainage it is usually expressed as the fall in a fraction of an inch per foot length of pipe.

(104)[(95)] "Grade plane" means a reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane is established by the lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet (1,829 mm) from the building, between the building and a point six (6) feet (1,829 mm) from the building.

(105)[(96)] "Grease interceptor" means "interceptor" as defined by this administrative regulation.

(106)[(97)] "Grease trap" means "interceptor" as defined by this administrative regulation.

(107)[(98)] "Grillage" means sand, pea gravel, or limestone rock sizes #57 and smaller used for bedding for piping systems.

(108)[(99)] "Hangers" means "supports" as defined by this administrative regulation.

(109) "Health care facility" means a hospital, nursing home, limited care facility, clinic, ambulatory care center, or office practice

medical or dental office as defined in NFPA 99.

(110)[(400)] "Horizontal branch drain" means a drain branch pipe extending laterally from a soil or waste stack or building drain, with or without vertical sections or branches, which receives the discharge from one (1) or more fixture drains and conducts it to the soil or waste stack or to the building drain.

(111)[(401)] "Horizontal pipe" means any pipe or fitting that makes an angle of less than forty-five (45) degrees with the horizontal.

(112)[(402)] "Hose bibb" means a sill cock, wall hydrant, or similar faucet with a downward angled threaded nozzle.

(113)[(403)] "Hot water" means water at a temperature of not less than 120 degrees Fahrenheit.

(114)[(404)] "House drain" means "building drain" as defined by this administrative regulation.

(115)[(405)] "House sewer" means "building sewer" as defined by this administrative regulation.

(116)[(406)] "Indirect waste pipe" means a waste pipe not directly connected with the drainage system, but which discharges into the drainage system through an air break or air gap into a trap, fixture, receptor, or interceptor.

(117)[(407)] "Individual sewage disposal system" means a system for disposal of domestic sewage by means of a septic tank, cesspool, or mechanical treatment, designed for use apart from a public sewer to serve a single establishment or building.

(118)[(408)] "Individual vent" means a pipe installed to vent a fixture drain. It connects with the vent system above the fixture served or terminates outside the building into the open air.

(119)[(409)] "Individual water supply" means a supply other than an approved public water supply which serves one (1) or more families.

(120)[(410)] "Industrial floor drain" means a drain placed in the floor of a building other than in a toilet room or shower room to receive waste water.

(121)[(411)] "Industrial wastes" means liquid wastes resulting from the processes employed in industrial and commercial establishments.

(122)[(412)] "Insanitary" means contrary to sanitary principles; injurious to health.

(123)[(413)] "Interceptor" means a device designed and installed so as to separate and retain deleterious, hazardous, or undesirable matter from normal wastes while permitting normal sewage or liquid wastes to discharge into the drainage system by gravity.

(124)[(414)] "Installed" means altered, changed, or a new installation.

(125)[(415)] "Invert" means the lowest portion of the inside of any horizontal pipe.

(126)[(416)] "Kitchen sink unit" means a sink, double or single compartment, food waste disposer, and dishwasher placed in a unit so arranged that the dishwasher abuts the sink.

(127)[(417)] "Lavatory" means a hand basin, such as in a bathroom.

(128)[(418)] "Leaching well or pit" means a pit or receptacle having porous walls that allow the contents to seep into the ground.

(129) "Lead" means solders and flux containing more than two tenths (0.2) percent lead and the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures containing more than a weighted average of one fourth (0.25) percent lead as calculated according to the formula established in 42 U.S.C. 300g-6(d)(2).

(130)[(419)] "Leader" means an exterior drainage pipe for conveying storm water from roof or gutter drains.

(131)[(420)] "Liquid waste" means the discharge from any fixture, appliance, area or appurtenance, which does not contain fecal matter.

(132)[(421)] "Load factor" means the percentage of the total connected fixture unit flow that is likely to occur at any point in the drainage system.

(133)[(422)] "Local vent stack" means a vertical pipe to which connections are made from the fixture side of traps and through which vapor and foul air can be removed from the fixture or device used on bedpan washers.

(134)[(123)] "Local ventilating pipe" means a pipe through which foul air is removed from a room or fixture.

(135)[(124)] "Loop vent" means a circuit vent that loops back to connect with a stack vent instead of a vent stack.

(136)[(125)] "Main" means the horizontal, vertical, and continuous piping that receives the waste, soil, main, or individual vents from fixture outlets, or traps, directly or through branch pipes.

(137)[(126)] "Main sewer" means "public sewer" as defined by this administrative regulation.

(138)[(127)] "Main vent" means the principal artery of the venting system to which vent branches can be connected. (Manufacturer's Floor Drain. See "industrial floor drain" as defined by this administrative regulation.)

(139) "Medical gas system" means an assembly of equipment and piping for the distribution of nonflammable medical gases such as oxygen, nitrous oxide, compressed air, carbon dioxide, and helium as defined in NFPA 99.

(140) "Medical-surgical vacuum system" means an assembly of central vacuum-producing equipment and a network of piping for patient suction in medical, medical-surgical, and waste anesthetic gas disposal applications as defined in NFPA 99.

(141) "Mobile facility" means a vehicle licensed and registered with the Kentucky Department of Transportation that contains plumbing fixtures and is intended for temporary use with regard to the structure it serves.

(142) "Modular" means a structure or component that is wholly or substantially fabricated in an off-site manufacturing facility for installation at the building site.

(143)[(128)] "Multiple dwelling" means a building containing more than two (2) dwelling units.

(144) "NFPA" means the National Fire Protection Association.

(145)[(129)] "Nominal pipe size" means a standard expression in inches and fractions thereof to designate the approximate inside diameter of a pipe, conduit, or tube.

(146)[(130)] "Nonpotable water" means water not safe for drinking, personal, or culinary use.

(147) "NSF" means the National Sanitation Foundation.

(148)[(131)] "Nuisance" means dangerous to human life or detrimental to health; whatever building, structure, or premise is not sufficiently ventilated, sewer, drained, cleaned or lighted, in reference to its intended or actual use; and whatever renders the air or human food or drink or water supply unwholesome.

(149)[(132)] "Nurses' station" means an area in the nursing unit separated from the corridor by counter or desk, designed to permit nurses to record and file each patient's history and progress, observation, and control of corridor, preparation of medicines, and maintain contact with patients, the hospital, and the outside by local and public means of communication.

(150)[(133)] "Offset" means a combination of elbows or bends that bring one (1) section of the pipe out of line but into a line parallel with the other section.

(151)[(134)] "Oil interceptor" means "interceptor" as defined by this administrative regulation.

(152) "Parts or materials" means all types of fittings and piping used in the soil, waste, and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(153) "PE" means polyethylene.

(154)[(135)] "Person" is defined by KRS 318.010(9).

(155) "PEX" means cross-linked polyethylene pipe.

(156) "PEX-AL-PEX" means polyethylene/aluminum/cross-linked polyethylene composite pressure pipe.

(157)[(136)] "Pitch" means "grade" as defined by this administrative regulation.

(158)[(137)] "Plumbing" is defined by KRS 318.010(4).

(159)[(138)] "Plumbing appliance" means any one (1) of a special class of plumbing fixture that is intended to perform a special function. Its operation and control may be dependent upon one (1) or more energized components, such as motors, controls, heating elements, or pressure or temperature-sensing elements. Fixtures can operate automatically through one (1) or more of the following actions:

(a) A time cycle;

(b) A temperature range;

(c) A pressure range;

(d) A measured volume or weight; or

(e) Manual adjustment or control by the user or operator.

(160)[(139)] "Plumbing appurtenance" means a manufactured device, or a prefabricated assembly of component parts, and is an adjunct to the basic piping system and plumbing fixtures. An appurtenance demands no additional water supply, nor does it add any discharge load to a fixture or the drainage system. It is presumed that it performs some useful function in the operation, maintenance, servicing, economy, or safety of the plumbing system.

(161)[(140)] "Plumbing fixture":

(a) Means a receptacle or device that is either permanently or temporarily connected to the water distribution system of the premises, and demands a supply of water therefrom, or it discharges used water, liquid-borne waste materials, or sewage either directly or indirectly to the drainage system of the premises, or that requires both a water supply connection and a discharge to the drainage system of the premises; and

(b) Does not mean piping that carries water or sewage.

(162)[(141)] "Plumbing inspector" means a duly authorized employee or agent of the Department of Housing, Buildings and Construction who is charged with the responsibility of inspecting plumbing installations and with the enforcement of the state plumbing laws and code.

(163)[(142)] "Plumbing repair" means as used in the code to mean replacing a part or putting together that which is torn or broken.

(164)[(143)] "Plumbing system" means the following: appliances and water heaters; the water supply distributing pipes; the fixtures and fixture traps; the soil, waste and vent pipes; the house drain and house sewer; the storm water drainage within a building with their devices, appurtenances and connections all within and adjacent to the building.

(165)[(144)] "Pool" means "swimming pool" as defined by this administrative regulation.

(166)[(145)] "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the Division of Water in 401 KAR Chapter 8 or the administrative regulations of the Department of Housing, Buildings and Construction.

(167)[(146)] "Private or private use" means, in the classification of plumbing fixtures, private applies to fixtures in residences and apartments and to fixtures in private bathrooms of hotels as well as similar installations in other buildings where the fixtures are intended for the use of a family or an individual.

(168)[(147)] "Private sewer" means a sewer, serving two (2) or more buildings, privately owned, and not directly controlled by public authority.

(169)[(148)] "Public or public use" means, in the classification of plumbing fixtures, public applies to fixtures in general toilet rooms of schools, gymnasiums, hotels, railroad stations, public buildings, bars, public comfort stations, and other installations (whether pay or free) where a number of fixtures are installed so that the fixtures use is similarly unrestricted.

(170)[(149)] "Public sewer" means a common sewer directly controlled by public authority.

(171)[(150)] "Public water main" means a water supply pipe for public use controlled by public authority.

(172)[(151)] "PVC" means polyvinyl chloride.

(173)[(152)] "Receptor" means a fixture or device that receives the discharge from indirect waste pipes.

(174)[(153)] "Relief vent" means an auxiliary vent that permits additional circulation of air in or between drainage and vent systems.

(175)[(154)] "Replace" means to put something new or rebuilt in the place of that which was existing.

(176)[(155)] "Return offset" means a double offset installed so as to return the pipe to its original alignment.

(177)[(156)] "Revent pipe" means "individual vent" as defined by this administrative regulation.

(178)[(457)] "Rim" means an unobstructed open edge of a fixture.

(179)[(458)] "Riser" means a water supply pipe that extends vertically one (1) full story or more to convey water to branches or to a group of fixtures.

(180)[(459)] "Roof drain" means a drain installed to receive water collecting on the surface of a roof and to discharge it into a leader or a conductor.

(181)[(460)] "Roughing-in" means the installation of all parts of the plumbing system that can be completed prior to the installation of fixtures. This includes drainage, water supply, vent piping, and the necessary fixture supports.

(182)[(464)] "Safe waste" means "indirect waste pipe" as defined by this administrative regulation.

(183)[(462)] "Sand interceptor" means "interceptor" as defined by this administrative regulation.

(184)[(463)] "Sand trap" means "interceptor" as defined by this administrative regulation.

(185)[(464)] "Sanitary sewer" means a sewer that carries sewage and excludes storm, surface, and ground water.

(186)[(465)] "Scrub sink" means a device usually located in the operating suite to enable operating personnel to scrub their hands prior to operating procedures. The hot and cold water supply is activated by a knee-action mixing valve or by wrist or pedal control.

(187) "SDR" means standard dimensional ratio.

(188)[(466)] "Seepage well or pit" means a covered pit with open-jointed lining into which septic tank effluent is received that will seep or leach into the surrounding porous soil.

(189)[(467)] "Separator" means "interceptor" as defined by this administrative regulation.

(190)[(468)] "Septic tank" means a watertight receptacle that receives the discharge of a building sanitary drainage system or part thereof, and is designed and constructed so as to digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through a system of open joint or perforated piping, or a seepage pit.

(191)[(469)] "Sewage" means any liquid waste containing animal or vegetable matter in suspension or solution, including liquids containing chemicals in solution.

(192)[(470)] "Sewage ejector" means a device for lifting sewage by entraining it in a high velocity jet of steam air or water.

(193)[(474)] "Side vent" means a vent connecting to the drain pipe through a fitting at an angle not greater than forty-five (45) degrees to the vertical.

(194)[(472)] "Size of pipe and tubing" means "diameter" as defined by this administrative regulation.

(195)[(473)] "Slope" means "grade" as defined by this administrative regulation.

(196)[(474)] "Soil pipe" means any pipe that conveys the discharge of water closets or similar fixtures, with or without the discharges from other fixtures, to the house drain.

(197)[(475)] "Soil vent" means "stack vent" as defined by this administrative regulation.

(198)[(476)] "Special wastes" means wastes that require special treatment before entry into the normal plumbing system.

(199)[(477)] "Special waste pipe" means pipes that convey special wastes.

(200)[(478)] "Stack" means any vertical line of soil, waste, or vent piping.

(201)[(479)] "Stack group" means a group of fixtures located adjacent to the stack so that by means of proper fittings, vents can be reduced to a minimum.

(202)[(480)] "Stack vent" means the extension of a soil or waste stack above the highest horizontal drain connected to the stack.

(203)[(484)] "Stack venting" means a method of venting a fixture or fixtures through the soil or waste stack.

(204)[(482)] "Sterilizer, boiling type" means a fixture (nonpressure type), used for boiling instruments, utensils, and other equipment (used for disinfection). Some devices are portable; others are connected to the plumbing system.

(205)[(483)] "Sterilizer, instrument" means a device for the sterilization of various instruments.

(206)[(484)] "Sterilizer, pressure instrument washer-sterilizer" means a fixture (pressure vessel) designed to both wash and sterilize instruments during the operating cycle of the fixture.

(207)[(485)] "Sterilizer, pressure (autoclave)" or "autoclave" means a fixture (pressure vessel) designed to use steam under pressure for sterilizing.

(208)[(486)] "Sterilizer, utensil" means a device for the sterilization of utensils as used in hospital services.

(209)[(487)] "Sterilizer vent" means a separate pipe or stack, indirectly connected to the building drainage system at the lower terminal, which receives the vapors from nonpressure sterilizers, or the exhaust vapors from the pressure sterilizers, and conducts the vapors directly to the outer air. Sometimes a sterilizer vent is referred to as vapor, steam, atmospheric, or exhaust vent.

(210)[(488)] "Sterilizer, water" means a device for sterilizing water and storing sterile water.

(211)[(489)] "Still" means a device used in distilling liquids.

(212)[(490)] "Storm drain" means building storm drain.

(213)[(494)] "Storm sewer" means a sewer used for conveying rain water, surface water, condensate, cooling water, or similar liquid wastes.

(214)[(492)] "Subsoil drain" means a drain that collects subsurface water and conveys it to a place of disposal.

(215)[(493)] "Sump" means a tank or pit, which receives sewage or liquid waste, located below the normal grade of the gravity system and that is emptied by mechanical means.

(216)[(494)] "Sump pump" means a mechanical device, other than an ejector or bucket, for removing sewage or liquid waste from a sump.

(217)[(495)] "Supports" means devices for supporting and securing pipe, fixtures, and equipment.

(218)[(496)] "Swimming pool" means any structure, basin, chamber, or tank containing any artificial body of water for swimming, diving, wading or recreational bathing.

(219) "Temporary" means a period of time not to exceed thirty (30) days of intermittent or continual use within twelve (12) month period on the same premises.

(220)[(497)] "Trap" means a fitting or device that provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or waste water through it.

(221)[(498)] "Trap arm" means that portion of a fixture drain between a trap and its vent.

(222)[(499)] "Trap primer" means a device or system of piping to maintain a water seal in a trap, typically installed where infrequent use of the trap would result in evaporation of the trap seal, such as floor drains.

(223)[(500)] "Trap seal" means the vertical distance between the crown weir and the top of the dip of the trap.

(224)[(504)] "Utility room" means a workroom in the patient nursing area, designed and equipped to facilitate preparation, cleaning, and incidental sterilizing of the various supplies, instruments, and utensils involved in nursing treatment and care, exclusive of medications handled in nurses' stations and bedpan cleaning and sterilizing.

(225)[(502)] "Vacuum" means any pressure less than exerted by the atmosphere.

(226)[(503)] "Vacuum breaker" means "backflow preventer" as defined by this administrative regulation.

(227)[(504)] "Vacuum breaker, nonpressure type (atmospheric)" means a vacuum breaker that is not designed to be subjected to static line pressure.

(228)[(505)] "Vacuum breaker, pressure type" means a vacuum breaker designed to operate under conditions of static line pressure.

(229)[(506)] "Vent pipe" means any pipe provided to ventilate a house drainage system and to prevent trap siphonage and back pressure.

(230)[(507)] "Vent system" means a pipe or pipes installed to provide a flow of air to or from a drainage system or to provide a circulation of air within the system to protect trap seals from siphonage and back pressure.

(231)[(508)] "Vertical pipe" means any pipe or fitting that makes an angle of fortyfive (45) degrees or less with the vertical.

(232)~~(209)~~ "Wall hung water closet" means a wall mounted water closet installed in such a way that no part of the water closet touches the floor.

(233)~~(210)~~ "Waste pipe and special waste" means any pipe that receives the discharge of any fixture (except water closets or similar fixtures) and discharges to the house drain, soil, or waste stacks. If a pipe does not connect directly with a house drain, waste, or soil stack, the pipe is considered to contain special waste.

(234) "Water closet" means a flush toilet.

(235)~~(211)~~ "Water distributing pipe" means a pipe within the building or on the premises that conveys water from the water-service pipe or meter to the point of usage.

(236)~~(212)~~ "Water lifts" means "sewage ejector" as defined by this administrative regulation.

(237)~~(213)~~ "Water outlet" means a discharge opening through which water is supplied to a fixture, into the atmosphere (except into an open tank that is part of the water supply), to a boiler or heating system, or to any devices or equipment requiring water to operate but that are not part of the plumbing system.

(238)~~(214)~~ "Water riser pipe" means "riser" as defined by this administrative regulation.

(239)~~(215)~~ "Water service pipe" means the pipe from the water main or other source of potable water supply to the water distributing system of the building served.

(240)~~(216)~~ "Water supply stub" means a vertical pipe less than one (1) story in height supplying one (1) or more fixtures.

(241)~~(217)~~ "Water supply system" means the water service pipe, the water-distributing pipes, and the necessary connecting pipes, fittings, control valves, and all appurtenances in or adjacent to the building or premises.

(242)~~(218)~~ "Well, bored" means a well constructed by boring a hole in the ground with an auger and installing a casing.

(243)~~(219)~~ "Well, drilled" means a well constructed by making a hole in the ground with a drilling machine of any type and installing casing and screen.

(244)~~(220)~~ "Well, driven" means a well constructed by driving a pipe in the ground. The drive pipe is usually fitted with a well point and screen.

(245)~~(221)~~ "Well, dug" means a well constructed by excavating a large diameter shaft and installing a casing.

(246)~~(222)~~ "Wet vent" means a vent that receives the discharge of wastes other than from water closets.

(247)~~(223)~~ "Yoke vent" means a pipe connecting upward from a soil or waste stack to a vent stack for the purpose of preventing pressure changes in the stack.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 23, 2019 at Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 500 Mero St., Frankfort, Kentucky 40601, phone (502) 573-0365, fax (502) 573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the definitions for terms needed in the interpretation of other sections of the subsequent administrative regulations in 815 KAR Chapter 20.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to define terms used in implementing the Division of Plumbing's statutory duty to establish a state plumbing code that regulates the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers, and private water supplies, including the size of waste pipes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by providing the definitions for terms used in 815 KAR Chapter 20, which fulfills the department's obligation to promulgate an administrative regulation to establish the Kentucky State Plumbing Code, which will regulate plumbing, including waste pipes for plumbing fixtures and appurtenances under KRS 318.130.

(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 in the Kentucky State Plumbing Code promulgated by the Department, required by KRS 318.130.

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

(a) How the amendment will change this existing administrative regulation: This amendment consolidates all the defined terms for 815 KAR Chapter 20 into one administrative regulation. The definition sections from 815 KAR 20:020, 815 KAR 20:060, 815 KAR 20:120, 815 KAR 20:191, and 815 KAR 20:195 were relocated, and any term not included in 815 KAR 20:010 was added including the terms ANSI, APML, ASME, ASSE, critical level, department, developed travel distance, division, health care facility, lead, medical gas system, medical-surgical vacuum system, mobile facility, modular, NFPA, NSF, parts or materials, PE, person, PEX, PEX-AL-PEX, SDR, and temporary.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to incorporate the defined terms in the general definition administrative regulation to aid in the understanding of the subsequent administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by listing the defined terms used in the Kentucky State Plumbing Code, required by KRS 318.130.

(d) How the amendment will assist in the effective administration of the statutes: This amendment aids in the understanding of the Kentucky State Plumbing Code, and makes the reading of 815 KAR Chapter 20 more user-friendly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in designing and the installation of plumbing and Department of Housing, Buildings and Construction personnel.

(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: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

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

entities: Regulated entities and the public can now go to a single regulation for all terms of art used across 815 KAR Chapter 20, making the chapter as a whole easier to navigate.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the Department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not establish any new fees. There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and Department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is required and authorized by KRS 198B.040(10) and 318.130.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction (Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 318.200

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department[, after review by the State Plumbing Code Committee,] to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes an "approved parts or materials list" containing the parts and materials that have been approved for use in Kentucky.

Section 1.[Definitions. (1) "ABS" means acrylonitrile-butadiene-styrene pipe.

(2) "APML" means the "[Approved Parts or Materials List]".

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

(4) "Code" is defined by KRS 318.010(11).

(5) "Committee" means the State Plumbing Code Committee.

(6) "Department" means Department of Housing, Buildings, and Construction.

(7) "Parts or materials" means all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(8) "Person" is defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List ([APML]). (1) A part or material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) Drainage or plumbing systems[A part or material] shall only use parts and materials that:

(a) Are[not be used in a drainage or plumbing system, other than those] currently authorized by the code[;] or

(b) Have been considered[unless the use of the part or material has been considered by the committee] and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML.

(3) The APML may specify methods of installation or restrictions applicable to a particular part or material.

Section 2. Amending the APML. (1) A person may petition the division[committee], in writing, to amend[no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending] the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the division[committee].

(2)(a) The division[committee] shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

(c) Following the determination[A hearing shall be held before the committee if requested by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(e) Upon approval of a recommendation] by the department, a person having an interest in the subject matter may request a hearing on the determination within thirty (30) days[the APML shall be amended by listing the new part or material in Section 5 of this

administrative regulation].

Section 3. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings[,] and Construction, 500 Mero Street~~[101 Sea Hero Road]~~, Frankfort, Kentucky 40601-5412~~[40601-5405]~~.

Section 4. Content of ~~APML~~Approved Parts or Materials List. The following list of parts or materials have been reviewed ~~[by the Kentucky Plumbing Code Committee]~~ and approved by the department and shall be allowed for installation in Kentucky:

- (1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, 0.032;
- (2)(a) Flushmate water closet tank;
- (b) Microphor company. Two (2) quart flush toilets;
- (c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush;
- (d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems;
- (e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock;
- (f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products; and
- (g) Dual flush water closets by Caroma, USA. The water closets shall use eight-tenths (.8) gallons for the short flush cycle and one and six-tenths (1.6) gallons for the full flush cycle;
- (3) Tubular traps with gasket in trap seal;
- (4)(a) PE~~[Polyethylene]~~ sump pump basin. PE~~[Polyethylene]~~ sump pump basin shall be constructed of PE~~[polyethylene]~~ material and shall be provided with a sump cover;
- (b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage;
- (c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage;
- (d) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units because it has a one and one-half (1 1/2) inch drain;
- (e) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates;
- (f) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use; and
- (g) Electric Drain System as manufactured by Myers for light commercial and household usage;
- (5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves;
- (b) PE~~[Polyethylene]~~ roof flashing. PE~~[Polyethylene]~~ roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket;
- (c) Dekitite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation;
- (d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only;
- (e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation;
- (f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.;
- (g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company; and
- (h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.;

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe;

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.; and

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.;

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand grillage and shall be:

(a) Backfilled by hand and tamped six (6) inches around piping; and

(b) Surrounded by six (6) inches of sand grillage;

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.;

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation;

(10)(a) Water heaters. Heat pump water heaters as manufactured by:

1. Dec International, Inc., Therma-Stor Products Group; or

2. Steibel Eltron Accelera 300. If the water heater is shipped with a 100 PSI Pressure and Temperature Relief Valve, it shall be replaced with a 150 PSI Pressure and Temperature Relief Valve; and

(b) Water heaters, point of use or instantaneous;

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154;

2. Eemax Electric Tankless water heaters.

a. Nonpressure type without the requirement of a temperature and pressure relief valve; or

b. The pressure type with the requirements that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and be installed with the product;

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater, which shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge;

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP;

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130, REU-V2520 FFU-US, REU-V2520 FFUC-US, REU-V2020W-US, REU-V2020WC-US, and REU-V1616W-US pressure type, which shall be equipped with an approved pressure relief valve;

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve;

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater, which shall be equipped with an approved pressure relief valve;

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve;

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet;

10. Chronomite Laboratories, Inc. - instantaneous water heater, which shall be equipped with an approved pressure relief valve;

11. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve;

12. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.;

13. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP, which shall be equipped with an approved pressure relief valve;

14. Ariston electric water heaters, model numbers P-15S and P-10S, which shall be equipped with an approved pressure relief

valve;

15. Vaillant Corporation gas fired point of use water heater.

16. Trinom Hot Man Tankless Water Heater as manufactured by Siemens;

17. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters;

18. Acutemp Instantaneous Water Heater as manufactured by Keltech, Inc., Model #100/208; #100/240; #150/208; #150/240; #180/208; #180/240; #153/208; #153/240; #183/208; #183/240; #183/480 and #C183/480;

19. Hot Aqua Instantaneous Tankless Electric Water Heaters, Model Numbers, 18/125PC, 24/125PC, 24/120, 32/120, 24/240, 36/240, 48/240, 59/240, 70/240, 24/208, 35/208, 46/208, 60/208, 28/277, 42/277, 55/277, 69/277, 24/120-P, 59/240-P, 46/208-P, 55/277-P, 18/125PC and 24/125PC. This product shall not be approved for supplying hot water for showers.

20. Stiebel Eltron Tankless Water Heater.

a. Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories and sinks;

b. Models Tempra/DHC-E 8/10 and DHC-E 12;

c. Models Mini 2, Mini 3, Mini 4, and Mini 6 Point of Use tankless electric water heaters; and

d. Models 12/2 Plus, 15/15 Plus, 20/20 Plus, 24/24 Plus, 29 Plus, and 36 Plus;

21. Bosch Aqua Star tankless water heater. Models 125X, 125B, 125S, 125BS, 125FX and 38B. All models shall be installed with pressure relief valves;

22. Controlled Energy Corporations "Powerstream" tankless water heater;

23. Ariston mini tank electric water heaters in 2.5, 4 and 6 gallon models;

24. Powerstar PS19T and PS28T Electric Instantaneous Water Heater, as manufactured by Controlled Energy Corporation, to be installed with pressure relief valves;

25. Aquastar AQ240 FX (LP, NG) gas fired instantaneous water heater, as manufactured by Controlled Energy Corporation, to be installed with pressure relief valve;

26. S.E.T.S. Tankless Water Heater Models: #220, #180, #165 and #145 to be installed with temperature and pressure relief valve.

27. Rinnai Continuous Flow Water Heaters: Models 2532FFU(-C), 2532W(-C), 2532FFU and 2424W(-C) all requiring an approved pressure relief valve;

28. Noritz American Corporation Tankless, Instantaneous Water Heater Models: N-042, N-063 to be installed with pressure relief valve;

29. Takagi Industrial Company USA, Inc., Instantaneous Water Heaters, Models: T-KLS; T-K JR; T-K2; T-KD20 to be installed with pressure relief valve;

30. Envirotech Systems ESI 2000 Series Tankless Water Heaters, all requiring an approved pressure relief valve;

31. Quietside Instantaneous Water Heater Models: QVW8 - 100, 120, 175. All models shall be equipped with an approved temperature and pressure relief valve and temperature preset at 120 degrees;

32. Seisco Tankless Water Heaters Model:

a. Point-of-Use Single Chamber Models: POU24, POU30, POU35, POU40, POU45, POU55, POU60, POU70, POU73, POU78, POU80, POU90, POU140, SC90, and SC140. These models shall not require the installation of a temperature and pressure relief valve;

b. Residential Single Phase Models: RA14, RA16, RA18, RA22, RA24, RA28, and RA32. These models shall not require the installation of a temperature and pressure relief valve;

c. Commercial Single Phase Models: CA14, CA16, CA18, CA22, CA24, CA28, and CA32. These models shall not require the installation of a temperature and pressure relief valve;

d. Commercial Three (3) Phase Models: CA9-3, CA10-3, CA12-3, and CA14-3. These models shall not require the installation of a temperature and pressure relief valve; and

e. Electric Mini-Tank Models: SMT2.5, SMT4, and SMT6. These models require the installation of a temperature and pressure relief valve supplied by the manufacturer;

(11) Compression joints. Fail-safe hot and cold water systems;

(12) Orion fittings for acid waste piping systems for above and below ground;

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping;

(14) Johns Manville Flex I drain roof drain system;

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick;

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping;

(17) Elkay Aqua-chill water dispensers;

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum;

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only;

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only; and

(c) Red White Valve Corporation. Reduced port polypropylene ball valves designed for installation on fusion welded polypropylene piping systems compliant with NSF standards 61 and 14 and ASTM F2389;

(20) Interceptors:

(a) Town and Country plastic interceptors to be used as a grease trap;

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ;

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections;

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code;

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL;

(f) Grease Traps U.S.A.: Polypropylene grease trap, model number GT-25, as certified by the Plumbing and Drain Institute;

(g) Schier Grease Interceptors Trapper II Series meeting ASME 112.14.3 Model numbers 1820, 2025, 2635 and 3050;

(h) Schier Grease Interceptors Great Basin Series meeting ASME 112.14.3 Model numbers GB-75 and GB-250 approved only with the installation of two-directional, accessible cleanouts on the inlet and the outlet. The discharge of garbage disposals shall not be permitted; and (i) Thermaco Inc. models TZ600 (150 GPM), TZ 400 (75 GPM), and the TZ 160 (35 GPM). These interceptors shall be installed with a full size vent (three (3) or four (4) inches as applicable per manufacturer's instructions to the model being installed), located on the outlet side of the interceptor and returned to the vent stack or located so that it terminates a minimum of twelve (12) inches above the ground;

(21) Plastic Oddities Srv (sewer relief vent) clean-out;

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-06 except dimensions at the time of manufacture;

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.;

(24) Eljer plumbing ware - Elgers ultra one/G water closet;

(25)(a) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company, which shall have a three (3) inch vent and alternate additional waste openings shall be located in the pump chamber above the top of the base chamber; and

(b) Hydromantic JB-1 System as manufactured by Hydromantic Pumps, Inc.;

(26) Exemplar Energy garden solar water heater;
 (27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. Proset E-Z flex coupling shall be approved for similar or dissimilar materials;

(28)(a) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries;

(b) Flood-Gate Automatic Backwater Valve as manufactured by Bibby-Ste-Croix; and

(c) Fullport Backwater Valve as manufactured by Mainline Backflow Products, Inc.;

(29) Clamp-All Corporation Pipe Coupling Systems shall be approved size for size on dissimilar materials on new or existing installations. The use of Snap-All Increaser/Reducer transition bushings shall be included in this approval;

(30) Mission Rubber Company "Band-Seal Specialty Coupling" shall be approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS, and SDR 35;

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safining material for floors and walls in showers, bathtubs, and floor drain pans;

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material;

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers;

(33)(a) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub, and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe, and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade; and

(b) Fernco Proflex Shielded Couplings: Series 3000 for service weight cast iron to plastic, steel or extra cast iron in sizes one and one-half (1 1/2) inch to four (4) inch, Series 3001 for cast iron, plastic or steel to copper in sizes one and one-half (1 1/2) inch to two (2) inch, Series 3003 for copper to copper in one and one-half (1 1/2) inch;

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe shall have been tested for the tensile strength, durability, of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials;

(35) Blucher-Josam stainless steel pipe, fittings, and drains for disposal of corrosive wastes;

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS, and SDR in four (4) inch and six (6) inch sizes;

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior [in sizes four (4) inch through twenty-four (24) inches] for underground storm water drainage within a building;

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer;

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line;

(40)(a) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations; and

(b) Flo-Bowl Waxless Leakless Toilet System as manufactured by Flo-Bowl Systems Inc.;

(41)(a) Conbraco 78-RV Series In-Line Water Heater Shut-Off Thermal Expansion Control Valve preset at 125 psi to relieve thermal expansion; and

(b) Watts Regulator BRV Expansion Relief Valve to relieve thermal expansion;

(42) Plastic Productions PVC "Quick Stub" approved as a solvent weld transition between tubular PVC and schedule 40 PVC;

(43) HubSett In Line Test Coupling: PVC and ABS test couplings produced by HubSett Manufacturing Inc. for testing soil waste and vent systems;

(44) Viega/Ridgid ProPress System: Copper press fittings for joining copper water tubing and using an elastomeric o-ring that forms the joint;

(a) The fitting shall be made by pressing the socket joint under pressure in accordance with the manufacturer's installation requirements; and

(b) This system shall be approved for pipe sizes one-half (1/2) inch through four (4) inch for above slab installations only;

(45) TRIC Trenchless Systems for replacement sewers in four (4) inch and six (6) inch sizes;

(a) A video camera tape of the existing sewer shall be made to determine proper alignment and reviewed by the plumbing inspector;

(b) After the installation is complete, another tape shall be reviewed by the plumbing inspector to ensure that the installation was successful;

(c) The sewer shall be tested according to 815 KAR 20:150; and

(d) The interior heat fusion bead shall be removed to provide a smooth surface with no obstruction;

(46) Envirovac Inc.: Evac Vacuum Systems Condensate Collection System approved for condensate collection and the discharge from lavatories only;

(47) Macerating Systems from Sanitary-for-All, consisting of a sump with a macerating pump, with or without a macerating toilet. The sump shall be air tight and provided with a minimum one and one-fourth (1 1/4) inch vent. These systems shall be installed in accordance with the manufacturer's recommendations and shall not be used as a primary means of waste disposal;

(48) Rhino Wet Waste Interceptor manufactured by Ecosystems Inc. to be used as a prefiltration of wet wastes before discharging to a grease trap or interceptor;

(49) Quick Snap Multi Level Flange as manufactured by Jett Plumbing Products, Inc.;

(50) Sioux Chief Manufacturers Stainless Steel Swivel Ring Closet Flange;

(51) Service Weight and No-Hub Cast Iron Pipe and Fittings furnished by DWV Casting Company complying with ASTM A74, A888 and CIPI 301-00;

(52) American Pipe Lining, Inc. APL 2000, which is an epoxy lining used in restoring water distribution systems. The use of APL 2000 shall be subject to the conditions established in paragraphs (a) through (d) of this subsection.

(a) A plumbing construction permit shall be required.

(b) Installation shall be by a licensed plumber.

(c) Water quality shall be tested before and after each project.

(d) A water distribution system treated with APL 2000 shall be clearly marked on all exposed piping and water heater with the following notice: "FLAMELESS TECHNIQUES MUST BE USED FOR ALL REPAIRS AND MODIFICATIONS TO THIS PIPING SYSTEM";

(53) Base Products Corporation;

(a) Water powered pump: basepump. Each model shall:

1. Be installed with a reduced pressure principle backflow preventer with copper piping only;

2. Be approved for groundwater removal only; and

3. Require incoming water pressure of 50 psi to operate; and

(b) Battery back-up pump: hydropump;

(54) Perma-Liner Industries, Inc, Lateral Lining System.:

(a) This system shall be approved for pipe sizes three (3) inches through eight (8) inches for interior and exterior installations;

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required by 815 KAR 20:150, Section 4(2) or (3);

(c) Exterior applications shall be videoed before and after and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6); and

(d) A permit shall be obtained prior to an exterior or interior application;

(55) Stainless steel piping system for potable water applications manufactured by Victaulic for above ground applications only;

(56) Wallgate Classic Model CME recessed and molded handwasher/dryer;

(57) MaxLiner.

(a) This system shall be approved for pipe sizes three (3) inch through ten (10) inch for interior and exterior installations;

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3);

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6); and

(d) Permits shall be required for both interior and exterior applications;

(58) Nuflo Technologies Inc., Nuflo System;

(a) This system shall be approved for pipe sizes one and one-half (1 1/2) inch through twelve (12) inch for interior and exterior installations;

(b) Interior applications shall be videoed before and after installation and shall have a water or air test as required in 815 KAR 20:150, Section 4(2) or (3);

(c) Exterior applications shall be videoed before and after installation and shall have a smoke test to comply with 815 KAR 20:150, Section 4(6); and

(d) Permits shall be required for both interior and exterior applications;

(59) Schluter Shower System for waterproofing tiled shower installations installed per manufacturer recommendations;

(60) WATCO Manufacturing Watco Flex and Watco Flex 900 Innovator tub waste and overflow;

(61) J.R. Smith MFG. CO. THE BOSS TEE Series 4505 cleanout tee;

(62) Pipe Patch NO-Dig Repair System by Source One Environmental.

(a) The repair shall require a plumbing installation permit issued by the department; and

(b) After the repair has been completed, the building sewer shall be inspected, tested with either a water or a smoke test, and approved by the department;

(63) PHIX Cartridge Systems. The PHIX cartridge system shall be approved for use as a point-source or in-line acid neutralization system;

(64) SharkBite Evopex polymer fittings meeting ASSE Standard 1061. The use of SharkBite Evopex polymer fittings shall be approved for underground burial except the fitting shall not be buried:

(a) Under or encased in concrete, or

(b) Underground beneath a building; and

(65) SharkBite Universal DZR brass fittings or SharkBite EvoPEX DZR brass transition fittings meeting ASSE Standard 1061. The use of these fittings shall be approved for underground burial if the fitting is:

(a) Wrapped with self-fusing, formaldehyde and chloride-free, fully cured silicone tape with a minimum thickness of 0.020 inches; and

(b) Not buried under or encased in concrete; and

(c) Not buried underground beneath a building.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 23, 2019 at Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative

regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-0365, fax (502) 573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes parts and materials that have been approved for the use in plumbing in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement the Division of Plumbing's statutory duty to establish a state plumbing code regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, including the methods and materials to be used therein within Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes the kind and type of parts and materials that may be used.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the Division of Plumbing in establishing the uniform standards for the types of parts and materials to be installed in various types of plumbing systems 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 amendment deletes the definition section of the administrative regulation as the terms are defined in 815 KAR 20:010. The amendment also removes all references to the State Plumbing Code Committee, which was dissolved by HB 394 of the Regular Session of the 2017 General Assembly. The restriction on the size requirements for the Advance Drainage Systems, Inc. Series 35 polyethylene corrugated sewer pipe has been removed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove references update the list of approved parts and materials and to account for updated products and technologies.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly relates to the permissible types of plumbing parts and materials that may be used in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will increase the options of flexible hot and cold connectors and the pipe size of the Advance Drainage Systems, Inc. Series 35 polyethylene corrugated sewer pipe available to the plumbing industry in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry in Kentucky and department personnel.

(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: This amendment imposes no new requirements on the affected entities in question

(3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Affected entities are not anticipated to incur any increased expenses as a result of this amendment, as this amendment merely removes restrictions from previously approved products.

(c) As a result of compliance, what benefits will accrue to the entities: Benefits will include greater flexibility and options in complying with current plumbing requirements for the design and construction of plumbing systems.

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

(a) Initially: There are no anticipated additional initial costs to administer this amendment.

(b) On a continuing basis: There are no anticipated additional costs to administer 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: Implementation of this amendment is anticipated to result in no additional costs to the agency. Any costs resulting from this amendment will be met with existing agency funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied as all relevant plumbing work will be subject to the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 318.130.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this amendment in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this amendment in subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction (Amendment)

815 KAR 20:030. Plumbing licenses.

RELATES TO: KRS 318.010, 318.020, 318.030, 318.040, 318.050, 318.054, 318.060, 318.080

STATUTORY AUTHORITY: KRS 198B.040(10), 318.040(1)(d), (2), (3), 318.050, 318.054(3), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate and amend~~[an administrative regulation establishing]~~ the Kentucky State Plumbing Code to regulate plumbing. KRS 318.040(1)(d) authorizes the commissioner to promulgate administrative regulations establishing qualifications for a master plumber's license and a journeyman plumber's license. KRS 318.040(2) and (3) require the department to establish~~[promulgate administrative regulations establishing]~~ examination requirements and procedures. KRS 318.050 requires the department to establish reasonable application fees for licensure as a master plumber or journeyman plumber. KRS 318.054(3) requires the department to establish reasonable renewal fees for master plumbers and journeyman plumbers. This administrative regulation establishes the application, examination, and renewal requirements for master plumbers and journeyman plumbers.

Section 1. Examinations~~[License—Requirements]~~. (1) Examination applications~~[Master plumber. An applicant seeking a master plumber license shall meet the following requirements:]~~

(a) All examination applicants for any plumber's license~~[The applicant shall have:]~~

1. A valid journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application, and be actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years; or

2. An engineer license in Kentucky sufficiently experienced in mechanical engineering. The sufficiency of experience] shall submit to the department:

1. A completed Plumbing Examination Registration Form, Form PLB-3;

2. The appropriate non-refundable examination fee:
a. [be determined based upon the number and complexity of the applicant's past mechanical engineer projects; and

(b) Apply for and successfully complete the master plumber examination pursuant to Section 2 of this administrative regulation with a passing score of eighty (80) percent, with a minimum of seventy five (75) percent obtained for each portion of the examination.

(2) Journeyman plumber. An applicant seeking a journeyman plumber license shall meet the following requirements:

(a) At least two (2) consecutive years of experience as an apprentice plumber demonstrated by the submission of:

1. A W-2 form;
2. An affidavit from a Kentucky licensed master plumber; or
3. A plumbing license issued by another state; or

(b) Complete a department approved course and at least one (1) year of experience as an apprentice plumber; and

(c) Apply for and successfully complete the journeyman plumber examination pursuant to Section 2 of this administrative regulation with a passing score of seventy five (75) percent, with a minimum of seventy (70) percent obtained for each portion of the examination.

(3) License fees:

(a) The master plumber license fee shall be \$250.

(b) The journeyman plumber license fee shall be sixty (60) dollars.

(c) The initial license fee] For a master plumber, \$150; or

b. For a journeyman plumber, fifty (50) dollars]~~[or a journeyman~~

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plumber may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month.

Section 2. Examinations.

(1) Examination applications.

~~(a) Master plumber examination application. An applicant for examination for a master plumber's license shall submit to the department:~~

~~1. A completed Application for License as a Master Plumber, Form PLB-1;~~

~~2. An examination fee of \$150; and~~

~~3. A passport-sized color photograph of the applicant taken within the past six (6) months.~~

~~(b) If [Journeyman plumber examination application.] an applicant fails to successfully complete the appropriate [for examination for a journeyman plumber license shall submit to the department:~~

~~1. A completed Application for License as a Journeyman Plumber, Form PLB-2;~~

~~2. An examination within one (1) year from the date of the first notice of examination, the application shall be void.~~

~~(2) Examination design.~~

~~(a) The fee of fifty (50) dollars; and~~

~~3. A passport-sized color photograph of the applicant taken within the past six (6) months.~~

~~(2) Examination design.~~

~~(a) The examination requirements shall be designed by the State Plumbing Examining Committee[.]~~

~~(b) The examination requirements shall design the examination requirements.~~

~~(b) All examinations [be more complex for the master plumber's license examination than the journeyman plumber's license examination.~~

~~(c) The master plumber examination shall include:~~

~~1. [Answering] Written questions pertaining to basic principles of plumbing, [and] KRS Chapter 318, 815 KAR Chapter 2, and 815 KAR Chapter 20; and~~

~~2. Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures connected thereto.~~

~~a. The proper sizing of main stacks shall be given more importance than other piping.~~

~~b. Deductions shall be required for oversized piping and for undersized piping.~~

~~3. [(d)] The journeyman plumber's license [plumber] examination shall include[.]~~

~~1. Answering written questions pertaining to basic principles of plumbing and KRS Chapter 318 and 815 KAR Chapter 20;~~

~~2. Inserting the proper pipe size on a prepared drawing that indicates all stacks, wastes, and vents and the plumbing fixtures connected thereto.~~

~~a. The proper sizing of main stacks shall be given more importance than other piping.~~

~~b. Deductions shall be required for oversized piping and for undersized piping; and~~

~~3. Completing a practical section in which the applicant shall demonstrate the ability to properly install plumbing by engaging in certain activities such as making proper connections of various plumbing materials.~~

~~a. [(3) Examination materials.~~

~~(a) An applicant for a journeyman plumber's license examination shall furnish the plumbing materials required for the practical examination.~~

~~b. [(b)] The department shall notify the applicant at least one (1) week prior to the date of examination as to what plumbing materials are needed.~~

~~4. The [(4)] examination requirements shall be more complex for the master plumber's license examination than the journeyman plumber's license examination.~~

~~(3) Examination schedule.~~

~~(a) Regular examination of applicants for a master plumber's license or a journeyman plumber's license shall be conducted~~

yearly during the months of February, May, August, and November.

~~(b) A special examination may be conducted during other times of a year as the department directs.~~

~~(c) Notice of the time and place of examination shall be given by the department at least one (1) week prior to the date of examination to each person who has an approved registration form [application] on file.~~

~~(4) [(5)] Examination retakes. Within one (1) year from the date of the applicant's first notice of examination:~~

~~(a) An applicant who fails to attend or successfully complete an examination for which he has been scheduled may request to reschedule or retake the examination. Except for the [within one (1) year from the date of the applicant's first notice of] examination fee, [as established in subsection (2) paragraph (c) of this section.] an applicant shall not resubmit the requirements in subsection 1 of this section.~~

~~(b) An applicant for a journeyman plumber's license who passes the written portion, the drawing portion, or the practical portion of the examination, but not all portions, may apply to retake only the portion failed [that he failed within one (1) year from the date of the applicant's first notice of examination].~~

~~(c) An applicant for a journeyman plumber's license who failed to achieve a passing score on the retaken portion of the examination may apply to retake the failed portion of the examination.~~

~~(d) An applicant must pay the full examination fee for a retake of any portion of the examination.~~

~~(5) A passing score on an examination shall be valid for three (3) years.~~

Section 2. Master Plumber License [if the reexamination is completed within one (1) year from the date of the applicant's first notice of examination.

(d) 1. An Application. To qualify for licensure as [for] a master plumber, an applicant shall:

(1) (a) Have held a valid [plumber's or] journeyman plumber's license for a minimum of two (2) years within the past five (5) years immediately preceding application and be actively employed in plumbing under the supervision of a licensed master plumber for a minimum of two (2) years;

(b) Hold an engineer license in Kentucky and be sufficiently experienced in mechanical engineering, as determined by the department based upon the number and complexity [shall be void if the applicant fails to successfully complete his examination within one (1) year from the date] of the applicant's past mechanical engineer projects;

(c) Hold a valid plumbing license issued by another state for a minimum of two (2) years within the past five (5) years immediately preceding application; or

(d) Have been engaged in the practice of plumbing in another state that does not issue a plumbing license, in a capacity equivalent to a master plumber, for a minimum of four (4) consecutive years immediately preceding application.

(2) Master plumber license application. [first notice of examination.

2.] An applicant for a master plumber license shall submit to the department:

(a) A completed [whose] Application for License as a Master Plumber, Form PLB-1;

(b) Proof of successfully completing the Kentucky master plumber examination with a passing score of a minimum of eighty (80) percent obtained for each portion of the examination; and

(c) A license fee of \$250.

(d) A master plumbing license applicant applying with experience under paragraphs (c) or (d) in subsection (1) of this section shall submit proof of successfully completing the journeyman plumber examination [has become void] pursuant to Section 3(2)(b) of this administrative regulation.

(3) The initial license fee for a master plumber may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of [this subsection may reapply as if] the applicant's birth month.

Section 3. Journeyman Plumber License Application. To qualify for licensure as a journeyman plumber, an applicant shall:

(1)(a) Have At least two (2) consecutive years of experience as an apprentice plumber; or

(b) Complete a department approved course and at least one (1) year of experience as an apprentice plumber.

(2) Journeyman plumber license application.[applicant was a first-time applicant.

(e)] An applicant for a journeyman plumber license shall submit to the department:

(a) A completed Application for License as a Journeyman Plumber, Form PLB-2;

(b) Proof of successfully completing the Kentucky journeyman plumber examination with a passing score of a minimum of seventy five (75) percent obtained for each[must pay the full examination fee for a retake of any] portion of the examination;[,] and

(c) A license fee of sixty (60) dollars.

(3) The initial license fee for a journeyman plumber may be prorated for not less than seven (7) months or more than eighteen (18) months and shall expire on the final day of the applicant's birth month[regardless of whether the applicant is taking less than the whole examination].

Section 4[3]. License Renewals. (1) Filing for renewal. A master plumber and a journeyman plumber shall submit to the department:

(a) The applicable renewal fee made payable to the Kentucky State Treasurer of:

1. \$250 for a master plumber; or

2. Sixty (60) dollars for a journeyman plumber;

(b) Proof of completing the continuing education requirements established in 815 KAR 2:010; and

(c) Proof of insurance as required by KRS 318.030 for a master plumber.

(2) Inactive status[license renewals].

(a) To place a plumbing license in inactive status:

1. A master plumber shall pay an initial inactive fee of \$125;

2. A journeyman plumber shall pay an initial inactive fee of thirty (30) dollars.

(b) 1. An inactive master plumber shall not secure a plumbing permit, advertise, represent himself as a qualified master plumber, or otherwise engage in the work of a master plumber.

2. An inactive journeyman plumber shall not represent himself as a qualified journeyman plumber or otherwise engage in the work of a journeyman plumber.

(c) To reactivate a plumbing license, the inactive licensed plumber shall complete all renewal requirements of subsection (1) of this section and:

1.-] pay the appropriate[an additional] reactivation fee;[.]

1.[a.] \$125 for a master plumber; or

2.[b.] Thirty (30) dollars for a journeyman plumber;[2. Provide proof of insurance as required by KRS 318.030 for a master plumber; and

3. Comply with the continuing education requirements established in 815 KAR 2:010.]

Section 5[4]. Change of information. (1) A licensee[master plumber or journeyman plumber] shall notify the department of any change to the name or[of the plumber's business and its] address[.] of the business or employer[employer, and the employer's address each time a change of employment is made].

(2) Death of a master plumber.

(a) If the master plumber representing a company dies, the company shall notify the department within ten (10) days of the master plumber's death.

(b) The 180 day interim period established in KRS 318.054 shall begin on the date the master plumber dies.

(c) The company shall not be required to renew the deceased's master plumber license, if the license renewal date falls within the 180 day interim period.

(d) The company shall not use the deceased master plumber's license after the expiration date of the interim period.

(e) The company shall notify the department when the company has a replacement master plumber to represent the company[on or before the expiration date of the interim period].

Section 6[5]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for License as a Master Plumber", Form PLB-1, October 2019;[November 2018; and]

(b) "Application for License as a Journeyman Plumber", Form PLB-2, October 2019; and

(c) "Plumbing Examination Registration Form, Form PLB-3, October 2019;[November 2018].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Plumbing, 500 Mero Street[101 Sea Hero Road, Suite 100], Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://dhbc.ky.gov>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 23, 2019 at Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-0365, fax (502) 573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the qualifications for licensure as a master plumber and a journeyman plumber, the requirements for renewing and reactivating plumbing licenses, and the examination standards for licensed plumbers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.040(1)(d) authorizes the commissioner to promulgate administrative regulations establishing qualifications for a master plumber's license and a journeyman plumber's license. KRS 318.040(2) and (3) require the department to promulgate administrative regulations establishing examination requirements. KRS 318.050 requires the department to establish reasonable application fees for licensure as a master plumber or journeyman plumber. KRS 318.054(3) requires the department to establish reasonable renewal fees for master plumbers and journeyman

plumbers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the application and examination requirements and the application and renewal fees for master plumbers and journeyman plumbers.

(2) If 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 the general passage percentage for master plumber and journeyman plumber examinations. Applicants will only need to achieve percentage requirements for each portion of the examination. Also, the amendment makes a passing score for a journeyman plumber applicant or a master plumber applicant valid for three (3) years. The incorporated application forms have been updated to reflect the changes in the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This amendment also better aligns the plumbing licensing process with other licenses administered by the department.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 318.040(1)(d) by amending qualification requirements for master plumbers, and conforms to KRS 318.040 by amending the examination requirements for journeyman plumbers and master plumbers.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the application and examination requirements for master plumbers and journeyman plumbers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry, potential applicants for master plumber license and journeyman plumber license, and Department of Housing, Buildings and Construction personnel.

(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: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities: This amendment helps clarify the requirements for a master plumber applicant. The amendment removes the unnecessary overall examination percentage requirement - clarifying what an applicant needs to achieve on each portion of the examination to pass.

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

(a) Initially: There are no anticipated additional initial costs to administer this regulatory amendment.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer this regulatory amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of this amendment is anticipated to result in no additional costs to the Department. Any costs resulting from these administrative amendments will be met with existing agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This

amendment will not necessitate an increase in fees or require funding from the Department for implementation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and Department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing and Licensing Branch will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required and authorized by KRS 198B.040(10) and KRS 318.130.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction (Amendment)

815 KAR 20:050. Installation permits.

RELATES TO: KRS 318.030, 318.134, 318.160

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130, 318.134(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130[318.134(3)] requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.134(1) requires all persons, firms, or corporations to procure a[establish a reasonable schedule of fees and charges to be paid for] plumbing installation permit from the department to construct, install, or alter, or cause to be constructed, installed, or altered any plumbing. KRS 318.134(3) requires[permits and the necessary inspections incident thereto. KRS 318.130 authorizes] the department to establish[promulgate] a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary

~~inspections incident thereto~~~~[rule or administrative regulation to administer the provisions of KRS Chapter 318]. This administrative regulation establishes the requirements, fees, and charges for plumbing installation permits and inspections in Kentucky.~~

Section 1. Permit Required~~[Issuance of Permits]. (1) A plumbing permit shall be required for:~~

- ~~(a) A new plumbing installation;~~
- ~~(b) An existing plumbing installation if a fixture, soil, or waste opening or conductor is to be moved or relocated;~~
- ~~(c) A new house sewer or a house sewer that is to be replaced;~~
- ~~(d) A new water service or a water service that is to be replaced;~~
- ~~(e) The addition~~~~[to construct, install, or alter plumbing, sewerage, or drainage shall be issued only to a licensed master plumber except as established in subsection (3)] of a backflow prevention device to an existing water service; or~~
- ~~(f) A new water heater installation or a water heater that is to be replaced.~~

~~(2) A new plumbing permit~~~~[this section: (2) A journeyman plumber]~~ shall be required when a master plumber:

~~(a) Takes over a~~~~[not construct, install, or alter] plumbing[.] installation originally permitted to another master plumber or homeowner; or~~

~~(b) Assumes responsibility to correct and test an installation made by someone else.~~

~~(3) A permit shall not be required for:~~

~~(a) The repair of:~~

- ~~1. Leaks;~~
- ~~2. Cocks; or~~
- ~~3. Valves; or~~

~~(b) Cleaning out waste or sewer pipes.~~

Section 2. Issuance of Plumbing Permits. (1)~~[sewerage, or drainage unless the work is performed under the supervision of a licensed master plumber.~~

~~(3) A permit to construct, install, or alter plumbing, sewerage, or drainage shall be issued only to:~~

~~(a) A licensed master plumber; or~~

~~(b) A homeowner who wishes to construct~~~~[desiring to] install, or alter plumbing, sewerage, or drainage in a home occupied by the homeowner or constructed by the homeowner for the homeowner's own personal residential use, if:~~

~~1. [(a)] Application is made for the permit prior to the beginning of the work;~~

~~2. [(b)] The homeowner files with the application an affidavit stating that the homeowner shall abide by the terms of this section;~~

~~3. [(c)] All work shall be performed in compliance with the code;~~

~~4. [state plumbing code, 815 KAR Chapter 20;~~

~~(d)] All the work shall be personally performed by the homeowner; and~~

~~5. [(e)] The homeowner shall not have obtained another homeowner permit for construction of a new home issued within the last five (5) years.~~

~~(2) [(4)] A journeyman plumber~~~~[permit] shall not construct, install, or alter plumbing, sewerage, or drainage unless the work is performed under the supervision of a licensed master plumber with a valid permit.~~

Section 3. Plumbing Plan Submission. (1) Procedure. Except as provided in subsection (2) of this section, plumbing plans shall be submitted to the department for review and approval prior to the issuance of a plumbing permit~~[be required for:~~

~~(a) The repairing of:~~

- ~~1. Leaks;~~
- ~~2. Cocks; or~~
- ~~3. Valves; or~~

~~(b) Cleaning out waste or sewer pipes.~~

Section 2. Conditions Under which a Permit Shall be Required. A plumbing plan submission~~[installation permit]~~ shall consist of:

- (a) A complete Plan Application form; and
- (b) Three (3) sets of identical plans that include:

1. A complete floor plan;
2. An isometric plumbing diagram of the drain, waste, and vent system; and

3. A site utility plan.

(2) Field inspections. A plumbing inspector may inspect the plumbing in the following without an initial submission of plumbing plans:

(a) An existing~~[be required for:~~

(1) A new plumbing installation;

(2) An existing plumbing installation if a fixture, soil, or waste opening or conductor is to be moved or relocated;

(3) Each individual unit of a multistory building if:

1. There are no~~[is] more than ten (10) openings;~~

2. There is no change of use in the occupancy;

3. There is no increase in the occupant load;

4. Approval by the Department of Health is not required; and

5. Plans or documents of the installation are submitted to the department after installation~~[one (1) unit];~~

(4) A building that is considered separate if:

(a) The connection between the building and another building is not a necessary part of the structure of either building; or

(b) A multi-family dwelling if:

1. The building consists of twelve (12) units or less;

2. The water and sewer connections have been approved by the Division of Water;

3. Proof of a building permit from the authority having jurisdiction has been submitted~~[The building's roof is not part of the roof of another building];~~

(5) A new house sewer or a house sewer that is to be replaced;

(6) A new water service or a water service that is to the department; and

4. Plumbing plans are made available to the plumbing inspector for review and approval prior to construction.

(c) A plumbing inspector shall not review and approve plans for the following:

1. A tenant space that has not been occupied;

2. A day care facility~~[be replaced];~~

(7) The addition of a backflow prevention device to an existing water service;

(8) A new water heater installation or a water heater installation that is not currently licensed;

3. A project on a private water system without approval from the Division of Water; or

4. A project with a sewer main extension or a sewage treatment plant without approval from the Division of Water~~[to be replaced; or~~

(9) Taking over a plumbing installation originally permitted to another master plumber or assuming responsibility to correct and test an installation made by someone else].

Section 4~~[3]. Plumbing~~~~[Installation] Permit Fees.~~ (1) The base fee for each plumbing~~[installation]~~ permit for residential~~[.]~~ one (1) and two (2) family units~~[.]~~ shall be forty-five (45) dollars plus seven (7) dollars for each:

(a) Plumbing fixture~~[or] appliance, or opening left for a plumbing fixture~~~~[opening] or appliance~~~~[opening left] in the soil or waste pipe system~~~~[including openings left for future fixtures or appliances];~~

(b) Domestic water heater; and

(c) Separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(2) The base fee for each plumbing~~[installation]~~ permit for buildings other than residential~~[.]~~ one (1) and two (2) family units~~[.]~~ shall be forty-five (45) dollars plus fifteen (15) dollars for each:

(a) Plumbing fixture~~[or] appliance, or opening left for a plumbing fixture~~~~[opening] or appliance~~~~[opening left] in the soil or waste pipe system~~~~[including openings left for future fixtures or appliances];~~

(b) Domestic water heater;

(c) Conductor opening; and

(d) Separately metered water and sewer service if more than one (1) water or sewer service is to be installed.

(3)(a) If only one (1) new domestic water heater is installed or replaced within a single building, the only fee for the plumbing [installation] permit shall be forty-five (45) dollars.

(b) If more than one (1) water heater is replaced within a building, a permit fee shall be calculated[required] pursuant to subsections[Sections] 1 or 2 of this section.

(4) The plumbing permit fee shall be limited to the base fee if:

(a) The work to be performed[administrative regulation.

(4) If the application for permit does not include [any] new installation;

(b) The work to be performed[but] is to make corrections to or [te] provide testing for an installation made by someone else; [.] or

(c) A master plumber takes over a plumbing permit pursuant to Section 1(2)[the permit fee shall be limited to the base fee of forty-five (45) dollars only].

Section 5[4]. Inspection Fees. (1) A person with a plumbing permit shall be entitled to five (5) plumbing inspections at no additional cost.

(2)(a) The fee for an additional inspection shall be[Each plumbing inspection in excess of five (5) shall be charged at the rate of] fifty (50) dollars.

(b) All additional[per] inspection fees[and] shall be paid prior to the final inspection.

(3) Additional inspection fees shall not apply if the cost of the plumbing permit exceeds \$200.

Section 6[5]. Expiration of Permits. (1) Plumbing[Except as established in subsection (2) of this section, all plumbing installations] permits issued pursuant to this administrative regulation shall expire one (1) year after the date of issuance unless:

(2)(a) Except as established in paragraph (b) of this subsection, if] construction is ongoing, in which case[begin within one (1) year after the date the permit is issued,] the permit shall remain effective until completion of the planned plumbing inspection.

(2)[(b)] The permit shall expire and become void if the plumbing work ceases on the project for a period exceeding twelve (12) months.

[Section 6. Plumbing Inspection Fees for Public Buildings. The schedule of fees for inspection of the construction, installation, or alteration of plumbing in public buildings shall be the same as established in Section 4 of this administrative regulation.]

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 23, 2019 at Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0365, fax (502) 572-1057, email david.startzman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements, fees, and charges for plumbing installation permits and inspections in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements, fees, and charges for plumbing installation permits and inspections 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 amendment corrects grammatical errors and removes superfluous language. This amendment also clarifies the process for plan submission to the Department, and provides exceptions for certain inspections to be conducted in the field by a plumbing inspector prior to plan submission.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This amendment is also necessary to aid in clarity and accessibility of the administrative regulation to the public.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.103 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the administrative regulation easier to understand and more accessible to both individuals engaged in the plumbing industry and plumbing inspectors. The amendment also clarifies the plan review process and establishes instances when a field inspector may review plumbing prior to plumbing plan submission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry and Department of Housing, Buildings and Construction personnel.

(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: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities: Compliance with this amendment will ensure that regulated entities and consumers are protected by following proper plumbing permitting and inspection procedures.

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

(a) Initially: There are no anticipated additional initial costs to

administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the Department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes the fees and charges for plumbing permits and inspection in Kentucky. These fees were already in place and have not been increased or decreased.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and Department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized and required by KRS 198B.040(10) and KRS 318.130.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction (Amendment)

815 KAR 20:055. Water heating[heater] devices.

RELATES TO: KRS 318.200[, EO 2009-535]

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130,

318.200

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.200 requires that all retailers, wholesalers, and installers ~~selling or offering for sale~~[of] water heating devices, within thirty (30) days ~~off~~[forward] the date of sale, forward a list of names and addresses of purchasers[name and address of each purchaser] along with the serial number of the device purchased to the ~~department~~[office] or to the appropriate agency of county or city government having jurisdiction. This administrative regulation establishes the requirements for water heating devices.

Section 1. Installation Requirements. (1) General requirements.

(a) A water heater shall be:

1. Properly connected to the hot and cold water supply; and
2. Accessible for inspection, repair, and replacement.

(b) Temperature and pressure relief valves shall be installed in accordance with manufacturer's requirements.

(2) A water heater designed for use as an appliance for supplying potable hot water for domestic or commercial purposes may be used for space heating if the water temperature does not exceed 140 degrees Fahrenheit.

(3) Crawl space.

(a) A water heater installed in a crawl space shall:

1. Have adequate access with a travel path no less than five (5) feet of vertical distance; and
2. Be installed on at least a two (2) inch thick corrosion resistant material adequate to support the water heater.

(b) The replacement of a water heater that was originally installed in a crawl space prior to September 1, 2006 shall be exempt from vertical distance requirement in paragraph (a)1. of this subsection.

(4) Attic or wood flooring.

(a) A water heater installed in an attic or on wood flooring in the occupied space of a building constructed after April 1, 2020 shall be:

1. Installed with a corrosion resistant water tight pan below the water heater;[within thirty (30) days of the purchase. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings] and
2. Equipped with at least a three-fourths (3/4) inch drain to be piped similarly to a temperature and pressure relief valve discharge line.

(b) A temperature and pressure relief valve may discharge into the drain pan if the drain pan pipe:

1. Is equipped with a one (1) inch drain;
2. Is of a material suitable for hot water; and
3. Discharges through an air gap to a sump basin, service sink, open receptacle[Construction, and established the commissioner, rather than executive director], or other point of discharge approved by the division.

(5) Fuel-fired water heaters.

(a) A fuel-fired water heater shall be connected to a flue or a chimney. The flue or chimney shall:

1. Be of a size at least as large as required by the water heater manufacturer's instructions;
2. Extend two (2) feet above the roof of the building;
3. Be properly flashed; and
4. Not terminate within six (6) feet of a door or window.

(b) A fuel-fired water heater vent shall not be connected to a flue serving a coal-burning apparatus.

(c) A fuel-fired water heater shall not be placed in any bathroom, toilet room, or a room used for sleeping unless it has a direct-vent or through the wall vent system.

(d) A fuel-fired water heater shall not be placed in a closed room or closet unless the space:

1. Has a louver door; or
2. Is ventilated to provide combustion air and circulation that satisfies the requirements of the National Fuel Gas Code in Chapter 35 of the Kentucky Building Code incorporated by

reference in 815 KAR 7:120.

(6) Gas-fired direct vent water heaters.

(a) A residential gas-fired direct vent and through the wall type water heater shall be:

1. Vented in accordance with the manufacturer's instructions; and

2. Installed to satisfy the requirements of the National Fuel Gas Code in Chapter 35 of the Kentucky Building Code incorporated by reference in 815 KAR 7:120.

(b)1. The vent terminal of a direct vent water heater with an input of 50,000 BTUs per hour or less shall be located at least nine (9) inches from any opening through which flue gases may enter the building.

2. The vent terminal of a direct vent water heater with an input over 50,000 BTUs per hour shall be located at least twelve (12) inches from any opening through which flue gases may enter the building.

(c) The bottom of the vent terminal and the air intake of a direct vent water heater shall be located at least twelve (12) inches above grade.

(7) Instantaneous water heaters. An instantaneous water heater not listed in 815 KAR 20:020 shall:

(a)1. Be certified to ANSI Z21.10.1 for units including but not exceeding 75,000 BTUs; or

2. Be certified to ANSI Z21.10.3 for units exceeding 75,000 BTUs;

(b) Have a minimum of three-fourths (3/4) inch inlet and outlet;

(c) Be installed with a properly sized pressure relief valve not exceeding 150 pounds per square inch; and

(d) Be installed to enable flushing without altering the installation, as the head of the department. This administrative regulation establishes the requirements for submitting the information to the department.

Section 1. Reporting Requirements. (1) if required by the manufacturer to be periodically flushed.

Section 2. Water Heaters Subject to Additional Requirements.

Water heaters shall be considered pressure vessels and shall comply with KRS Chapter 236 and 815 KAR Chapter 15 if the water heater exceeds:

(1) Heat input of 200,000 BTU/Hr.;

(2) Water temperature of 210 degrees Fahrenheit; or

(3) Water storage capacity of 120 gallons.

Section 3. Domestic Solar Water Heaters. A domestic solar water heater may have a "single wall heat exchanger" if:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent;

(2) The heat exchanger is pretested by the manufacturer to 450 pounds per square inch;

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 4. Domestic [KRS 318.200 to submit information to the department, rather than to a local jurisdiction, a wholesaler, retailer, or installing contractor selling a] Water Heater Preheating [heating] Device. (1) A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump heater.

(2) Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided.

(3)(a) The water inlet to the heat exchange vessel shall be provided with a check valve. An approved pressure relief valve set to relieve at five (5) pounds per square inch above the maximum water pressure at the point of installation shall be provided adjacent to and at the outlet side of the check valve, if the heat exchange units contain more than twenty (20) pounds of refrigerants.

(b) This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the pre-heater device.

(4)(a) Condensate drain water shall be piped in accordance to the Kentucky Plumbing Code and shall not:

1. Drain into a crawl space, sewer, or vent stack; or

2. Be installed in an area subject to freezing.

(b) A condensate pump shall be used if a drain is:

1. Not available; or

2. Located above the vent.

Section 5. Temperature and Pressure Relief Devices. (1) Only temperature and pressure relief devices approved by the department as established in 815 KAR 20:020 and 815 KAR 20:120 shall be installed.

(2) A temperature and pressure relief device shall be installed:

(a) On each water heater on the hot water side not more than three (3) inches from the top [submit to the Department of Housing, Buildings and Construction, Division of Plumbing, the name and address of each purchaser, including the serial number] of the water heater; and

(b) According to the manufacturer's recommendation, if a marked opening is provided on the [on Form PLB-94,] water heater by the manufacturer for a temperature and pressure relief device.

(3)(a) In a location with a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor.

(b) In a location without a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell [Is this a word?] turned down and piped to within four (4) inches of the surface of the ground.

(4) The relief device may discharge through an air gap to a sump basin, service sink, open receptacle, or other point of discharge in which equivalent safety [Report Form.

(2) An installing contractor shall be provided as approved by the department.

Section 6. Water Distribution for Fan Coil Units. (1) If a domestic water heater is used for heating purposes through a fan coil medium, the water temperature shall not exceed 140 degrees Fahrenheit.

(2) The fan coil unit shall use not less than three-fourths (3/4) inch piping and its run shall not exceed 140 feet between the water heater and the heating unit.

(3) The applicable requirements established in 815 KAR 20:070 shall be met.

Section 7. [exempt from the] Reporting Requirements. (1) Except as established in [of] subsection (2) [(4)] of this section, a wholesaler, retailer, or installer who sells a water heating device shall submit to the division Form PLB-94, Water Heater Report Form, within thirty (30) days of the date of sale.

(2) An installing contractor who obtains [the contractor has if purchased] an installation permit for the installation of a water heating device shall be exempt from the reporting requirements of subsection (1) of this section. The installation [water heater. The] permit shall serve as the reporting requirement for the installer [Division of Plumbing] as required by KRS 318.200.

Section 8 [2]. Incorporation by Reference. (1) Form PLB-94, "Water Heater Report Form", October 2019 [December 2009], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Plumbing, 500 Mero St. [404 Sea Hero Road, Suite 100], Frankfort, Kentucky 40601-5412 [40601-5405], Monday through Friday, 8 a.m. to 4:30 [430] p.m. and is available online at <http://dhbc.ky.gov/Pages/default.aspx>.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 23, 2019 at Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, phone 502-563-0375, fax 502-563-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for water heating devices.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures. KRS 318.200 requires that all retailers, wholesalers, and installers selling or offering for sale water heating devices to forward a list of names and addresses of purchasers along with the serial number of the device purchased to the department or to the appropriate agency of county or city government having jurisdiction within thirty (30) days of purchase.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for the installation, alteration, and reporting of water heating devices.

(2) If 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 incorporates sections regarding water heaters previously found in other administrative regulations to make the administrative regulation more accessible and user-friendly. This amendment further corrects grammatical errors, errors with manufacturer's numbers, and removes superfluous language.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This amendment is also necessary to aid in clarity and accessibility of the administrative regulation to the public and licensees installing or servicing water heaters.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.200 requires that all retailers, wholesalers, and installers selling or offering for

sale water heating devices to forward a list of names and addresses of purchasers along with the serial number of the device purchased to the department within thirty (30) days of purchase. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures. This administrative regulation establishes the installation and reporting requirements for water heating devices.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the administrative regulation easier to understand and more accessible to both individuals engaged in the plumbing industry and plumbing inspectors. This amendment places water heating device requirements in a single, concise administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry, Department of Housing, Buildings and Construction personnel, and water heater retailers.

(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: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities: It will help the entities in question (3) read and understand the administrative regulation. Individuals engaged in the plumbing trade and plumbing inspectors will now have a single, concise administrative regulation that contains the requirements for water heating devices.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the Department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established by this administrative regulation amendment. There are also no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and Department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized and required by KRS

198B.040(10) and 318.130.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
(Amendment)

815 KAR 20:060. Quality, and weight, installation, and storage of materials.

RELATES TO: KRS 318.130, 318.150, 42 U.S.C. 300g-6[(d)(2)]

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate[an] administrative regulations[regulation] establishing the Kentucky State Plumbing Code to regulate plumbing, including the quality, and weight, installation, and storage of material. This administrative regulation establishes the manufacturer's specification number for the quality and weight of material that shall be used in the installation of plumbing systems and establishes minimum specifications for the intended use. This administrative regulation also establishes the minimum requirements for the storage and installation material used in the installation of plumbing systems.

Section 1. [Definitions. (1) "ASME" means the American Society of Mechanical Engineers.

(2) "CISPI" means the Cast Iron Soil Pipe Institute.

(3) "Lead" means solders and flux containing more than two-tenths (0.2) percent lead and the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures containing more than a weighted average of 0.25 percent lead as calculated according to the formula established in 42 U.S.C. 300g-6(d)(2).

Section 2. Quality and Handling of Materials. (1) The material used in a drainage or plumbing system or part of a system shall be free of defects[and shall be handled as to not cause damage to the material.

(2) All pipes and fittings shall be:

(a) Inspected for cracks or other damage prior to installation; and

(b) Installed in compliance with the manufacturer's recommendations unless otherwise stated in this code.

Section 2. Storage. (1) Schedule 40 or 80 PVC and ABS.

(a) Pipe shall remain in lifts until ready for use. Lifts shall not be stacked more than three (3) high and shall always be stacked wood-on-wood. Loose pipe shall be stored in racks with a minimum support space of three (3) feet. Pipe shall be shaded but not directly covered when stored outside in high ambient temperatures to provide for free circulation of air and reduce the heat buildup due to direct sunlight exposure.

(b) Fittings shall be stored in their original cartons to remain free of dirt and to reduce the possibility of damage. As a best practice, fittings shall be stored indoors.

(2) CPVC, SDR 11.

(a) CPVC pipe, tubing, and fittings shall be stored under cover to avoid unnecessary dirt accumulation and long-term exposure to sunlight. Pipe and tubing shall be stored with continuous support in straight, uncrossed bundles.

(3) PEX. PEX shall not be stored where it will be:

(a) Exposed to direct or indirect ultraviolet light (sunlight);

(b) Exposed to materials that affect the basic properties of PEX, brass, or copper; or

(c) Come into contact with chemicals, pipe thread compounds, putty, and mineral or linseed oil compounds.

(4) Solvent cement and primers. Solvent cement and primers shall not be exposed to ignition, sparks, open flames, or heat during storage and shall not be used beyond their marked shelf life.

Section 3. Marking[Label, Cast, or Stamped]. Each length of pipe, fitting, trap, fixture, or device used in a plumbing or drainage system shall be [stamped or] indelibly marked with the:

(1) Weight or quality; and

(2) Maker's mark or name (manufacturer's specification number).

Section 4. Vitrified clay pipe, concrete pipe, truss pipe, and [extra-heavy] SDR 35 pipe[sewer piping] shall be produced, labeled, and used only as established in subsections (1) through (4) of this section[subsubsection].

(1) Vitrified clay pipe shall be as established in ASTM C[-]700, and fittings ASTM C425.

(2) Concrete pipe shall be as established in ASTM C[-]14, and fittings ASTM C443.

(3) Truss[(a) Except as established in paragraph (b) of this subsection, truss] pipe shall be as established in ASTM D[-]2680, unless it is solid[-].

(b) Solid[-] wall truss pipe, which shall be as established in ASTM D2751.

(4) Extra heavy SDR 35 sewer piping shall be as established in ASTM[D-3033-74 and] D[-]3034[-74].

(5) Joints. Joints in pipe and fittings with no more than two (2) pipe sizes between vitrified clay, ABS, or PVC to cast iron pipe and fittings or the joining of either material may be made with the proper fittings by using a dispersion grade PVC ring produced and labeled as ASTM C443, C425, or C564, or an elastomeric PVC coupling.

Section 5. Cast[-] iron Pipe. (Hub and Spigot and No-hub). (1) Extra heavy. Extra heavy cast-iron pipe and fittings shall be produced and labeled as ASTM A74.

(2) Service-weight. Service-weight cast[-] iron pipe and fittings shall be produced and labeled as ASTM A74 and C1540[1563].

(3) No-hub cast[-]iron and fittings shall be produced and labeled ASTM 888 or CISPI 301.

(4) No-hub couplings shall be produced and labeled as ASTM C1277, C564, C1563, or CISPI 310.

(5) Coating. Cast[-]iron pipe and fittings for underground use shall be coated with:

(a) Asphaltum;

(b) Coal tar pitch; or

(c) A coating produced and labeled as ASTM A743.

(6) Instructions for Cutting Cast Iron Soil Pipe. During installation assembly, pipe and fittings shall be inserted into the hub or into the gasket firmly and seated against the bottom of the

hub or against the center rib or shoulder of the gasket. To provide a sound joint with field cut lengths of pipe, ends shall be cut square and as smooth as possible with a metal cutting saw or snap type cutters.

(7) General Installation Instructions for Cast Iron Pipe.

(a) Vertical piping.

1. Vertical piping shall be secured at sufficiently close intervals to maintain alignment and to support the weight of the pipe and its contents. Approved metal clamps or hangers shall be used to support stacks at their bases and at sufficient floor intervals to meet the requirements of local codes.

2. If vertical piping is to stand free of any support or if no structural element is available for support and stability during construction, the piping shall be secured in its proper position by means of adequate stakes or braces fastened to the pipe.

(b) Horizontal piping, suspended.

1. Ordinary horizontal piping and fittings shall be secured at sufficiently close intervals to maintain alignment and prevent sagging or grade reversal. Each length of pipe shall be supported by an approved hanger located not more than eighteen (18) inches from the joint.

2. Terminal ends of all horizontal runs or branches and each change of direction or alignment shall be supported by an approved hanger.

3. Closet bends installed above ground shall be firmly secured.

(c) Horizontal piping, underground.

1. When trenches are dug too deep, the piping shall be supported with approved grillage laid on firm ground as established in 815 KAR 20:130. To maintain proper alignment during backfilling, the pipe shall be stabilized in proper position by partial backfilling and cradling.

2. Piping laid on grade shall be adequately secured to prevent misalignment when the slab is poured.

3. Closet bends installed under slabs shall be adequately secured.

(d) Joints.

1. Joints in cast iron shall either be caulked, screwed, or made with the use of neoprene gaskets. Neoprene gaskets shall be produced and labeled as ASTM C564.

2. Steel, brass, and copper joints connected to cast iron pipe shall be either screwed or caulked joints. Caulked joints shall be made by the use of a caulking spigot.

3. Cast iron coupling for joining hubless cast iron pipe shall consist of a neoprene gasket, cast iron clamps produced and labeled as ASTM A48, and stainless steel bolts and nuts produced and labeled as ANSI B 18.2.1 and ANSI B 18.2.2.

4. Lead and Oakum Joint Installation.

a. Insert the spigot into the properly cleaned hub.

b. An oakum strand shall be inserted into the joint which is of a diameter that can be pressed into the joint by hand and sufficiently long to make three (3) turns around the pipe. Drive the strand of oakum to the bottom of the joint using a yarning iron. Pack the oakum solidly and evenly using a packing iron and hammer.

c. Place additional strands of oakum into the joint until it fills the hub to within one-half (1/2) inch of the top, and using a packing iron and hammer, pack this oakum until it forms a uniform surface one (1) inch from the top of the hub.

d. Pour molten lead into the joint at one (1) spot between the hub and spigot until it arches up slightly above the top of the hub.

e. When the lead has cooled, drive it down at four (4) points around the hub using a caulking iron to insure uniform caulking.

f. Caulk the joint on the inside and outside edges using a sixteen (16) ounce ball peen hammer and appropriate caulking irons.

5. Compression Joint Installation. a. Fold and insert the one (1) piece rubber gasket into the hub which has been properly cleaned.

b. Apply special gasket lubricant to the spigot and inside of the neoprene gasket.

c. Push, draw or drive the spigot into the gasketed hub with a pulling tool or suitable device.

6. No-hub Joint Installation.

a. Clamp and gasket installation. The following procedures shall be taken to insure a proper joint:

i. Place the gasket on the end of one (1) pipe and the stainless steel or cast iron clamp assembly on the end of the other pipe.

ii. Firmly seat the pipe ends against the integrally molded shoulder inside the neoprene gasket.

iii. Slide the clamp assembly into position over the gasket and tighten the bands or clamps as described below.

b. Torqueing bands. A properly calibrated torque wrench, set at sixty (60) inch pounds shall be used. The following procedure for applying torque to the band assembly shall be used: The stainless steel bands shall be tightened alternately and firmly to sixty (60) inch pounds of torque.

i. Step 1. The inner bands shall be tightened alternately and firmly to sixty (60) inch pounds of torque.

ii. Step 2. The outer bands shall be tightened alternately and firmly to sixty (60) inch pounds of torque.

iii. Torqueing clamps. A properly calibrated torque wrench, set at 175 inch pounds shall be used. The following procedure for applying torque to the clamp assembly shall be used: The stainless steel bolts shall be tightened alternately, gradually and firmly to 175 inch pounds torque.

Section 6. Steel and Wrought[-] iron Pipe. (1) All wrought[-]iron pipe shall be produced and labeled with the latest ASTM "specifications for welded wrought iron pipe".

(2) Steel pipe shall be produced and labeled with the current ASTM specification number for welded wrought iron pipe or welded and seamless pipe.

(3) Schedule 40 shall be the minimum weight.

(4) For water distribution or soil, waste and vent, galvanized pipe shall be used.

(5) Cutting and Reaming.

(a) Pipe shall be cut to length with a square cut using the appropriate tool.

(b) If the cut-to-length pipe is to be threaded or prepared for a mechanical connection, it shall be reamed to the full inner diameter of the pipe.

(6) Hangers and Supports.

(a) Hangers, anchors and supports shall be:

1. Of sufficient strength to support the piping and its contents; and

2. Securely attached to the building construction at intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement and vibration.

(b) Vertical piping.

1. Screwed piping shall be supported at every other story height and supports shall be of ferrous metal.

2. Mechanical joint piping shall be supported at every story height and supports shall be of ferrous metal.

(c) Horizontal piping.

1. Horizontal piping shall be supported at intervals which keep the piping in alignment and pre-vent sagging.

2. Screwed and mechanical joint pipe one and one-half (1 1/2) inches and over shall be supported at twelve (12) foot intervals; one and one-quarter (1 1/4) inch and smaller shall be supported at eight (8) foot intervals.

3. Supports shall be of ferrous metal.

(7) Joints.

(a) Screw Joints.

1. Screw joints shall be made by the use of a properly cut thread inserted into the female part of the fitting after applying the recommended pipe joint compound sparingly to the male threads.

2. The screw joints shall be tightened hand-tight to check for alignment and then tightened enough to insure a tight leak-proof joint but shall not be over-tightened.

(b) Mechanical joints.

1. Mechanical joints for hot and cold water shall not be used above ground unless the couplings are galvanized and the gaskets are ASTM D2000, Grade N-R-615 BZ.

2. The pipe ends shall be lubricated with a lubricant in compliance with the manufacturer's instructions and the gasket shall be slipped over one (1) pipe end.

3. The pipe ends shall be connected and the gasket shall be

inserted into central spanning position.

4. The housing clamps shall be placed over the gasket and the bolts and nuts tightened with a socket wrench.

(c) Steel connections to cast iron pipe. Steel joints connected to cast iron pipe shall be either screwed or caulked joints.

(d) PVC and ABS pipe and fitting connections to steel. 1. PVC and ABS pipe and fitting connections to steel shall be either a screwed or caulked joint.

(e) Stainless steel tubing to cast iron pipe shall be made by caulking spigot.

(f) Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(g) The joints between lead pipe and steel or wrought iron shall be made by means of a caulking ferrule or a soldering nipple [Section 7. Mild-steel Pipe. Steel pipe shall be produced and labeled with the latest ASTM "specifications for welded and seamless steel pipe"].

Section 7[8]. Brass Pipe, [;] Copper Pipe, [;] Seamless Stainless Steel Tubing, and Brass Tubing. (1) Brass pipe, copper pipe, and brass tubing shall be produced and labeled with the latest specifications of ASTM for "brass pipe, copper pipe, and brass tubing, standard sizes".

(2) Cutting, reaming, and sizing. The tube shall be cut to exact length with a square cut using the appropriate tool.

1. The tube shall have burrs and slivers removed by using a reamer or other appropriate tool.

2. The tube shall be brought to true dimensions and roundness by using a sizing tool consisting of a plug and ring.

(3) Cleaning. The surface to be joined shall be clean and free from oil, grease and heavy oxides. The end of the tube shall be cleaned with a fine sand cloth or a special wire brush a distance slightly more than is required to enter the socket of the fitting.

(4) Hangers and Supports. Hangers, anchors and supports shall be:

(a) Of material of sufficient strength to support the piping and its contents; and

(b) Securely attached to the building construction at sufficiently close intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement, and vibrations.

(c) Vertical piping.

1. Copper tubing shall be supported:

a. At each story for piping one and one-half (1 1/2) inches and larger in diameter; and

b. At each story and not more than ten (10) foot intervals for piping one and one-quarter (1 1/4) inches and smaller in diameter.

2. Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.

(d) Horizontal piping.

1. Copper tubing shall be supported at:

a. Six (6) foot intervals for one (1) inch and smaller in diameter; and

b. Ten (10) foot intervals for one and one-quarter (1 1/4) inch and larger.

2. Supports shall be of copper material of sufficient strength which will not adversely react with the piping material.

(5) Joints.

(a) Soldered joints. Joints of copper pipe, brass, and seamless stainless steel tubing shall be soldered. The following procedures shall be used to solder a joint:

1. After cleaning, the surfaces shall be covered with a thin film of mildly corrosive liquid

or petroleum based pastes that contain chlorides of zinc and ammonium. Self-cleaning flux shall not be used in place of the cleaning pipe.

2. Excess flux shall be wiped off within the fitting socket.

3. The tube end shall be inserted into the socket, with the tube firmly seated against the end of the socket.

4. Excess flux shall be removed with a rag.

5. Heat shall be applied to the fitting and then moved in order

to heat as large an area as possible. The fitting and joint shall:

a. Not be overheated; and

b. Be heated until the solder melts on contact with the pipe and flows by capillary attraction into the joint.

6. The heat shall be removed.

7. The fitting and joint shall be cooled before moving.

(b) Brazed joints. The following procedures shall be used for a brazed joint:

1. Except as provided in subparagraph 2 of this paragraph, after cleaning, the surface of the tube end and the fitting socket shall be covered with a thin film of flux in accordance with the recommendations of the manufacturer of the brazing filler metal being used. Effort shall be made to avoid getting flux inside the tube.

2. Flux may be omitted if joining copper tube to wrought copper fittings with copper-phosphorus allows (B-cup Series) which are self-fluxing on copper.

3. The tube end shall be inserted into the socket hard against the stop and turn if possible.

4. Heat shall be applied to the parts to be joined, with:

a. The tube heated first; and

b. The fitting at the base of the cup heated next.

5. Brazing wire, rod or strip shall be applied at the point where the tube enters the socket of the fitting.

6. The heat shall be removed.

7. The fitting and joint shall be cooled.

(c) Flared joints; impact tools. The following procedures shall be used for a flared joint.

1. The joints shall be cut, reamed, sized, and cleaned.

2. The coupling nut shall be slipped over the end of the tube.

3. The flaring tool shall:

a. Be inserted into the tube end; and

b. Be driven by hammer strokes to expand the end of the tube to the desired flare.

4. The fitting shall be placed squarely against the flare.

5. The coupling nut shall be engaged with the fitting threads.

6. The joint shall be tightened with two (2) wrenches, one (1) on the nut and one (1) on the fitting.

(d) Screw type flaring block.

1. The procedures established in subparagraphs 1. and 2. of paragraph (c), subsection (6) of this section shall be followed for impact flaring.

2. The tube shall be clamped in the flaring block so that the tube is slightly above the block.

3. The yoke of the flaring tool shall be placed on the block so that the beveled end of the compression cone is over the tube end.

4. The compressor screw shall be turned down firmly, forming the flare between the chamber in the flaring block and the beveled compressor cone.

5. The flaring tool shall be removed and assembled pursuant to subparagraphs 4., 5., and 6. of paragraph (c) of this section.

(e) Mechanically formed tee connection.

1. A mechanically formed tee connection shall be approved for use in a domestic hot and cold water distribution system above ground only.

2. A mechanically extracted collar shall be formed in a continuous operation consisting of drilling a pilot hole and drawing out the tube surface to form a collar having a height of not less than three (3) times the thickness of the tube wall. The collaring device shall be fully adjustable so to insure proper tolerance and complete uniformity of the joint.

3. All joints shall be brazed in accordance with subsection (2) of this section and the manufacturer's instructions. A soldered joint shall not be permitted.

(f) Mechanical couplings. Types K and L copper tubing systems from two (2) inch through six (6) inch and used for water distribution may be installed using mechanical pipe couplings of a bolted type with a flush seal gasket along with grooved end copper fittings. Couplings shall be of the angle pad design to obtain rigidity.

Section 8[9]. Borosilicate Pipe, [Plastic Pipe,] Stainless Steel Tubing, Silicon Iron Pipe, Polyethylene Pipe, and Polypropylene

Pipe. (1) Borosilicate pipe. Borosilicate pipe shall be produced and labeled ASTM C1053 for drain, waste, and vent applications [with the latest ASTM specifications]. (2) Plastic pipe. All plastic piping used in a drainage, waste, and vent system shall be:

(a) Schedule 40 or 80, Type 1, Grade 1, polyvinyl chloride produced and labeled as ASTM D1784;

(b) Cellular core PVC produced and labeled ASTM F-891;

(c) Schedule 40 or 80 acrylonitrile-butadiene-styrene produced and labeled as ASTM D2661; or

(d) Cellular core ABS produced and labeled as ASTM F-628.

(3) Pipe and fittings shall be produced and labeled in accordance with the provisions of ASTM-D-2665, as amended, for PVC and ASTM-D-2661 for ABS, and both shall bear the National Sanitation Foundation seal of approval.

(4) Copies of National Sanitation Foundation specifications for the manufacture of products

identified in this administrative regulation may be obtained by writing the National Sanitation Foundation (NSF), 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106.

(5) All pipe and fittings shall bear the ASTM designation together with the NSF seal, the manufacturer's identification, and the size.

(6)(a) Except as established in paragraph (b) of this subsection, the use of plastic pipe and fittings (PVC or ABS) shall be limited to buildings in which the plumbing system does not exceed forty-five (45) feet in height, measured from the grade plane, and continuing through the vertical distance of the building to a maximum height of forty-five (45) feet.

(b) Plastic pipe and fittings may be installed in a building in which the plumbing system exceeds forty-five (45) feet in height if the installation complies with all of the requirements established in subparagraphs 1. through 3. of this paragraph.

1. The use of PVC and ABS piping shall be limited to schedule 40 or 80 produced and labeled as ASTM D2665 and D1784 for PVC piping and ASTM D2661 for ABS piping.

2. The installation of the plastic pipe and fittings (PVC or ABS) shall be made in compliance with the manufacturer's recommendations, which shall be made available to the inspector.

3. Firestop systems shall be inspected in accordance with ASTM E2174 by an approved inspection agency.]

(2)(7) Stainless steel tubing.

(a) Stainless steel tubing for hot and cold water piping shall be produced and labeled either as ASTM A269 or ASTM A312.

(b) Stainless steel tubing for the soil, waste, and vent system shall be 304 or 316L produced and labeled as ASME A112.3.1.

(3)(8) PE [Polyethylene] pipe used in acid waste systems shall be produced and labeled as ASTM 1204 [D-4204].

(4)(9) PP [Polypropylene] pipe used in acid waste systems shall be produced and labeled as ASTM D-14101 or ASTM F-1412.

(5) Joints.

(a) Stainless steel tubing to cast iron pipe shall be made by caulking spigot.

(b) Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(c) Joints in PE and PP piping shall be made by the heat fusion process.

(d) Joints in PP shall be made with a union joint.

(e) Joints in borosilicate pipe shall be a stainless steel mechanical joint.

(f) Joints between silicon iron pipe shall be either caulk joint or stainless steel mechanical joint.

Section 9. Schedule 40, ABS and PVC plastic pipe and fittings.

(1) All plastic piping used in a drainage, waste, and vent system shall be:

(a) Schedule 40 or 80, Type 1, Grade 1, PVC produced and labeled as ASTM D1785;

(b) Cellular core PVC produced and labeled ASTM F891;

(c) Schedule 40 or 80 ABS produced and labeled as ASTM D2661; or

(d) Cellular core ABS produced and labeled as ASTM F628.

(2) Pipe and fittings shall be produced and labeled in accordance with the provisions of ASTM D2665, as amended, for PVC and ASTM D2661 for ABS, and both shall bear the National Sanitation Foundation seal of approval.

(3) All pipe and fittings shall bear the ASTM designation together with the NSF seal, the manufacturer's identification, and the size.

(4)(a) The use of plastic pipe and fittings (PVC or ABS) shall be limited to buildings in which the plumbing system does not exceed forty-five (45) feet in height, measured from the grade plane, and continuing through the vertical distance of the building to a maximum height of forty-five (45) feet, unless:

(b) The use of PVC and ABS piping is limited to schedule 40 or 80 produced and labeled as ASTM D2665 and ASTM D1785 for PVC piping and ASTM D2661 for ABS piping;

(c) The installation of the plastic pipe and fittings (PVC or ABS) is made in compliance with the manufacturer's recommendations, which shall be made available to the inspector; and

(d) Firestop systems are inspected in accordance with ASTM E2174 by an approved inspection agency.

(5) Installation.

(a) Underneath concrete floors. Pipe and fittings shall be laid on stable earth conditions and have four (4) inches of grillage on its bottom, top and sides. If ground is unstable, it shall be removed and the excavation filled with grillage to the underneath side of the piping. Soil or waste pipe shall not be placed in a concrete slab except those pipes that pass vertically through it.

(b) Above concrete floors. Horizontal piping shall be properly aligned and installed without strain. Piping shall not be bent or pulled in position either before or after solvent welds have been made. It shall be supported at intervals not to exceed four (4) feet and at the end of the branches and at the change of direction and shall be so installed as to permit freedom of movement. Vertical piping shall be supported at their bases and all upward movement shall not be restricted. Closet flanges shall be securely fastened to the floor through which it passes.

(6) Hangers. Hangers and straps shall be at least one (1) inch wide and shall not compress, distort, cut, or abrade the piping to allow free movement at all times.

(7) Joints.

(a) Joints in PVC Schedule 40 or 80 pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D2665.

(b) Joints in ABS pipe and fittings shall be solvent welded joints and shall be in compliance with ASTM D2661.

(c) ABS and PVC sewer piping produced and labeled as ASTM 3034 shall be joined by solvent cement in compliance with the applicable standard or with an elastomeric joint in compliance with ASTM D3212.

(d) Piping shall be cut square with a saw or pipe cutter designed especially for plastic pipe. Pipe and fittings shall be protected from serrated holding devices or abrasions.

(e) Burrs shall be removed from both inside and outside of the pipe. Dust, dirt and moisture shall be removed from the surfaces that shall be cemented.

(f) Solvent chemical cleaner recommended by the company whose product is being installed shall be applied inside the fitting and on the outside of the piping shall be joined.

(g) A paint brush shall be used to apply the solvent cement in a moderate, even coating in the fit-ting socket as well as covering the pipe on the joining surfaces.

(h) Joints shall be assembled as quickly as possible before the cement dries. Insert the piping into the fitting socket turning the pipe slightly to ensure even distribution to the cement. Hold the piping in a firm position so it does not "back out" of the joint.

(i) Remove excess solvent cement from the exterior of the joint with a clean dry cloth. The joint shall not be handled for a two (2) minute period. A fifteen (15) minute period shall be allowed for the joint to develop hanging strength.

(j) A Cemented pipe joint shall not be made in conditions of excessive moisture (ninety (90) percent humidity level) or when the temperature is below forty (40) degrees or above ninety (90) degrees Fahrenheit.

(k) ABS and PVC pipe and fitting connections to steel, brass, copper, or cast iron pipe shall be either a screwed or caulked joint.

(l) Joints between Schedule 40 PVC or ABS pipe and cast iron pipe may be made by the use of a neoprene gasket produced and labeled as ASTM C564.

(m) Caulk joints shall be made with the use of either a PVC or ABS or cast iron caulking spigot.

(8) Commingling of Plastic Pipe. Plastic pipe shall not be commingled except through the use of male and female adapters or other transition fittings approved by administrative regulation of the department.

(9) Mixing of plastic and Metal Piping. Plastic and metal piping shall discharge into one another by the use of proper fittings and adapters.

(10) Thermal Expansion. Each plumbing installation shall be engineered and designed giving due consideration to the expansion characteristics of the material. Expansion tables for both PVC and ABS schedule 40 plastic piping are as follows:

PVC-DWV TYPE 1 THERMAL EXPANSION TABLE							
Chart shows length change in inches vs. degrees temperature change							
Lg. Ft.	40° F	50° F	60° F	70° F	80° F	90° F	100° F
20	.278	.348	.418	.487	.557	.626	.696
40	.557	.699	.835	.974	1.114	1.235	1.395
60	.835	1.044	1.253	1.462	1.670	1.879	2.088
80	1.134	1.392	1.672	1.949	2.227	2.506	2.784
100	1.392	1.740	2.088	2.436	2.784	3.132	3.480

ABS-DWV TYPE 1 THERMAL EXPANSION TABLE							
Chart shows length change in inches vs. degrees temperature change							
Lg. Ft.	40° F	50° F	60° F	70° F	80° F	90° F	100° F
20	.536	.670	.80	.938	1.072	1.206	1.340
40	1.070	1.340	1.610	1.880	2.050	2.420	2.690
60	1.609	2.010	2.410	2.820	3.220	3.620	4.020
80	2.143	2.680	3.220	3.760	4.290	4.830	5.360
100	2.680	3.350	4.020	4.700	5.360	6.030	6.700

Section 10. SDR 11. CPVC plastic pipe and fittings. (1) Installation. Correct assembly shall consist of the following steps:

(a) Cutting the pipe square;

(b) Removing burrs;

(c) Cleaning both pipe end and fitting socket with a CPVC cleaner in compliance with manufacturer's recommendations, unless using an approved one (1) step cement.

(d) Applying a liberal coat of CPVC solvent cement to the pipe and applying a light coat of cement to the fitting socket, removing all excess cement from the interior which may clog the waterway;

(e) Assembling immediately by bottoming the pipe in the socket and rotating one-quarter (1/4) turn as the joint is assembled.

(f) Removing excess cement from the joint; and

(g) Determining if the joint has been properly assembled by looking for a small bead of cement to appear at the junction between the pipe or tubing and the fitting.

(2) Installation Temperature. Extra care shall be taken if installing in temperatures below forty (40) degrees Fahrenheit or above 110 degrees Fahrenheit. The manufacturer's installation instructions shall be followed carefully.

(3) Hangers and Supports. Support shall be provided at each floor level for piping installed in vertical runs. For horizontal runs, support shall be provided at three (3) foot intervals for pipe one (1) inch or less in diameter and at four (4) foot intervals for larger pipe sizes. Piping shall not be anchored tightly to a support but secured with smooth straps or hangers allowing for movement caused by expansion and contraction. Hangers shall not have rough or sharp edges that come in contact with the piping.

(4) CPVC-to-metal Transitions. CPVC threaded adapters shall not be used to transition from CPVC to metal. Union type fittings that use gaskets or o-rings to seal dissimilar connections shall not

be used. Compression type transition fittings, over-molded transition fittings and push-type fittings that meet the ASSE 1061 standard may be used.

(5) Thermal Expansion. The linear thermal expansion rate for CPVC is approximately one-half (1/2) inch for each ten (10) degrees Fahrenheit temperature change for each 100 feet of pipe or tubing. If installing long runs of pipe, one-sixteenth (1/16) to three thirty-seconds (3/32) inch longitudinal clearance shall be allowed per foot of run to accommodate thermal expansion. Offsets of twelve (12) inches or more every ten (10) feet shall be included on vertical risers if they are restrained by horizontal branches at each floor.

Section 11. PEX. (1) PEX that is to be used for cold water only shall be produced and labeled as established by ASTM F876.

(2) PEX that is to be used for either cold water or hot water shall be produced and labeled as established by ASTM F877.

(3) PEX-Al-PEX shall be produced and labeled as established by ASTM F1281.

(4) Cold expansion fittings with PEX reinforcing rings for use with PEX tubing shall be produced and labeled as established by ASTM F1960.

(5) Metal insert fittings utilizing a copper crimp ring shall be produced and labeled as established by ASTM F1807.

(6) Stainless steel clamps substituted for the copper crimp ring shall be produced as established by ASTM F2098.

(7) Plastic insert fittings for PEX shall be produced as established by ASTM F2159.

(8) Push fit fittings for PEX shall be produced as established by ASSE 1061.

(9) Metal insert fittings for PEX/aluminum/PEX composite pressure pipe shall be produced as established by ASTM F1974.

(10) Metal insert fittings utilizing a copper crimp ring for PEX-Al-PEX shall be produced as established by ASTM F2434.

(11) Installation.

(a) Water service installation.

1. Tubing shall be snaked in the ditch to allow for linear expansion and contraction.

2. Tubing shall not be installed in contaminated soils.

3. PEX shall not be installed in areas of known soil contamination or where there is a high risk of chemical spills such as organic solvents or petroleum distillates.

4. Metallic fittings other than those consisting of red brass shall be protected from the soil to prevent corrosion.

5. The number of fittings shall be kept to a minimum.

6. The bottom of the trench shall be flat and free of rocks, hollows, or other sharp objects.

7. If placed in soil consisting of rock, piping shall be covered with six (6) inches of coarse sand or pea gravel.

8. If passing through a foundation wall, a rigid sleeve that spans the distance from within the wall out to the undisturbed soil shall be used to prevent shearing of the tubing.

(b) Distribution system.

1. If PEX is to be buried under a building, fittings shall not be used.

2. PEX passing through a concrete slab or wall shall be protected by use of sleeves.

3. PEX passing through metal studs or plates shall be protected by plastic grommets de-signed for this purpose.

4. PEX shall not be used in operating conditions inconsistent with pressure ratings that appear on the tubing and the applicable ASTM standard.

5. PEX shall not be installed:

a. Where it may be exposed to direct or indirect ultraviolet light (sunlight);

b. Where it may be exposed to open flame;

c. With or exposed to petroleum based caulking or sealants;

d. Where it may be subjected to prolonged exposure to free chlorine concentrations greater than four (4) ppm;

e. Within twelve (12) inches of any recessed light fixture; or

f. Within six (6) inches of any gas appliance metallic vent.

6. PEX shall be tested under a pressure not to exceed 100

pounds per square inch nor less than forty (40) pounds per square inch.

(12) Hangers and supports.

(a) PEX sizes one (1) inch and smaller installed horizontally shall be supported at intervals not to exceed thirty-two (32) inches.

(b) PEX sizes 1-1/4" and larger installed horizontally shall be supported at intervals not to exceed forty-eight (48) inches.

(c) PEX installed vertically shall be supported at the base of each story with a mid-story guide.

(d) PEX shall not be rigidly anchored but shall be installed to allow room for proper expansion and contraction of the tubing.

(e) Hangers or strapping shall be constructed of plastic material or be coated to prevent damage to the tubing.

(f) PEX-Al-PEX installed horizontally shall be supported at intervals not to exceed ninety-eight (98) inches.

(g) PEX-Al-PEX installed vertically shall be supported at the base of each story with a mid-story guide.

Section 11[40]. Lead Pipe[~~-, Diameter, Weights~~]. (1) Lead soil, waste, and vent pipe shall be produced and labeled as Federal Specifications WW-P-325 and shall not be lighter than the weights established in the following table:

Size Inside Diameter Inches	Commercial Designation "D" or "XL"		Wall Thickness Inches	Weight Pounds	Per Foot Ounces
1 1/2	D	XL	0.138	3	8
2	D	XL	0.142	4	12
3	D	XL	0.125	6	0
4	D	XL	0.125	8	0

(2) Lead bends and lead traps. All lead bends and lead traps shall be of the weight known as extra heavy (XH) and shall have at least one-eighth (1/8) inch wall thickness.

(3) Joints.

(a) Joints in lead pipe or between lead pipe and brass or copper pipes, ferrules, soldering nipples, or trap, shall be full-wiped joints with an exposed surface of the solder at each side of the joint of not less than three-quarters (3/4) of an inch.

(b) The minimum thickness of the thickest part of the joint shall be at least as thick as the material being used.

(c) If lead pipe is used for acid waste lines, the pipe may be joined by burning.

(d) The joints between lead to cast iron, steel, or wrought iron shall be made by means of a caulking ferrule or a soldering nipple.

Section 12. Unions. Unions shall be ground faced and shall not be concealed or enclosed.

Section 13[44]. Integral Flashing and Roof Joints. (1) If a roofing system requires integral flashing, a flashing material, which is part of the manufactured roofing system and required by the roofing manufacturer to guarantee or warranty the roofing system, shall be used.

(2) The joint at the roof shall be made watertight by the use of copper, lead, or other approved flashing or flashing material.

(3)(a) Except as established in paragraph (b) of this subsection, the approved flashing shall:

1. Not extend less than six (6) inches from the pipe in all directions; and

2. Extend upward twelve (12) or more inches and turn down into the pipe.

(b) Lead flashings for three (3) inch and four (4) inch vent stacks shall have a minimum twelve (12) inch base.

(4) A hub flashing may be used if it is constructed in a manner allowing the flashing to be caulked into a hub above the roof.

Section 14. Wall or Floor Flange Joints. Wall or floor flange joints shall be made by using a lead ring or brass flange and shall be properly soldered.

Section 15[42]. Sheet Lead. Sheet lead for a shower pan shall not weigh less than four (4) pounds per square foot and shall not weigh less than two and one-half (2 1/2) pounds per square foot for

vent pipe flashings.

Section 16[43]. Sheet Copper or Brass. Sheet copper or brass shall not be lighter than No. 18 B. & S. gauge, except local and interior ventilating pipe shall not be lighter than No. 26 B. & S. gauge.

Section 17[44]. Threaded Fittings. (1) A plain screw fitting shall be either cast[~~-~~]iron, malleable iron, or brass of standard weight and dimension.

(2) A drainage fitting shall be either cast[~~-~~]iron, malleable iron, or brass, with smooth interior waterway, with threads tapped out of solid metal.

(3) A cast[~~-~~]iron fitting used in a water supply distribution shall be galvanized.

(4) A malleable iron fitting shall be galvanized.

Section 18[45]. Caulking Ferrules. A caulking ferrule shall be of red brass and shall be in accordance with the following table:

Pipe Sizes Inches	Inside Diameter Inches	Length Inches	Minimum Weight Each
2	2 1/4	2 1/2	1 lb. 0 oz.
3	3 1/4	4 1/2	1 lb. 12 oz.
4	4 1/4	4 1/2	2 lb. 8 oz.

Section 19[46]. Soldering Nipples. A soldering nipple shall be recessed red cast brass, iron pipe size. If cast, they shall be full bore and of minimum weight.

Section 20. Increaseers and reducers. If different size pipes or fittings are to be concealed, the proper size increaser or reducer pitched at an angle of forty-five (45) degrees between the two (2) sizes shall be used. This section shall not apply to nonmetallic installations.

Section 21[47]. Floor Flanges for Water Closets and Service Sinks or Similar Fixtures. (1) A floor flange shall either be:

- (a) Hard lead;
- (b) Brass;
- (c) Cast iron;
- (d) Galvanized malleable iron;
- (e) ABS; or
- (f) PVC

(2) A hard lead or brass flange shall not be less than one-eighth (1/8) inch thick.

(3) Cast iron or galvanized malleable iron shall:

- (a) Not be less than one-fourth (1/4) inch thick; and
- (b) Have a two (2) inch caulking depth.

Section 22[48]. Use of Lead. (1) Lead shall not be used in the installation or repair of a public or private water system providing potable water for human consumption.

(2) This section shall not apply to:

(a) Pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that

are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses in which the water is not anticipated to be used for human consumption; or

(b) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, service saddles, or water distribution main gate valves that are two (2) inches in diameter or larger.

Section 23[49]. Prohibited Joints and Connections. A fitting or connection that has an enlargement chamber, or recess with a ledge shoulder, or reduction of the pipe area in the direction of the flow shall be prohibited.

Section 24. New Materials. (1) Materials other than those established in this administrative regulation shall be prohibited

unless the material is specifically approved by the ~~division~~[State Plumbing Code Committee] and the department as being equal to or better than the material specified in ~~this~~[the State Plumbing] code.

(2) It shall be the responsibility of any person or company seeking the approval of a material not included in this code to prove that the material is equal to or better than the material that it is intended to replace.

(3) Procedural requirements for approval of new parts and materials are established in 815 KAR 20:020.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019, at 10:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-105, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the manufacturer's specification number for the quality and weight of material that shall be used in the installation of plumbing systems and establishes minimum specifications for the intended use. This administrative regulation also establishes the minimum requirements for the storage and installation of material used in the installation of plumbing systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the manufacturer's specification number for the quality and weight of material that shall be used in the installation of plumbing systems and establishes minimum specifications for the intended use. This administrative regulation also establishes the minimum requirements for the storage and installation of material used in the installation of plumbing systems.

(2) If 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 combines 815 KAR 20:060, 815 KAR 20:071, 815 KAR 20:072, 815 KAR 20:073, 815 KAR 20:074, 815 KAR 20:078, 815 KAR 20:084, and 815 KAR 20:100 to make the administrative regulation more accessible and user-friendly. This amendment also corrects grammatical errors, errors with manufacturer's numbers, removes superfluous language, and reorganizes the administrative regulation for ease of use.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This amendment is also necessary to aid in clarity and accessibility of the administrative regulation to the public.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment aids the department in regulating plumbing, including the materials used in plumbing work in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the administrative regulation easier to understand and more accessible to both individuals engaged in the plumbing industry and plumbing inspectors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry and Department of Housing, Buildings and Construction personnel.

(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 comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will help the entities in question (3) read and understand the administrative regulation. Individuals engaged in the plumbing trade and plumbing inspectors will now have a single, concise administrative regulation that includes the minimum requirements for the quality, weight, storage, and installation of materials in plumbing systems.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established by this administrative regulation amendment. There are also no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and department personnel are

affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

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 and required by KRS 318.130 and KRS 198B.040(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 amendment is not anticipated to generate additional revenue for the state or local government in the first year.

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
(Amendment)

815 KAR 20:070. Plumbing fixtures.

RELATES TO: KRS 318.010, 318.015, 318.150, 318.200

STATUTORY AUTHORITY: KRS ~~198B.040(10)~~, 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department~~[, after review by the State Plumbing Code Committee,]~~ to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the kind, type, and quality of plumbing fixtures to be used in the construction of plumbing systems. This administrative regulation establishes the requirements for plumbing fixtures to be used~~[allowed]~~ in Kentucky.

Section 1. Materials. Receptacles used as water closets, urinals, or for the disposal of human excreta, shall be of vitrified earthenware, hard natural stone, or cast-iron with a light color porcelain enameled on the inside, except as established in Section 4 of this administrative regulation.

Section 2. Installation. (1) Plumbing fixtures shall be installed to allow access for cleaning.

(2)~~[(4)]~~ All pipes from fixtures shall be run to the wall.

(3)~~[(2)]~~ A trap or pipe shall not extend nearer to the floor than twelve (12) inches except laundry trays or similar fixtures.

Section 3. Water Closet Bowls. (1) A water closet bowl shall be of one (1) piece construction and hold a sufficient quantity of water when filled to the trap overflow to prevent fouling of its interior surfaces.

(2) A water closet bowl shall be provided with an integral flushing rim to flush the entire interior of the bowl.

Section 4. Plastic Water Closet Bowl and Tank. (1) A plastic water closet bowl and tank shall be constructed with a PP[polypropylene] lining inside the one (1) piece bowl and tank.

(2) The outer surface of the bowl shall be constructed of PVC material.

(3) The filler material between the lining and outer surface shall be made of polyurethane foam.

(4) The bowl shall have:

(a) A three (3) inch water seal; and

(b) A two and one eighth~~[one-eighth]~~ (2 1/8) inch waste opening passage.

Section 5. Frost-proof Closet. (1) A frost-proof water closet may be installed only in a building that has at least a twelve (12) inch air break between it and any building used for habitation or occupancy.

(2) The frost-proof water closet~~[room]~~ shall:

(a) Be tightly enclosed and accessible from the outside only; ~~[-]~~

(b) Have a nonabsorbent floor;

(c) Have a~~[(3) The]~~ soil pipe between the trap and hopper ~~off~~~~[shall be of extra heavy cast-iron,]~~ four (4) inches in diameter; and~~[shall be light colored porcelain enamel on the inside.]~~

~~— (4) The building shall have a nonabsorbent floor.~~

~~— (5) A frost-proof water closet shall]~~

(d) Have a four (4) inch vent.

Section 6. Floor and Shower Drains. (1) A floor drain or a shower drain shall be considered a plumbing fixture and shall be provided with a strainer.

(2) Shower drain pan construction.

(a) A shower drain pan shall be constructed~~[without a seam and shall extend]~~ to a minimum height of six (6) inches on all vertical walls.

(b) A shower drain pan shall not be required on a concrete floor below~~[before]~~ the outside grade level.

(c) A shower drain pan shall be constructed of:

1. Sheet lead weighing not less than four (4) pounds per square foot;

2. Nonplasticized chlorinated polyethylene produced and labeled as ASTM D412~~[D-412]~~ and D1204~~[D-1204]~~, which shall be not less than four hundredths (0.040) inches thick;

3. Nonplasticized~~[polyvinyl chloride - (PVC)]~~ sheet material produced and labeled as ASTM D1004, D412, D412 ~~[-D-1004, D-412,]~~ 06A, and D1790~~[D-1790]~~, which shall be not less than four hundredths (0.040) inches thick; or

4. Other approved material as established in 815 KAR 20:020, Section 5.~~[Copies of ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.]~~

(3) Fiberglass bathtubs, showers, tub enclosures, and shower stalls.

(a) Fiberglass bathtubs and tub enclosures shall be produced and labeled as ANSI Z124.1~~[Z-124-1]~~.

(b) Acrylic-faced bathtubs shall be produced and labeled as ASTM E84 - 08A or E162~~[E8408A or E-162]~~.

(c) Fiberglass shower stalls and shower receptors shall be produced and labeled as ANSI Z124.2~~[Z-124-2]~~.

(4) Metamorphosed carbonate aggregate polyester resinous matrix-marbleoid bathtubs, lavatories, and shower stalls.

(a)~~[4.]~~ Metamorphosed carbonate aggregate polyester resinous matrix-marbleoid bathtubs shall be produced and labeled as ANSI Z124.1.

(b)~~[Z-124-1.2.]~~ Lavatories shall be produced and labeled as ANSI Z124.3.

(c)~~[Z-124-3.3.]~~ Shower stalls shall be produced and labeled as ANSI Z124.2~~[Z-124-2]~~.

~~— (b) Copies of ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York~~

10018].

Section 7. Fixture Strainers. (1) A fixture, other than a water closet or a pedestal urinal, shall be provided with a strainer.

(2) The outlet area of the strainer shall not be less than the interior area of the trap.

Section 8. Fixture Overflow. The overflow from a fixture shall be optional, but if used, the overflow shall be connected to the inlet side of a trap and accessible for cleaning.

Section 9. Fixture Additions. A fixture added to a plumbing system shall be installed to comply with all applicable sections of the [State Plumbing] code.

Section 10. Defective Fixtures. If a newly installed fixture is found to be defective by the department or if an old fixture is found to be in an unusable condition, it shall be repaired, replaced, or removed within thirty (30) days upon written notice from the department [office].

Section 11. [Water Heaters. (1) A water heater shall be properly connected to the hot and cold water supply.

~~(2) A water heater designed for use as an appliance for supplying potable hot water for domestic or commercial purposes may be used for space heating if the water temperature does not exceed 140 degrees Fahrenheit.~~

~~(3) Every water heater shall be accessible for inspection, repair, and replacement.~~

~~(4)(a) If a water heater is installed in a crawl space after September 1, 2006, it shall have adequate access with a travel path no less than five (5) feet of vertical distance and be installed on at least a two (2) inch thick noncorrosive material adequate to support the heater.~~

~~(b) The replacement of a water heater that was originally installed in a crawl space prior to September 1, 2006 shall not require compliance with the vertical distance requirement of this subsection.~~

~~(5) If a water heater is located in an attic of a residence, a water tight pan of corrosion resistant material shall be installed beneath the water heater and shall be equipped with at least a three-quarter (3/4) inch drain to be piped similarly to a pressure and temperature relief valve discharge line.~~

~~(6) A fuel-fired water heater shall be connected to a flue or chimney of a size that shall be at least as large as the size required by the water heater manufacturer's instructions.~~

~~(7) A fuel-fired water heater vent shall not be connected to a flue serving a coal-burning apparatus.~~

~~(8) The flue or chimney shall extend two (2) feet above the roof and shall be properly flashed and shall not terminate within six (6) feet of a door or window.~~

~~(9) A fuel-fired water heater, with the exception of those having direct vent or through the wall vent systems, shall not be placed in any bathroom, toilet room, or a room used for sleeping.~~

~~(10) If a fuel-fired water heater is placed in a closed room or closet, the door shall be a louver door or shall be properly ventilated to provide combustion air and circulation in accordance with the Fuel Gas Code incorporated by reference in Chapter 35 of the Kentucky Building Code filed in 815 KAR 7:120.~~

~~(11) Direct venting system location.~~

~~(a) A residential gas-fired direct vent and through the wall type water heater shall be vented in accordance with the manufacturer's recommendations and shall be installed in accordance with the Fuel Gas Code incorporated by reference in the Kentucky Building Code filed in 815 KAR 7:120.~~

~~(b)1. The vent terminal of a direct vent appliance with an input of 50,000 BTU per hour or less shall be located at least nine (9) inches from any opening through which flue gases could enter a building.~~

~~2. An appliance with an input over 50,000 BTU per hour shall require a twelve (12) inch vent termination clearance.~~

~~(c) The bottom of the vent terminal and the air intake shall be located at least twelve (12) inches above grade.~~

~~(12) An instantaneous water heater not listed in 815 KAR 20:020 shall:~~

~~(a) 1. Be certified to ANSI Z21.10.1 for units including but not exceeding 75,000 BTUs; or~~

~~2. Be certified to ANSI Z21.10.3 for units exceeding 75,000 BTUs;~~

~~(b) Have a minimum of 3/4 inch inlet and outlet;~~

~~(c) Be installed with a properly sized pressure relief valve not exceeding 150 pounds per square inch; and~~

~~(d) If required by the manufacturer to be periodically flushed, be installed to flush without altering the installation.~~

~~(13) Temperature and pressure relief valves shall be installed in accordance to manufacturer's requirements.~~

~~Section 12.] Conservation of Water. (1)[Conservation of hot water.~~

~~(a)] Showers. A shower used for other than safety reasons shall be equipped with an approved flow control device, which shall limit the total flow to a maximum of two and one-half (2.5) gallons per minute per shower head.~~

~~(2)[(b)] Lavatories.~~

~~1. Public facilities (domestic hot water only). Lavatories[Lavatories in restrooms of public facilities shall be equipped with an outlet device, which shall limit the flow of domestic hot water to a maximum of 0.75 gallons per minute. 2. Lavatory faucets (other than those] in restrooms of public facilities[] shall be equipped with an outlet[a flow control] device, which shall limit the flow of domestic hot water to a maximum of seventy five hundredths (0.75[two (2.0)] gallons per minute.~~

~~2[3]. Non-public facilities (domestic hot and cold water). Sink faucets shall be equipped with a flow control device, which shall limit the flow of domestic hot water to a maximum of two and one-half (2.5) gallons per minute.~~

~~(2) Conservation of] cold water). Lavatory faucets [(a) Showers. A shower used for] other than those in restrooms of public facilities[] safety reasons shall be equipped with an approved control device to limit the total flow to a maximum of two and one-half (2.5) gallons per minute per shower head.~~

~~(b) Lavatory and sink faucets.~~

~~1. Lavatory faucets. Lavatory faucets] shall be equipped with a flow control device, which shall limit the flow of[the] domestic[cold] water to a maximum of two (2.0) gallons per minute.~~

~~3[2]. Sink faucets (domestic hot and cold water). Sink faucets shall be equipped with a flow control device, which shall limit the flow of domestic[cold] water to a maximum of two and one-half (2.5) gallons per minute.~~

~~(3)[(c)] Water closets. [A water closet shall not be installed in a facility or building unless it is of a type designed and manufactured to limit the gallons per flush as required by this subsection.]~~

~~1. Residential (private use) installations. A water closet for private use in a single family dwelling, duplex, or townhouse, condominium or apartment unit shall not exceed one and six-tenths (1.6) gallons per flush.~~

~~2. Commercial (public use) installations. A water closet for public use, including a commercial building, shall not exceed three and one-half (3.5) gallons per flush.~~

~~(4)[(d)] Urinals. A urinal shall not exceed one (1.0) gallon per flush.~~

~~(5)[(3)](a) The provisions of this section shall apply to new construction, renovation, or replacement in an existing structure.~~

~~(b) Upon compliance with the requirements of this section, the department[Division of Plumbing] shall permit the installation of a tank type water closet equipped with devices found by the inspector to meet applicable specifications in water closets having a tank capacity in excess of three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters).~~

~~(c) The department[Division of Plumbing] shall allow the use of a standard flush water closet and a urinal that does not meet the specific specifications if the configuration of the building drainage system requires a greater quantity of water to adequately flush the system, or if the owner requests the use of antique fixtures that would not be equipped for reduced flow.~~

Section 12. Specifications. (1) Copies of ANSI specifications identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York 10018.

(2) Copies of ASTM specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 23, 2019 at Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero, Road, Suite 100, Frankfort, Kentucky 40601, phone (502) 573-0365, fax (502) 573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for plumbing fixtures to be used in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to implement the Division of Plumbing's statutory duty to establish a state plumbing code regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, including the methods and materials to be used.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes the kind, type and quality of plumbing fixtures. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists Division of Plumbing in establishing uniform standards for the quality and construction of fixtures used in all regulated plumbing systems.

(2) If 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 technical and grammatical errors. This amendment also removes a section on water heaters as this information has been simultaneously relocated as part of 815 KAR 20:055.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that has been relocated to another administrative regulation to

eliminate duplication.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment directly relates to the permissible quality and type of fixtures that may be used in plumbing systems.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure conformity and uniformity with construction, installation and safety standards. This amendment will make the administrative regulation and 815 KAR Chapter 20 more user-friendly as all water heater information will be in one administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing in Kentucky and Department of Housing, Buildings and Construction personnel.

(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: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities: Compliance with this administrative regulation will ensure the entities in question (3) do not use or install fixtures that are inconsistent with the Kentucky Plumbing Code.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and department personnel are affected by the amended 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? Department of Housing, Buildings and Construction, Division of Plumbing 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 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes the kind, type and quality of plumbing fixtures. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.

(3) Estimate the effect of this administrative regulation on the

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expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
(Amendment)**

815 KAR 20:080. Waste pipe size.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department [after review by the State Plumbing Code Committee] to promulgate [an] administrative regulations [regulation] establishing the Kentucky State Plumbing Code to regulate plumbing, including the sizes of waste piping. This administrative regulation establishes the minimum size of waste piping required for certain fixtures.

Section 1. The minimum size (nominal inside diameter) of traps, soil, or waste branches for a given fixture shall not be less than that established in the following table:

	Minimum Size (in inches)		Fixture Unit
	Trap	Branch	
Automatic clothes washer	2	2	2
Basement floor drain	3	3	3
Bath: sitz	1 1/2	1 1/2	2
Bathtub	1 1/2	1 1/2	1 1/2
Combination fixture	2	2	2
Dental cuspidor	2	2	2
Dishwasher	1 1/2	1 1/2	1 1/2
Disposal unit	1 1/2	1 1/2	1 1/2
Drinking fountain	1 1/4	1 1/4	1
Floor drain in residential laundry room	2	2	2
Floor drain in toilet room	3	3	3
Floor drain in utility room	3	3	3
Industrial floor drain	4	4	4
Kitchen sink unit	1 1/2	1 1/2	1 1/2
Laundry tray	1 1/2	1 1/2	1 1/2
Lavatories	1 1/4	1 1/4	1
Santistand	3	4	6
Shower stall	1 1/2	1 1/2	1 1/2
Sink[sinks]: bar or soda fountain	1 1/2	1 1/2	1 1/2

Sink[sinks]: barium	2	2	2
Sink[sinks]: chemical	1 1/2	1 1/2	1 1/2
Sink: clinic	3	4	6
Sink[sinks]: kitchen, residence	1 1/2	1 1/2	1 1/2
Sink: plaster	2	2	2
Sink: service	3	3	3
Sink: service wall type	2	2	2
Sink: three compartment	2	2	2
Urinal: lip	1 1/2	1 1/2	1 1/2
Urinal: pedestal	3	3	3
Urinal: stall	2	2	2
Urinal: trough	1 1/2	1 1/2	1 1/2
Water closet: <u>Greater than 1.6 gallons[3.5 gallon] per flush</u>	3	3 or 4	6
Water closet: 1.6 <u>gallons[gallon] per flush or less</u>	3	3 or 4	4

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019, at 10:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone: 502-573-0365, fax: 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the waste pipe size requirements for various plumbing fixtures and appurtenances for buildings in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a state plumbing code regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, including the size of waste pipes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, which includes waste pipes for plumbing fixtures and appurtenances. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the size of waste pipes in furtherance of the Division of Plumbing's statutory obligation to promulgate a Kentucky State Plumbing 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 amendment changes the administrative regulation by adding a new row in Section 1 for floor drains in residential laundry rooms, which can have a two (2) inch trap and branch. Also, the amendment clarifies that the column designating the "Fixture Unit" is its own measurement and does not fall under "Minimum Size (in inches)" heading. The amendment corrects grammatical and technical errors in the chart.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow for the design and use of smaller floor drains in residential laundry rooms.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. This amendment directly relates to the permissible size of waste pipe attached to plumbing fixtures within Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: These amendments make the administrative regulation easier to understand by clarifying the trap and branch size for floor drains in residential laundry rooms.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in plumbing activity within the Commonwealth, as well as all owners and operators of buildings in which the plumbing fixtures described in this regulation are required or otherwise installed.

(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 comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3). The amendment clarifies that the minimum size of a trap and branch for a floor drain in a residential laundry room.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits will include a smaller pipe size requirement for floor drains in residential laundry rooms, making the installation of plumbing more efficient and less costly.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the Department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and Department personnel are affected by the amended requirements.

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 198B.040(10) and 318.130.

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.

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
(Amendment)

815 KAR 20:090. Soil, waste,[and] vent systems, traps, and clean-outs.

RELATES TO:[KRS 318.010,] 318.015, 318.130, 318.150, [318.200]

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department[~~, after review by the State Plumbing Code Committee,~~] to promulgate [an] administrative regulations[regulation] establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky for soil, waste, and vent systems. This administrative regulation establishes the minimum requirements for and manufacturer's specification number of the material accepted in the installation and design of soil, waste,[and] vent systems, traps, and clean-outs in each type of plumbing system.

Section 1. Materials. (1) Main or branch soil, waste, and vent pipes and fittings within or underneath a building shall be:

(a) Hub and spigot extra heavy or service weight cast iron;

(b) No-hub service weight cast iron;

(c) Galvanized steel;

(d) Galvanized wrought iron;

(e) Lead;

(f) Brass;

(g) Types K, L, M, and DWV copper;

(h) Standard high-frequency welded tubing produced and labeled with the latest ASTM specifications;

(i) Types R-K, R-L, R-DWV brass tubing;

(j) DWV brass tubing produced and labeled as ASTM B587;

(k) Seamless stainless steel tubing;

(l) Grade G or H produced and labeled as ASTM A312;

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government

(m) PVC schedule 40 or 80 produced and labeled as ASTM D2665, D1784, and F891;

(n) Coextruded composite PVC pipe produced and labeled ASTM F1488;

(o) ABS schedule 40 or 80 produced and labeled as ASTM D2661, F1488, or F628;

(p) CPVC schedule 40 or 80; or

(q) Silicon iron or borosilicate.

(2) A main or branch soil waste and vent pipe and fittings underground shall either be:

(a) Hub and spigot extra heavy or service weight cast iron;

(b) No-hub service weight cast iron;

(c) Type K or L copper pipe;

(d) Type R-K, R-L brass tubing;

(e) Lead; or

(f) Silicon iron or borosilicate pipe and fittings or plastics DWV established in this section.

(3) Underground waste pipe installed beneath a concrete slab shall:

(a) Not be less than two (2) inches in diameter; and

(b) Extend no less than twelve (12) inches above the concrete slab.

(4) A trap for a bathtub, lavatory, sink, or other similar fixture shall be made of:

(a) Tubular brass;

(b) Tubular ABS or PVC produced and labeled as ASTM F409;

(c) Cast brass;

(d) Cast iron;

(e) Lead;

(f) Schedule 40 PVC;

(g) Schedule 40 ABS;

(h) Grade G or H produced and labeled as ASTM A312; or

(i) CPVC schedule 40 or 80.

(5) A tubular or schedule 40 PVC, or a tubular or schedule 40 ABS p-trap shall be either the union-joint or solvent welded type.

(6) A tubular brass trap shall be seventeen (17) gauge.

(7) A tubular brass trap, tubular PVC trap, or tubular ABS trap shall not be installed below the finished floor serving a fixture.

(8) The threads in a cast brass or cast iron trap shall be tapped out of solid metal.

(9) A lead trap shall be extra heavy.

Section 2. Trap Requirements. (1) Trap placement. A fixture shall be separately trapped by a water-seal trap placed as near as possible to the fixture but not to exceed ten (10) inches from the bottom of the fixture to the dip of the seal.

(2) Water seal. A fixture trap shall have a water seal not less than two (2) inches nor more than four (4) inches.

(3) Waste discharge. Waste from a bathtub or other fixture shall not discharge into a water closet bend.

(4) Double trap prohibition. A fixture shall not be double trapped.

(5) A trap shall have a full-bore, smooth interior waterway.

(6) Self-cleaning. A trap shall be self-cleaning.

(7) Trap clean-outs. A trap clean-out shall be optional.

(8) Trap levels and protection. A trap shall be:

(a) Set true with respect to its water seal; and

(b) Protected from frost and evaporation

(9) Trap primers. Trap primers shall be required on:

(a) Floor drains only in mechanical rooms or boiler rooms; and

(b) All open receptacles that receive the discharge from a temperature and pressure relief device discharge only.

(10) Protected Traps and Vents.

(a) A fixture trap shall be protected against siphonage and backpressure.

(b) Air circulation shall be assured by means of an individual vent.

(c) A crown vent shall not be permitted.

(d) An open drain, such as a hub drain or open receptacle, shall not be installed within a plenum space.

(11) Distance of Trap from Vent.

(a)1. The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from

the vertical inlet of the trap to the vent opening.

2. The fixture trap vent, except for a water closet or a similar fixture, shall not be below the dip of the trap, and each ninety (90) degree turn in the waste line of the main waste, soil, or vent pipe shall be washed.

3. A fixture trap shall have a vent located with a developed length not greater than that in the following table:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

(b) A fixture branch on a water closet shall not be more than four (4) feet six (6) inches.

(12) Grease traps.

(a) If a grease trap is installed, it shall be:

1. Placed as near to the fixture it serves as practical; and

2. Approved by the department.

(b) A grease trap used inside a building shall:

1. Have a sealed cover; and

2. Be properly vented.

(c) A grease trap for a restaurant, food service establishment, or other business establishment shall be installed:

1. As required by municipal ordinance; or

2. As required by 902 KAR 10:085, if a food establishment uses a private sewage system.

(13) Sand Traps. A sand trap shall be:

(a) Readily accessible; and

(b) Serve the purpose intended.

(14) Slip joints.

(a) Slip joints shall be permitted on the inlet side of the trap.

(b) A single one and one-half (1 1/2) inch slip joint connection with an elastomeric gasket shall be permitted on the outlet side of a one and one-half (1 1/2) inch trap.

Section 3. Pipe Clean-out Requirements. (1) The bodies of clean-out ferrules shall be made in a standard pipe size, conforming in thickness to that of the pipe and fittings and shall not extend less than one-quarter (1/4) inch above the hubs in which they are placed.

(2) The clean-out cap or plug shall be yellow-brass, PVC, or ABS no less than one-eighth (1/8) inch thick and shall have a raised nut or recessed pocket for removal.

(3) In a building served by a stack over forty-five (45) feet in height, a clean-out shall be provided at the base of each vertical waste or soil stack.

(4) There shall be at least one (1) clean-out in the building drain with a full-size branch inside the wall or outside the building at a point not to exceed two (2) feet from the foundation wall. This clean-out shall be a two (2) directional fitting or a combination of sanitary tees or tee wyes to allow cleaning in both directions.

(5) If located outside the building, the clean-out shall be extended to the finished grade for accessibility.

(6) A clean-out shall be of the same nominal size as the pipe it serves up to four (4) inches and shall not be less than four (4) inches for larger pipe.

(7) A clean-out installed on a four (4) inch sewer shall be a two (2) directional fitting or a combination of sanitary tees or tee wyes to allow cleaning in both directions.

(8) The distance between clean-outs in all sewers shall not exceed 150 feet.

(9) An underground clean-out in a building shall be:

(a) Flush with the floor or wall; or

(b) Accessible by a manhole.

(10) A floor or wall connection of a fixture shall be regarded as a clean-out, except where the house drain enters a building.

Section 4. Grades and Supports of Horizontal Piping. (1)(a) Horizontal piping shall run in practical alignment and at a uniform grade of not less than one-eighth (1/8) inch per foot and shall be supported or anchored in accordance with the manufacturer's recommendations.

(b) The supports or anchors shall not be placed at intervals that exceed ten (10) feet in length.

(2) A stack shall be supported at its base, and each pipe shall be rigidly secured.

(3) No-hub pipe and fittings shall be supported at each joint of pipe and fittings.

(4) ~~PVC~~[Polyvinyl chloride] and ~~ABS~~[acrylonitrilebutadiene-styrene] schedule forty (40) horizontal piping shall be supported at:

(a) Intervals not to exceed four (4) feet;

(b) The base of each vertical stack; and

(c) Each trap branch as close to the trap as possible.

(5) ~~PE~~[Polyethylene] pipe and fittings shall be continuously supported with a V channel.

(6) A stack shall be rigidly supported at its base and at the floor level.

Section 5.[2.] Change in Direction. (1) Except as provided in subsections (2), (3), or (4) of this section, a change in direction shall be made by the appropriate use of a forty-five (45) degree wye, half-wye[(4/2)], quarter (1/4), sixth (1/6), eighth (1/8) or sixteenth (1/16) bend.

(2) A single sanitary tee may be used in a vertical stack.

(3) A sanitary tee may be turned on its back or side. If turned on its back or side, a sanitary tee shall not be placed at an angle of more than forty-five (45) degrees.

(4) A double sanitary tee may be used on a vertical soil, waste, and vent line.

Section 6. Direct Flow Fittings and Continuous-waste. A kitchen sink unit or a fixture with more than one (1) unit may be connected with a continuous-waste, if a directional flow fitting is used. Continuous-waste shall be either seventeen (17) gauge tubular brass or schedule 40 ABS or schedule 40 PVC or tubular ABS or tubular PVC.

Section 7.[3.] Prohibited Fittings. (1) The following shall be prohibited:

(a)[(4)] A double hub bend and double hub tee or inverted hub on a sewer, soil, or waste line;

(b)[(2)] The drilling and tapping of a house sewer or house drain, soil, waste, or vent pipe;

(c)[(3)] The use of a saddle hub; and

(d)[(4)] Pipe installed with a hub or restriction that reduces the area or capacity of the pipe.

(2) Prohibited traps. A trap shall not be used if the trap depends upon:

(a) The action of a movable part; or

(b) Concealed interior partition for its seal.

Section 8.[4.] Dead Ends. A dead end shall not be used in the installation of a drainage system[; a dead end shall not be used].

Section 9.[5.] Protection of Material. (1) A pipe passing under or through a wall shall be protected from breakage.

(2) A pipe passing through or under cinder, concrete, or other corrosive material shall be protected against external corrosion.

(3) 1. Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost.

2. The vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 10.[6.] Materials. (1) ~~Main or branch soil, waste, and vent pipes and fittings within or underneath a building shall be:~~

~~(a) Hub and spigot extra heavy or service weight cast iron;~~

~~(b) No-hub service weight cast iron;~~

~~(c) Galvanized steel;~~

~~(d) Galvanized wrought iron;~~

~~(e) Lead;~~

~~(f) Brass;~~

~~(g) Types K, L, M, and DWV copper;~~

~~(h) Standard high-frequency welded tubing produced and labeled with the latest ASTM specifications;~~

~~(i) Types R-K, R-L, R-DWV brass tubing;~~

~~(j) DWV brass tubing produced and labeled as ASTM-B587;~~

~~(k) Seamless stainless steel tubing;~~

~~(l) Grade G or H produced and labeled as ASTM-A-312;~~

~~(m) Polyvinyl chloride schedule 40 or 80 produced and labeled as ASTM-D2665, D1784, and F-891;~~

~~(n) Coextruded composite PVC pipe produced and labeled ASTM-F-1488;~~

~~(o) Acrylonitrile-butadiene-styrene schedule 40 or 80 produced and labeled as ASTM-D2661, F-1488, or F-628; or~~

~~(p) Silicon iron or borosilicate.~~

~~(2) A main or branch soil waste and vent pipe and fittings underground shall either be:~~

~~(a) Hub and spigot extra heavy or service weight cast iron;~~

~~(b) No-hub service weight cast iron;~~

~~(c) Type K or L copper pipe;~~

~~(d) Type R-K, R-L brass tubing;~~

~~(e) Lead; or~~

~~(f) Silicon iron or borosilicate pipe and fittings or plastics DWV established in this section.~~

~~(3) Underground waste pipe installed beneath a concrete slab shall not be less than two (2) inches in diameter and shall extend no less than twelve (12) inches above the concrete slab.~~

Section 7.] Size of Soil and Waste Pipe per Fixture Unit on One (1) Stack. (1) The following table, based on the rate of discharge from a lavatory as a unit, shall be employed to determine fixture equivalents:

Pipe Size (In Inches)	Maximum Developed Length	Fixture Units
1 1/4	25 ft.	1
1 1/2	60 ft.	2
2	80 ft.	6
2 1/2	100 ft.	12
3	225 ft.	36
4	unlimited	172
5	unlimited	342
6	unlimited	576
8	unlimited	1600
10	unlimited	2900
12	unlimited	4600

(2) A water closet shall be on a minimum of a three (3) inch soil and waste pipe with a maximum of three (3) water closets or soil discharging fixtures per three (3) inch soil and waste pipe. Four (4) water closets with a maximum flushing rate of one and six-tenths (1.6) gallons per flush per water closet shall be allowed to discharge into a three (3) inch soil and waste pipe.

Section 11.[8.] Soil and Vent Stacks. (1) A building in which a plumbing fixture is installed shall have a soil or waste and vent stack, or stacks, extending full size through the roof.

(2) A soil or waste and vent stack shall be as direct as possible and free from sharp bends or turns.

(3) The required size of the soil or waste and vent stack shall be determined from the total fixture units connected to the stack in accordance with Section 9[7] of this administrative regulation except that more than:

(a) Three (3) water closets with a flush rate of three and five-tenths (3.5) gallons per flush shall not discharge into a three (3) inch stack; and

(b) Four (4) water closets with a flush rate of one and six-tenths (1.6) gallons per flush or less shall not discharge into a three (3) inch stack.

Section 12.[9.] Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste, and vent piping and shall comply with this administrative regulation.

Section 13.[10.] House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be

equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain may be added to the house drain ~~with a three (3) inch trap~~ if it conforms with the requirements of Section ~~23~~[24] of this administrative regulation, without counting toward the fixture units of the system.

Section ~~14~~[44:] Soil and Waste Stacks, Fixture Connections. (1) A soil and waste stack or branch shall have correctly faced inlets for fixture connections.

(2) Each fixture shall be independently connected to the soil or waste system. (3) A fixture connection to a water closet, floor-outlet pedestal sink, pedestal urinal, or other similar plumbing fixture shall be:

- (a) Cast iron;
- (b) Lead;
- (c) Brass;
- (d) Copper; or
- (e) Plastic closet bend.

(4) A three (3) inch closet bend shall have a four (4) inch by three (3) inch flange.

Section ~~15~~[42:] Changing Soil and Vent Pipes in an Existing Building. (1) Soil, waste, and vent piping shall be replaced with appropriate size and materials for new work as prescribed by this administrative regulation, if:

(a) The fixtures are to be changed or replaced; and

~~(b)1.[4f]~~ The soil, waste, and vent piping in an existing building is not extended undiminished through the roof; ~~or~~

~~(c)[4f]~~ There is sheet metal soil or waste piping ~~[and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work].~~

Section ~~16~~[43:] Prohibited Connections. (1) A fixture connection shall not be made to a lead bend or a branch of a water closet or a similar fixture.

(2) A vent pipe above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

~~Section 17.[14:] Soil, Waste, and Vent Pipe Protected. (1) Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost.~~

~~(2) The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.~~

~~Section 15.] Roof Extensions. (1) A roof extension of soil and waste stacks shall run full size at least one (1) foot above the roof.~~

(2) If the roof is used for purposes other than weather protection, the extension shall not be less than five (5) feet above the roof.

(3)(a) A stack of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof.

~~(b)[(4)]~~ If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section ~~18~~[46:] Terminals. (1) Terminals on buildings. The terminus of a stack or vent shall extend at least two (2) feet above the top edge of a door, window, scuttle, or air shaft, if the[a] roof terminus is:

~~(a)[of a stack or vent is]~~ Within ten (10) feet of the top, bottom, face, or side edge of a door, window, scuttle, or air shaft; ~~and~~

~~(b)~~ Not screened from the opening by a projecting roof or building wall; ~~it shall extend at least two (2) feet above the top edge of the window or opening].~~

~~(2)[Section 17.] Terminals Adjoining High Buildings.~~

~~(a) Except when soil, waste, or vent piping is protected from freezing, a(1) Soil, waste, or vent] pipe extension of a new or~~

existing building shall be installed inside the building and shall not run or ~~(shall not)~~ be placed on an outside wall; ~~but shall be installed inside the building unless the piping is protected from freezing].~~

~~(b)[(2)]~~ If the new building is built higher than the existing building, the owner of the new building shall not locate a window within ten (10) feet of an existing vent stack on the lower building.

Section ~~19~~[18:] Protected Traps and Vents. (1) ~~A fixture trap shall be protected against siphonage and backpressure.~~

~~(2) Air circulation shall be assured by means of an individual vent.~~

~~(3) A crown vent shall not be permitted.~~

~~Section 19. Distance of Trap from Vent. (1)(a) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening.~~

~~(b) The fixture trap vent, except for a water closet or a similar fixture, shall not be below the dip of the trap, and each ninety (90) degree turn in the waste line of the main waste, soil, or vent pipe shall be washed.~~

~~(c) A fixture trap shall have a vent located with a developed length not greater than that in the following table:~~

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

~~(2) A fixture branch on a water closet shall not be more than four (4) feet six (6) inches.~~

~~Section 20.] Main Vents to Connect at Base. (1) All main vents or vent stacks shall:~~

~~(a) Connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch; and~~

~~(b) Extend undiminished in size through the roof or be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture.~~

~~(2)(a) Except as established in paragraph (b) of this subsection, if it becomes necessary to increase the size of a vertical vent stack, the entire stack shall be increased from its base.~~

~~(b) If the height of a stack which does not serve as the main vent is less than forty-five (45) feet, it shall not be required to be increased from its base.~~

Section ~~20~~[24:] Vents; Required Sizes. (1) The required size of a vent or vent stack shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, if necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS		
Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	600[800]	420[720]
6	800	720

(2) Except for a residential installation, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste system, or, if more than ten (10) feet of vertical piping is used, the vent shall be continued full size through the roof or returned full size to the main vent.

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Section ~~21.[22.]~~ Branch and Individual Vents. A branch or individual vent shall not be less than one and one-fourth (1 1/4) inches in diameter and shall not exceed the maximum length permitted for a main vent.

Section ~~22.[23.]~~ Vent Pipes Grades and Connections. (1) A vent or branch vent pipe shall be free from drops or sags and be so graded and connected as to drip back to the soil or waste pipe by gravity.

(2) If a vent pipe connects to a horizontal soil or waste pipe, the vent branch shall be taken off above the center line of the pipe, and the vent pipe shall rise vertically at an angle of forty-five (45) degrees to the vertical, to a point six (6) inches above the fixture it is venting before offsetting horizontally or connecting to the branch, main, waste, soil or vent.

Section ~~23.[24.]~~ Vents Not Required; Backwater Traps, Subsoil Catch Basin, and Basement Floor Drains. (1) A vent shall not be required on a backwater trap, subsoil catch basin trap, or a basement floor drain if the basement floor drain branches into the house drain so that measuring along the flow line from the center of the stack, the floor drain shall not be closer than five (5) feet of the stack, nor farther than twenty (20) feet.

(2) A basement floor drain shall not require an individual vent if it branches into the house drain so that measuring along the flow line from the center of the house drain the basement floor drain shall not be farther than ten (10) feet from the house drain.

Section ~~24.[25.]~~ Permissible Common Vent Conditions [Under Which Common Vent Permissible]. (1) A common vent or a common soil and waste pipe may be used if:

(a) Two (2) water closets, two (2) lavatories, or two (2) fixtures of identical purpose are located on opposite sides of a wall or partition;[,] or

(b) Directly adjacent to each other within the distance established in subsection (9) of Section 2[9] of this administrative regulation measured along the center line of the flow of water[; the fixtures may have a common soil or waste pipe and a common vent].

(c) Double sanitary tee or sanitary cross shall not be used if a common vent or a common soil and waste pipe are connected through a double fixture fitting for a water closet of less than 1.6 gallons per flush.

(2) A common vent or common soil and waste pipe[4] shall be vented in accordance with this administrative regulation.

Section ~~25.[26.]~~ Floor Drain Individual Vent Not Required. (1) A manufacturer's floor drain shall not require an individual vent if placed on a waste line for a floor drain within the distance of ten (10) feet from the main waste line, or stack, if the base of the stack is washed and the stack or stacks are undiminished through the roof, or connected to a main vent stack.

(2) An open receptacle may be connected to a floor drain line without being vented if the waste line discharges into a four (4) inch master trap before entering the sanitary sewer system.

Section ~~26.[27.]~~ Floor Drain at a sewage and water treatment plant. A floor drain or service sink installed on the operational floor level of a sewage and water treatment plant facility that discharges into an open sump and is not connected directly to the sanitary sewage system shall not be required to be trapped or vented.

Section ~~27.[28.]~~ House Drain Material. A house drain shall be:

- (1) Extra heavy cast iron;
- (2) Service weight cast iron;
- (3) Brass;
- (4) Type (K) or (L) copper;
- (5) Lead;
- (6) ABS or PVC plastic; or
- (7) Duriron.

Section ~~28.[29.]~~ Indirect Waste Connections. (1) Waste pipe from a refrigerator drain or other receptacle where food is stored or

waste water from a water cooled compressor shall connect indirectly with the house drain, soil or waste pipe.

(2) The drain shall be vented to the outside air.

(3) The waste pipe shall discharge into an open sink or another approved open receptacle that is properly supplied with water in accordance with this administrative regulation.

(4) The connection shall not be located in an inaccessible or unventilated area.

Section ~~29.[30.]~~ Bar and Soda Fountain Wastes. (1)(a) A bar and soda fountain waste, sink, or receptacle shall have a one and one-half (1 1/2) inch P trap and branches.

(b) The main shall not be less than two (2) inches.

(c) The fresh air pipe shall not be less than one and one-half (1 1/2) inches.

(d) The main waste line shall discharge into a properly vented and trapped open receptacle inside or outside a building.

(2) A floor receptor or floor sink may be installed flush with the finished floor if it has a full grate with an attached funnel to receive indirect waste.

(3) A floor receptor or floor sink installed specifically for the indirect wastes from a tilting braising pan, tilting kettle, or other similar equipment may be installed level with or slightly recessed in the floor if the receptor is equipped with a proper strainer and receives no other indirect waste.

Section ~~30.[31.]~~ Open Receptacles. Soil or waste piping receiving the discharge from an open receptacle shall be at least six (6) inches above the surface of the ground if it discharges into a septic system.

Section ~~31.[32.]~~ Refrigerator and Condensate Wastes. (1) A refrigerator or condensate discharge waste pipe shall not be less than:

(a) One and one-half (1 1/2) inches for one (1) to three (3) openings; and

(b) Two (2) inches for four (4) to eight (8) openings.

(2) Each opening shall be trapped.

(3) The waste piping shall be equipped with sufficient cleanouts to allow for thorough cleaning.

Section ~~32.[33.]~~ Overflow Pipes. (1) Waste from a water supply tank or exhaust from a water lift shall not be directly connected to a house drain, soil, or waste pipe.

(2) The waste pipe shall discharge upon a roof or into a trapped open receptacle.

Section ~~33.[34.]~~ Acid and Chemical Wastes. (1) A corrosive liquid shall not be permitted to discharge into the soil, waste, or sewer system unless otherwise permitted by this administrative regulation.

(2) The waste shall be thoroughly diluted or neutralized by passing through a properly constructed and acceptable dilution or neutralizing pit before entering the house sewer.

Section ~~34.[35.]~~ Laboratory Waste Piping. (1) Laboratory waste piping shall be sized in accordance with this administrative regulation and each fixture shall be individually trapped.

(2) A continuous waste and vent pipe system may be used if the waste discharges into a vented dilution pit outside the building with a vent equal to the size of the drain. The vent may be eliminated if the pit has a ventilated cover.

(3) If a dilution pit is not required and is not used, the fixtures shall be individually vented.

(4) If construction conditions permit, the base of the stack of the continuous waste and vent system shall be washed by the last fixture opening, and continue full size independently through the roof.

(5) A fixture branch exceeding more than the distance established in the table in Section 19 of this administrative regulation from the main shall be revented, and the distance shall be measured from the center of the main to the center of the vertical riser.

(6)(a) A fixture connection shall rise vertically to a height so that the trap shall not be lower than twelve (12) inches from the bottom of the sink.

(b) Two (2) or more sinks may be connected into a common waste before entering the riser of the continuous waste and vent system, if the fixtures are not more than five (5) feet from the center of one (1) fixture to the center of the other.

Section 35.[36.] Acid Waste Piping. (1) Underground piping for acid wastes shall be:

- (a) Extra heavy salt glazed vitrified pipe;
 - (b) Silicon iron;
 - (c) Lead;
 - (d) ~~PE~~[Polyethylene] pipe and fittings produced and labeled as ASTM D204;
 - (e) ~~PP~~[Polypropylene] pipe produced and labeled as ASTM D4101;
 - (f) ~~PP~~[Polypropylene] pipe and fittings produced and labeled as ASTM F[-]1412; or
 - (g) ~~[Chlorinated Poly-Vinyl-Chloride- (CPVC)]~~ Chemical Waste Drainage Systems meeting ASTM F[-]2618; or
 - (h) Other materials approved in 815 KAR 20:020, Section 5.
- (2) Piping for acid wastes and vents above ground shall be:
- (a) Silicon iron;
 - (b) Lead;
 - (c) Borosilicate;
 - (d) ~~PE~~[Polyethylene] pipe produced and labeled as ASTM D[-]1204[-]62T;
 - (e) ~~PP~~[Polypropylene] pipe produced and labeled as ASTM D[-]14101[-]85; or
 - (f) Filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D[-]2996 (green or poly thread); or
 - (g) ~~[Chlorinated Poly-Vinyl-Chloride- (CPVC)]~~ Chemical Waste Drainage Systems meeting ASTM F[-]2618.

Section 36.[37.] Special Vents. A flat vent may be allowed if the design of the building prohibits the type of venting required by this administrative regulation.

Section 37.[38.] Basement Floor Drains[and Sanitary Sewage Systems]. (1)~~[Except for a basement floor drain exempted pursuant to subsection (2) of this section.]~~ A basement floor drain shall be:

- (a) Connected to the house sewer; and
- (b) Properly trapped and vented;
- (c)~~[as established in this administrative regulation.]~~
- (2) Readily accessible for cleaning; and
- (d) Of sufficient size to serve the purpose intended.
- (2) If a drain is subject to back flow or back pressure, the drain shall be equipped with a back water valve that complies with Section 38 of this administrative regulation.
- (3)(a) A basement floor drain~~[in a single-family dwelling]~~ shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the division~~[of Plumbing]~~, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system.
- (b) If the drain is not to be connected to the house sewer, the installation shall also be exempt from the waste, trap, and venting provisions of ~~this~~[the State Plumbing] code.

Section 38. Back Water Valves. A back water valve shall be:

- (1) Made of noncorrosive material; and
- (2) Constructed to insure a positive mechanical seal except if discharging waste.

Section 39. Residential Laundry Room Floor Drains. A two (2) inch floor drain with an individual waste and vent may be installed in a residential laundry room.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019, at 10:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the minimum requirements for and manufacturer's specification number of the material accepted in the installation and design of soil, waste, vent systems, and traps and clean-outs in each type of plumbing system.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the minimum requirements for and manufacturer's specification number of the material accepted in the installation and design of soil, waste, and vent systems, and traps and clean-outs in each type of plumbing system.

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

(a) How the amendment will change this existing administrative regulation: This amendment combines 815 KAR 20:090 and 815 KAR 20:110 to make the administrative regulation more accessible and user-friendly. This amendment also corrects grammatical errors, errors with manufacturer's numbers, removes superfluous language, and reorganizes the administrative regulation for ease of use.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This amendment is also necessary to aid in clarity and accessibility of the administrative regulation to the public.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing

fixtures.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the administrative regulation easier to understand and more accessible to individuals engaged in the plumbing industry and plumbing inspectors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry in Kentucky and Department of Housing, Buildings and Construction personnel.

(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 comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will help the entities in question (3) read and understand the administrative regulation. Individuals engaged in the plumbing trade and plumbing inspectors will now have a single, concise administrative regulation that includes the minimum requirements for the quality, weight, storage, and installation of materials in plumbing systems.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the Department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established by this administrative regulation amendment. There are also no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and Department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized and required by KRS 198B.040(10) and KRS 318.130.

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.

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment is not anticipated to generate additional revenue for the state or local government in the first year.

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction (Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS[318.040,] 318.130, 318.150, 318.165,[318-200]

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department[~~after review by the State Plumbing Code Committee,~~] to promulgate [an] administrative regulations[regulation] establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes the types of piping and pipe sizes required for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

Section 1.[Definitions. (1) "ASSE" means the American Society of Sanitary Engineers.

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

(3) "Critical level" or "CL" means the level to which the vacuum breaker may be submerged before backflow will occur, and if the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "NSF" means the National Sanitation Foundation.

(6) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the department[office] and the Energy and Environment Cabinet, Division of Water Title 401 of the Kentucky Administrative Regulations. Toxic material shall be kept out of a potable water system.

(a) The pipe conveying, and each surface in contact with, potable water shall be constructed of nontoxic material.

(b) A chemical or other substance that could produce either a toxic condition, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the system.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material that will affect the taste, odor, color, or potability of the water supply if the tank is placed in, or returned to, service.

(2) Potable water shall be accessible to a plumbing fixture that supplies water for drinking, bathing, culinary use or the processing of a medicinal, pharmaceutical, or food product.

(3) The potable water supply system shall be designed, installed, and maintained to prevent contamination from a nonpotable liquid, solid, or gas being introduced into the potable water supply through a cross connection or other piping connection to the system.

(4) A cross connection shall meet the requirements of this administrative regulation.

(5) A cross connection between a private water supply and a public water supply shall not be made.

(6) Closed water systems, protection from excess pressure.

(a) If a single check valve is installed in a water system, a thermal expansion tank sized in accordance with manufacturer's instructions or other pressure relief device listed in 815 KAR 20:020 shall be installed in the cold water supply located near the water heater.

(b) If a backflow preventer is installed in a water system, a properly sized thermal expansion tank or other pressure relief device listed in 815 KAR 20:020 shall be installed in the water distribution system.

(c) If a pressure reducing valve not equipped with a bypass is installed in the cold water supply line to a water heater, a thermal expansion tank or other pressure relief device listed in 815 KAR 20:020 shall be installed in the cold water line near the water heater.

(7) Backflow and back siphonage protection. Protection against backflow shall be provided as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow shall include both back pressure and back siphonage.

(a) An air gap shall provide the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. ~~Measurement~~[How measured]. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be:

a. Twice the effective opening of a potable water outlet; or

b. If the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, three (3) times the effective opening of the outlet.

3. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES		
Fixture	Minimum Air Gap	
	When affected near wall (inches)	When not affected by wall (inches)
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3
Drinking water fountains – single office not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps if spaced from the inside edge of the spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap if spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more vertical walls or ribs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b)[A] Reduced pressure principle back pressure backflow preventer. A reduced pressure principle back pressure backflow preventer shall provide the best mechanical protection against backflow available and shall be considered equivalent to an air gap.

(c) Double check valve assembly[~~:- applicable to low level of hazard back pressure backflow conditions~~]. This device shall be a manufactured assembly consisting of two (2) independently acting check valves and including a shutoff valve at each end, and petcock and test gauge for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker[~~:- applicable to back siphonage conditions~~].

(e) Atmospheric type vacuum breaker[~~:- applicable to back siphonage conditions~~]. If applicable, an atmospheric type vacuum breaker shall be installed after the last cutoff valve on the water line. This device may operate under normal atmospheric pressure if the critical level (CL) is installed at the required height in accordance with the table in this paragraph:

CRITICAL LEVEL (CL) SETTINGS FOR ATMOSPHERIC TYPE VACUUM BREAKERS	
Fixture or Equipment	Method of Installation
Aspirators, ejectors, and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
On models without built-in vacuum breakers:	
Dental units	CL at least 6 in. above flood level rim of bowl[-]
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn Sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

(f) Barometric loop[~~:- applicable to back siphonage conditions~~]. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers.

1. A backflow and back siphonage preventer shall be in an accessible location, and accessible from within the same room as the fixture or connection it protects.

2. A backflow device may be installed in a utility or service space.

3. A device or air gap shall not be installed in a location subject to flooding or freezing.

(h) Inspection of devices.

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1. A periodic inspection shall be made of each backflow and back siphonage preventer to determine if it is in proper working condition.

2. A reduced pressure principle back pressure backflow preventer shall be tested on at least an annual basis.

3. Records shall be kept on each inspection.

(i) Approval of devices.

1. Before a device for the prevention of backflow or back siphonage is installed, it shall be identified as meeting the applicable specifications as listed in the application chart included in paragraph (k) of this subsection.

2. A device installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person responsible for the maintenance of the system.

(j) Degree of hazard. The protection required at an outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard, if there is potential for contamination by a toxic substance or disease-causing organism;

2. Moderate hazard, if there is potential for contamination by a nontoxic but objectionable substance; or

3. Minor hazard, if there is potential for contamination by a generally nontoxic, nonobjectionable substance, but which may cause the consumer to question the quality of water.

(k) Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and flood level rim if possible. The acceptable protection for various types of outlets or connections shall be as shown in the tables in this paragraph:

APPLICATION TABLE

TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE SPECIFICATIONS	
Reduced pressure principle backflow preventer for high hazard cross connections	Two independent check valves with intermediate relief valve. Supplied with shutoff valves and ball-type test cocks.	All cross connections subject to backpressure or back siphonage if there is a high potential health hazard from contamination. Continuous pressure.	Main supply lines, commercial boilers, cooling towers, hospital equipment, processing tanks, laboratory equipment, waste digesters, car wash, sewage treatment, lawn sprinklers	ASSE No. 1013 AWWA C506 FCCCHR of U.S.C. CSA B.64.4 Sizes 3/4" - 10"	
(A) Double check valve assembly for low hazard cross connections	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure if there is a low potential health hazard or nuisance. Continuous pressure.	Main supply lines, food cookers, tanks and vats, commercial pools	NONTOXIC	ASSE No. 1015 AWWA C506 FCCCHR of U.S.C. CSA B.64.5 Sizes 3/4" - 10"
(B) Dual check valve backflow preventer for low hazard applications	Two independent check valves. Checks are re-movable for testing	Cross connections if there is a low potential health hazard and moderate flow requirements.	Post ground hydrants		ASSE No. 1024 Sizes 3/4" & 1"
(A) Backflow preventer with intermediate atmospheric vent for moderate hazard cross connections in small pipe sizes	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage if there is a moderate health hazard. Continuous pressure.	Boilers (small), cooling towers (small), dairy equipment residential	ASSE No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"	
(B) Backflow preventer for carbonated beverage machine	Two independent check valves with a vent to atmosphere	On potable water distribution lines serving beverage dispensing equipment to prevent backflow of carbon dioxide gas and carbonated water into the water supply system.	Postmix carbonated beverage machine	ASSE 1022	
(C) Laboratory faucet and double check valve with intermediate vacuum breaker in small pipe sizes for moderate to low hazard	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage if there is a moderate to low health hazard.	Laboratory faucets and pipe lines, barber shop and beauty parlor sinks	ASSE No. 1035 (N-LF9)	
(A) Atmospheric vacuum breakers for moderate to high hazard cross connections	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process tanks, dishwashers, soap dispensers, washing machines	ASSE No. 1001 ANSI A112.1.1 CSA B.64.1.1 FCCCHR of U.S.C. Sizes 1/4" - 3"	
(B) Antisiphon pressure breakers for moderate to high hazard cross	Spring loaded single float and disc with independent 1st check.	This valve is designed for installation in a continuous pressure	Laboratory equipment, cooling towers, commercial laundry	ASSE No. 1020 CSA B.64.1.2 FCCCHR of U.S.C. Sizes 1/2" - 2"	

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connections	Supplied with shutoff valves and ball type test cocks.	potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	machines, swimming pools, commercial plating tanks, large toilet total & urinal facilities, degreasers, photo tanks, livestock water systems, lawn sprinklers	
(C) Hose connection vacuum breakers for residential and industrial hose supply outlets	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose bibs, service sinks, hydrants	ASSE No. 1011 CSA B.64.2 Size 3/4" Hose

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS								
Type of Connection	Degree of Hazard			Acceptable Protection				
	Severe	Moderate	Minor	Backflow		Backsiphonage		
				Air Gap	Reduced Pressure Device	Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1. Toxic substance	X			X	X			
2. Nontoxic substance		X		X	X	X		
B. Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C. Gravity due to obvious site conditions subject to:								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic substances		X		X	X	X		
II. Water outlets and connections not subject to back pressure:								
A. Connection to sewer or sewage pump	X			X				
B. Outlet to receptacles containing toxic substances	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances		X		X	X	X	X	X
D. Outlet into domestic water tanks			X	EACH CASE TREATED SEPARATELY				
E. Flush valve toilets	X			X	X		X	X
F. Flush valve urinals		X		X	X		X	X
G. Outlets with hose attachments subject to contamination from:								
1. Toxic substance	X			X	X		X	X
2. Nontoxic substance		X		X	X	X	X	
H. Outlets to recirculating cooling tower:								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		

(l) Protection of potable water system. A potable water opening, outlet, or connection, except one (1) that serves a residential unit, shall be protected against backflow in accordance with paragraphs (a) through (k) of this subsection.

Section 2.[3.] Water Required. (1) A building equipped with a plumbing fixture and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In a building used as a residence or a building in which people assemble or are employed, both hot and cold water shall be supplied.

Section 3.[4.] Water Service. (1) The water service piping to a building shall:

(a) Not be less than three-fourths (3/4) inch nominal pipe size; and

(b) Be of sufficient size to permit a continuous and ample flow of water to each fixture in the building.

(2) If the water service piping is made of plastic or other nonconductive piping, the water service piping shall be installed with an insulated copper tracer wire adjacent to the piping.

(a) Access shall be provided to the tracer wire within the building at the main supply control valve.

(b) The tracer wire shall not be less than eighteen (18) AWG and suitable for direct burial.

(3) Except as provided in this subsection, the underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth. The pipe may be placed in the same trench if:

(a) The bottom of the water service pipe at all points is at least eighteen (18) inches above the top of the sewer at its highest point;

(b) The water service pipe is placed on a solid shelf excavated at one (1) side of the common trench; and

(c) The number of joints in the water service pipe is kept to a minimum.

(d)1. If the water service pipe and sewer intersect, then a sleeve shall be used on the water service pipe extending five (5) feet on either side of the intersection.

2. The sleeve shall be of material approved for water service pipe in 815 KAR 20:020.

3. The sleeve shall be sealed on each end to prevent debris from entering the sleeve.

Section 4.[5-] Distribution. (1) The water supply shall be distributed through a piping system entirely independent of another piping system.

(2) Piping which has been used for a purpose other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing a water closet or urinal, if the water is piped in an independent system.

(a) If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified.

(b)1. An outlet on the nonpotable water distribution system used for a drinking or domestic purpose shall be permanently posted: DANGER - UNSAFE WATER.

2. Each branch, fitting, or valve shall be identified by the phrase - "NONPOTABLE WATER" either by a sign or brass tag that shall be permanently affixed to the pipe, fitting, or valve.

3. The identification marking shall not be concealed and shall be maintained by the owner.

(4) A backflow device or cross-connection control device shall be approved by the department.

(5) A combination stop and waste valve, cock, or hydrant shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with a public water supply.

(7) Water used for cooling of equipment or in another process shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or used for a nonpotable purpose as referenced in this section.

(8) Hose connections other than those intended for clothes washing machines, frost proof burial hydrants, and water heater drain valves shall be equipped with a vacuum breaker ASSE 1011 for areas not subject to freezing and a vacuum breaker ASSE 1019 for areas subject to freezing.

Section 5.[6-] Water Supply to Fixtures. (1) A plumbing fixture shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition.

(2) A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve.

(3) The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of a water closet, urinal, or similar fixture.

(4) If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valve shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage.

(5) The fixture shall have a vacuum breaker.

(6) A plumbing fixture, device or appurtenance shall be installed in a manner that shall prevent a possibility of a cross connection between the potable water supply system, drainage

system, or other water system.

Section 6.[7-] Connections to Boilers. (1) A potable water connection to a boiler feed water system in which a boiler water conditioning chemical is introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where a chemical is introduced.

(2) A boiler shall be equipped with a check valve in the cold water supply to the boiler.

Section 7.[8-] Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 8.[9-] Sizing of Water Supply Piping. (1)(a) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch.

(b)The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch.

(c) More than three (3), one-half (1/2) inch fixture branches shall not be supplied from a one-half (1/2) inch pipe.

(2)(a) The schedule in this subsection shall be used for sizing the water supply piping to a fixture.

(b) The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and shall be brought to the floor or wall adjacent to the fixture.

(c) A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cupsidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.)	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In a building supply system in which a device or appurtenance is installed utilizing a quick acting valve that causes noise due to water hammer, a protective device, including an air chamber or approved mechanical shock absorber, shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If a mechanical shock absorber is installed, the absorber shall be in an accessible place.

(b) If a mechanical device is used, the manufacturer's specifications shall be followed as to location and method of installation.

Section 9.[10-] Water Supply Pipes and Fittings, Materials. (1) Water supply piping for a potable water system shall be as follows:

(a) Galvanized wrought iron;

(b) Galvanized steel;

(c) Brass;

(d)Types K, L, and M copper;

(e) Cast iron;

(f) Types R-K, R-L, and R-M brass tubing;

(g) Fusion welded copper tubing produced and labeled as ASTM B-[447]-[2002] and ASTM B-[251];

(h) ~~[DWV welded brass tubing produced and labeled as ASTM B587;~~

~~(h) Seamless stainless steel tubing produced and labeled as ASTM A269 or ASTM A312, Grade H, produced and labeled as ASTM A268/268M;~~

~~(i)(j) Filament-wound reinforced thermosetting resin pipe produced and labeled as ASTM D[-]2996 (red thread for cold water use and silver and green thread for hot and cold);~~

~~(i)(k) Polyethylene (PE) plastic pipe produced and labeled as ASTM D2239 or ASTM F[-]714;~~

~~(k)(l) Cross-linked polyethylene (PEX) pipe produced and labeled as ASTM F[-]876 for cold water and ASTM F[-]877 for hot or cold water applications;~~

~~(l)(m) Cross-linked Polyethylene/Aluminum/Cross-linked Polyethylene (PEX-Al-PEX) pipe produced and labeled as ASTM F[-]1281;~~

~~(m)(n) Polyethylene/Aluminum/Polyethylene (PE-Al-PE) pipe produced and labeled as ASTM F[-]1282;~~

~~(n)(o) Copper tubing size PE produced and labeled as ASTM D[-]2737 for water service, if installed with compression couplings;~~

~~(o)(p) Polyvinyl chloride (PVC) plastic pipe produced and labeled as ASTM D1785;~~

~~(p)(q) Chlorinated Polyvinyl chloride (CPVC) plastic pipe produced and labeled as ASTM D2846;~~

~~(q)(r) Schedule 80 [chlorinated polyvinyl chloride (CPVC) plastic] pipe shall meet ASTM F441;~~

~~(r)(s) Schedule 80 [chlorinated polyvinyl chloride (CPVC) plastic] solvent fittings shall meet ASTM F439;~~

~~(s)(t) Schedule 80 [chlorinated polyvinyl chloride (CPVC) plastic] threaded fittings shall meet ASTM F437;~~

~~(t)(u) Schedule 80 [chlorinated polyvinyl chloride (CPVC) plastic] pipe and fittings shall be installed using primer meeting ASTM F656 and solvent cement meeting ASTM F493;~~

~~(u)(v) Polyvinyl chloride (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 pipe produced and labeled as ASTM D[-]2241[-]05;~~

~~(v)(w) Fusion welded PP[polypropylene pipe] products measuring one-half (1/2) inch to eighteen (18) inches in diameter which meet NSF Standards 61 and 14, and ASTM F2389, shall be approved. These pipe products shall be tested for compliance with the manufacturer's installation instructions;~~

~~(w)(x) Fusion welded high density PE[polyethylene] pipe products which meet NSF Standards 61 and 14, and ASTM F3035 and F714, shall be approved for underground use. These pipe products shall be tested for compliance with the manufacturer's installation instructions;~~

~~(x)(y) Push-fit fitting systems which meet the ASSE Standard 1061. Except as established in 815 KAR 20:020, these systems are approved for above-ground use only using pipe sizes up to two (2) inches; or~~

~~(y)(z) PE-RT Piping [(Polyethylene of Raised Temperature)] meeting ASTM F2769.~~

(2) A plastic pipe or fitting shall bear the NSF seal of approval.

(3) PB[Polybutylene] pipe utilizing an insert fitting of brass or copper shall use a copper clamping ring.

(4) A PB[Polybutylene] hot and cold water connector to a lavatory, sink, or water closet shall be produced and labeled as ASTM D3309, and PB[Polybutylene] plastic pipe shall be produced and labeled as ASTM 2662 for a cold water application.

(5) A fitting shall be brass, copper, approved plastic, galvanized cast iron, or galvanized malleable iron. Piping or a fitting that has been used for another purpose shall not be used for the water distribution system.

(6) Each joint in the water supply system shall be made of a screw, solder, or plastic joint. A cast iron water pipe joint may be caulked, screwed, or machine drawn.

(7) If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or passes through a concrete floor, it shall be wrapped with an approved material to permit expansion or contraction.

(8) [Polyethylene or] PVC shall not be used below ground under a house or building. If a [chlorinated polyvinyl chloride (CPVC)]

joint or connection is installed below ground under a house or building, the water distribution system shall be tested to at least 100 pounds per square inch before backfilling. The applicable requirements of 815 KAR 20:060 [and 815 KAR 20:073] shall be met.

(9) [Joints between copper tubing and galvanized steel pipe.] The joint between ferrous piping and copper or copper-alloy piping shall be made with a dielectric fitting or other insulating fitting to prevent electrolysis.

Section 10.[14.] Temperature and Pressure Control Devices for Shower Installations. A temperature or pressure balance device to prevent a sudden unanticipated change in water temperature shall be installed to serve each shower compartment and shower-bath combination.

Section 11.[12.] Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. [In addition, a main supply control valve shall be placed inside a foundation wall.] The main supply control valve shall be a full port valve and be accessible from within the occupied space and provided with a drip or drain valve. A pit or similar type installation shall not be used for a potable water supply shutoff valve.

(2) A pressure or gravity tank shall have its supply line valved at or near its source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will permit the unit to be shutoff without interfering with the cold water supply to another family unit or portion of the building.

(4) In a building other than a dwelling, a shutoff valve shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valved and a lawn sprinkler opening shall be valved. In residential construction, each fixture, except a bathtub or shower, shall be valved individually or as a group of fixtures.

(6) A group of fixtures or a fixture group shall include two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and serving this equipment. In residential dwellings, the shutoff valve shall be placed within three (3) feet of the water heater and be accessible from the accessible side of the water heater.

Section 12.[13.] Water Supply Protection. (1) A concealed water pipe, storage tank, cistern, or other exposed pipe or tank subject to freezing temperatures shall be protected against freezing. A water service shall be installed at least thirty (30) inches in depth.

(2) A relief device shall be installed on a pneumatic water system.

Section 13.[14.] Temperature and Pressure Relief Devices for Water Heaters. (1) A temperature and pressure relief device shall:

(a) Be installed on each water heater on the hot water side not more than three (3) inches from the top of the heater;

(b) If a marked opening is provided on the water heater by the manufacturer for the temperature and pressure relief device, be installed according to the manufacturer's recommendation; and

(c) Be of a type approved by the office in accordance with this administrative regulation and 815 KAR 20:020.

(2)(a) If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor.

(b) If a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground.

(c) The relief device may discharge through an air gap to a sump basin, service sink, open receptacle or other point of

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discharge in which equivalent safety shall be provided as approved by the Division of Plumbing.

(3) A relief device shall be installed on a pneumatic water system.

Section 15.] Protection of a Private Water Supply or Source. A private water supply or source shall be protected from pollution. Approval shall be obtained from the division [of Plumbing] prior to using the private water supply or source.

Section 14.[16. Domestic Solar Water Heaters. A domestic solar water heater may have a "single wall heat exchanger" if the following conditions are met:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent;

(2) The heat exchanger is pretested by the manufacturer to 450 pounds per square inch;

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. (1) A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater.

(2) Double wall heat exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided.

(3) The water inlet to the heat exchange vessel shall be provided with a check valve. There shall be provided adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) pounds per square inch above the maximum water pressure at the point of installation, if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device.

(4) Condensate drain water shall be piped in accordance to the State Plumbing Code and it shall not be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in an area subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18.] Tanks and Vats below Rim Supply. A tank or vat with potable water supply below the rim shall be subject to the following requirements:

(1) If a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the table in this subsection, the overflow pipe shall be provided with an air gap as close to the tank as possible;

Sizes of Overflow Pipes for Water Supply Tanks			
Maximum capacity of water supply line to tank	Diameter of Overflow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)
0-50 gpm	2	400-700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate at a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet, closed; and

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 15.[19. Water Distribution for Fan Coil Units. (1) If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit.

(2) It shall utilize not less than three-fourths (3/4) inch piping and its run shall not exceed 140 feet between the water heater and the heating unit.

(3) The applicable requirements established in 815 KAR 20:070 shall be met.

Section 20.] Fire Protection Systems. Except if installing an NFPA 13D fire protection system in a one (1) or two (2) family dwelling, a fire protection system using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 16.[21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home.

(2) All materials, including the pipe or fitting used for a connection, shall conform with the State Plumbing Code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space.

(a) The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control.

(b) The ground surface around the riser pipe shall be graded to divert surface drainage.

(c) The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing.

(d) An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather.

(e) A shutoff valve may be placed below the frost depth on the water service line, but this valve shall not be a stop-and-waste cock.

Section 22.] Conservation of water shall comply with the standards established in 815 KAR 20:070.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019, at 10:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the types of piping and pipe sizes required for a potable water supply system and the methods

to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the types of piping and pipe sizes required for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

(2) If 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 grammatical errors, errors with manufacturer's numbers, and removes superfluous language. The amendment also removes sections regarding hot water heaters that were relocated to 815 KAR 20:055, and sections regarding manufactured housing communities that were relocated to 815 KAR 20:170. The amendment also requires plastic piping to be buried with a tracer wire to make relocating the water supply piping easier. The amendment includes a provision that allows for a solution when the water service pipe and sewer pipe intersect.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This amendment is also necessary to aid in clarity and accessibility of the administrative regulation to the public.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment aids the Department in regulating plumbing, including the water supply to buildings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the administrative regulation easier to understand and more accessible to individuals engaged in the plumbing industry and plumbing inspectors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry in Kentucky and Department of Housing, Buildings and Construction personnel.

(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 comply with this administrative regulation or amendment: Individuals using plastic pipe for the water service pipe will have to install a tracer wire with the plastic pipe.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The increase in cost for the tracer wire will be nominal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will help the entities in question

(3) read and understand the administrative regulation. The tracer wire will enable individuals to locate a plastic water service pipe, reducing the likelihood that the water service pipe will be damaged when digging on the property.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the Department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established by this administrative regulation amendment. There are also no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and Department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized and required by KRS 198B.040(10) and KRS 318.130.

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.

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
(Amendment)

815 KAR 20:130. House sewers and storm water piping; methods of installation.

RELATES TO: KRS 318.010, 318.015, 318.130, 318.150, 310.200

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate[an] administrative regulation[regulation] establishing the Kentucky State Plumbing Code to regulate plumbing, including the methods and materials that may be used in Kentucky for the construction of house sewers and storm water piping. This administrative regulation establishes the materials and methods of installation that may be used in the construction of house sewers or storm water piping.

Section 1. Independent System. (1) The drainage and plumbing system of a new building and of a new work installed in an existing building shall be separate and independent of other buildings except as otherwise established in this administrative regulation.

(2) A building shall have an independent connection with either a public or private sewer or sewer system.

Section 2. Exceptions. (1)(a) If a building stands in the rear of other buildings or on an interior lot and a sewer connection cannot be made available to the rear building through an adjoining alley, court, yard, or driveway, the sewer from the front building may be extended to the rear building and it shall be considered as one (1) sewer.

(b) The exception established in this subsection shall not apply to corner lots if a sewer connection is available from the street or alley or to a new or existing building that abuts a street or alley.

(2) A building sewer may serve additional buildings and still be considered as one (1) sewer if the additional buildings are:

(a) Used in conjunction with the primary building;

(b) Contained within the same deed as the primary building; and

(c) Restricted within the deed from being sold separately from the primary building.

Section 3. Connection with Private Sewage Disposal System. If a sewer is not available, the house drain from a building shall connect with an approved private sewage disposal system.

Section 4. Excavations. An excavation made for the installation of a house sewer shall be open trench work, and the trenches shall be kept open until the piping has been inspected, tested, and approved.

Section 5. Depth of Sewer at the Property Line. (1) The sewer at the property line shall be at a sufficient depth to properly serve a plumbing connection installed in the basement of a building.

(2)(a) A house sewer shall be laid on a grade of not less than one-eighth (1/8) inch nor more than one-fourth (1/4) inch per foot.

(b) A sewer shall have at least an eighteen (18) inch cover.

(c) Sewer piping installed under property subject to vehicular traffic (such as a driveway, parking lot, or similar location) shall have at least a twenty-four (24) inch cover unless:

1. Constructed of cast iron piping, schedule 40 or 80 PVC produced and labeled as ASTM D2665 or D1784, or schedule 40 or 80 ABS produced and labeled as ASTM D2661; and

2. ~~If less than a twenty-four (24) inch cover is available, sewer piping shall be~~ Encased in a minimum of six (6) inches of concrete on each side and the top. Pipe shall be covered to prevent direct contact with concrete.

(d) A sewer shall be backfilled by hand and tamped six (6) inches above the piping or filled with six (6) inches grillage above the piping.

(e) Each joint in cast iron and vitrified clay pipe shall be constructed to comply with 815 KAR 20:060, Sections 4 and 5.

(f) If less than eighteen (18) inches of cover is available, a request for a variance shall be submitted to the division in writing.

Section 6. New House Sewer Connections. A house sewer installed where a private sewerage system has been discarded

may connect to the house drain if the existing plumbing system meets the State Plumbing Code.

Section 7. Materials for House Sewers. A house sewer or combined sewer shall be made of:

- (1) Extra heavy cast iron pipe;
- (2) Service weight cast iron;
- (3) Vitrified clay;
- (4) Concrete;
- (5) Coextruded composite PVC pipe produced and labeled ASTM F[-]1488;
- (6) PVC or ABS plastic pipe Schedules 40 and 80;
- (7) Cellular core PVC produced and labeled as ASTM F[-]891;
- (8) Cellular core ABS produced and labeled as ASTM 628 or ASTM F[-]1488;
- (9) Truss pipe;
- (10) Extra heavy SDR 35 pipe;
- (11) Type PS 46, PVC in sizes four (4) inches through fifteen (15) inches produced and labeled as ASTM F789;
- (12) PVC ribbed pipe produced and labeled as ASTM F794; or
- (13) PE[Polyethylene pipe] produced and labeled as ASTM F[-]714.

Section 8. Material for Storm Sewers Inside Buildings. (1) A storm sewer inside a building extending to a point two (2) feet outside a building in sizes eight (8) inches and smaller shall be made of:

- (a) Cast iron pipe;
 - (b) Aluminum; or
 - (c) Schedule 40 ABS or PVC DWV pipe or PVC pipe produced and labeled as ASTM F[-]1488.
- (2) A storm sewer in a size of ten (10) inches or larger shall be made of:
- (a) Cast iron;
 - (b) Aluminum;
 - (c) Schedule 40 ABS or PVC DWV pipe;
 - (d) SDR 35;
 - (e) Vitrified clay or concrete conforming to appropriate commercial specifications with approved joints; or
 - (f) PE[Polyethylene] pipe produced and labeled as ASTM F[-]714.

(3) Primary and secondary roof drains shall comply with the requirements established in this subsection.

(a)1. Roof drains shall have strainers extending not less than four (4) inches above the surface of the roof immediately adjacent to the roof drain.

2. Strainers shall have an available area not less than one and one-half (1 1/2) times the area of the conductor or leader to which the drain is connected.

(b) Roof drain strainers for use on sun decks, parking decks, and similar areas that are normally serviced and maintained, may be of the flat surface type, installed level with the deck, with an available inlet area not less than two (2) times the area of the conductor or leader to which the drain is connected.

(c) Secondary (emergency) roof drains or scuppers shall be provided where the roof perimeter construction allows ponding if the primary roof drains become blocked.

(d) Separate systems required.

1. Secondary roof drain systems shall have piping and point of discharge separate from the primary system.

2. Discharge shall be above grade plane in a location that would normally be observed by the building occupants or maintenance personnel.

(e) Primary and secondary drains shall be sized in accordance with Section 11 of this administrative regulation.

Section 9. Change of Direction. A change in direction of a sewer shall be made only with:

- (1) Long curves;
- (2) Forty-five (45) degree wyes;
- (3) Half wyes;
- (4) Quarter, sixth, eighth or sixteenth bends; or
- (5) Sanitary tees installed on their back or on their sides. If

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installed, sanitary tees shall be at an angle of not more than forty-five (45) degrees.

Section 10. Size of House Sewers and Horizontal Branches.

(1) The minimum size of a house sewer shall not be less than four (4) inches nor less than that of the house drain.

(2) A house sewer receiving a branch shall be sized in the same manner as a house drain.

(3) The house drains shall be installed in accordance with 815 KAR 20:090.

Section 11. Size of Storm Systems. (1) The required size of a storm sewer shall be determined on the basis of the total drained area in horizontal projection in accordance with the table in subsection (4) of this section.

(2) A storm sewer shall not be laid parallel to or within two (2) feet of a bearing wall.

(3) The storm sewer shall be laid at a sufficient depth to protect it from freezing[.]

(4)

Diameter of pipe - inches	Maximum drained roof area square feet*	
	Slope 1/8 in. fall to 1 ft.	Slope 1/4 in. fall to 1 ft.
3	N/A	1,160
4	1,880	2,650
5	3,340	4,720
6	5,350	7,550
8	11,500	16,300[6,300]
10	20,700	29,200
12	33,300	47,000
15	59,500	84,000

*The calculations in this table are based on a rate of rainfall of four (4) inches per hour[.]

Section 12. Combined Storm and Sanitary Sewer System. (1) If a combined sewer system is used, the required size of the house drain or house sewer shall be determined by multiplying the total number of fixture units carried by the drain or sewer by the conversion factor corresponding to the drained area, and the total fixture units, adding the product to the drained area and applying the sum from the table for storm water sewers in Section 11 of this administrative regulation.

(2) A combined house drain or house sewer shall not be less than four (4) inches in diameter, and a combined house drain or house sewer shall not be smaller in size than that required for the same number of fixture units or for the same roof area in separate systems.

(3)

CONVERSION FACTORS FOR COMBINED STORM AND SANITARY SYSTEM								
Number of Fixture Units on Sanitary System								
Drained roof area in square feet	Up to 6	7 to 18	19 to 36	37 to 60	61 to 96	97 to 144	145 to 216	217 to 324
Up to 120	180	105	60	45	30	22	18	15
121 to 240	160	98	57	43	29	21	17.6	14.7
241 to 480	120	75	50	39	27	20	16.9	14.3
481 to 720	75	62	42	35	24	18	15.4	13.2
721 to 1,080	54	42	33	29	20	15	13.6	12.1
1,081 to 1,620	30	18	16	15	12	11.5	11.1	10.4
1,621 to 2,430	15	12	11	10.5	9.1	8.8	8.6	8.3
2,431 to 3,645	7.5	7.2	7.0	6.9	6.6	6.5	6.4	6.3
3,646 to 5,460	2.0	2.4	3.0	3.3	4.1	4.2	4.3	4.4
5,461 to 8,190	0	2.0	2.1	2.2	2.3	2.4	2.5	2.6
8,191 to 12,285	0	0	2.0	2.1	2.1	2.2	2.3	2.3
12,286 to 18,420	0	0	0	2.1	2.1	2.1	2.2	2.2
18,421 to 27,630	0	0	0	0	2.0	2.1	2.2	2.2
27,631 to 40,945	0	0	0	0	0	2.0	2.1	2.2
40,946 to 61,520	0	0	0	0	0	0	2.0	2.1
Over 61,520	0	0	0	0	0	0	0	2.0

(4)

Number of Fixture Units on Sanitary System								
Drained roof area in square feet	325 to 486	487 to 732	733 to 1098	1,099 to 1644	1,645 to 2466	2,467 to 3702	3,703 to 5556	Over 5556
Up to 120	12	10.2	9.2	8.4	8.2	8.0	7.9	7.8
121 to 240	11.8	9.9	9.1	8.3	8.1	8.0	7.9	7.8
241 to 480	11.5	9.7	8.8	8.2	8.0	7.9	7.8	7.7
481 to 720	10.8	9.2	8.6	8.1	7.9	7.9	7.8	7.7
721 - 1,080	10.1	8.7	8.3	8.0	7.8	7.8	7.7	7.6
1,081 - 1,620	9.8	8.4	8.1	7.9	7.7	7.7	7.6	7.5
1,621 - 2,430	8.0	7.9	7.8	7.7	7.6	7.5	7.4	7.4
2,431 - 3,645	6.2	6.3	6.4	6.4	6.8	7.0	7.1	7.2
3,646 - 5,460	4.5	4.7	5.0	5.1	6.1	6.4	6.9	6.9
5,461 - 8,190	2.8	3.2	3.7	4.6	5.0	5.6	6.2	6.4
8,191 - 12,285	2.4	2.5	2.6	2.7	3.5	4.5	5.2	5.6
12,286 - 18,420	2.3	2.3	2.4	2.4	2.6	3.2	4.2	4.7
18,421 - 27,630	2.2	2.3	2.3	2.3	2.4	2.5	2.8	3.1
27,631 - 40,945	2.2	2.2	2.2	2.2	2.2	2.2	2.3	2.4
40,946 - 61,520	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1
Over 61,520	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0

(5) For a building constructed after August 1, 1996, each plumbing fixture or opening connecting to a combination sanitary and storm sewer system shall either:

(a) Be installed above the elevation of the cover of the nearest manhole serving the main; or

(b) Discharge through a sewage ejector to the combined sewer system at an elevation high enough to prevent flooding of the building.

Section 13. Storm Sewers and House Sewers[House Sewer] in Undisturbed or Filled Ground. (1) A house sewer laid in undisturbed ground shall be laid on at least four (4) inches of pea gravel, sand, or other approved grillage as defined in 815 KAR 20:010.

(2) A storm sewer laid in undisturbed ground shall not require grillage.

(3)[(2)] A storm sewer or house sewer laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert, or other equivalent support[that shall be] approved by the department.

(4)[(3)] A support [in] filled in ground shall be on a ten (10) foot center to a solid footing, either undisturbed earth or rock.

(5)[(4)] A house sewer constructed of flexible thermoplastic sewer piping shall be installed with at least six (6) inches of gravel on the bottom, top, and sides of the piping.

Section 14.[Storm Sewers in Undisturbed or Filled Ground. (1) A storm sewer laid in undisturbed ground shall not require grillage.

(2) A storm sewer laid in filled ground shall be embedded to the lower quadrant with at least a four (4) inch concrete pad below the invert or other support [that shall be] approved by the department.

(3) A support in filled ground shall be on a ten (10) foot center to a solid footing, either undisturbed earth or rock.

Section 15.] Drainage Below Sewer Level (Public). In a public building in which the whole or part of the building drain and plumbing system lies below the level of a[the] main sewer, sewage and waste shall be lifted by a device that complies with Sections 16[47] and 17[48] of this administrative regulation and discharged into the building sewer.

Section 15.[16:] Drainage Below Sewer Level (Residential). (1) In a residential building[home] in which the[house] sewer level is above the basement floor, waste water shall be lifted by means of an approved sump pump appropriate for that installation.

(2) The sump pit shall:

(a) Be gas and air tight; and

(b) Be constructed of:

1. Poured or precast concrete;

2. Approved fiberglass; or

3. PE[Polyethylene] material.

(3) The sump pit shall be provided with a two (2) inch vent, which may also act as a waste and vent for a laundry tray.

(4) The pump discharge piping shall be discharged[discharge] into a two (2) inch waste pipe extended inside the building to a height at least twelve (12) inches above the outside grade plane.

(5) The sump pit shall be provided with a tight-fitting concrete cover.

(6) (a) On the outside of the building, the[this] waste piping shall connect into a four (4) inch by two (2) inch sanitary tee, which shall connect into a four (4) inch P trap and then into the sanitary sewer.

(b) The four (4) inch by two (2) inch sanitary tee shall be extended at least two (2) inches above the finished grade plane and shall be provided with a ventilated cap.

Section 16.[17:] Sumps and Receiving Tanks. (1) A subsoil drain shall discharge into an air tight sump or receiving tank located to receive the sewage by gravity.

(2) The sewage shall be lifted and discharged into the house sewer by a pump or ejector.

(3) Sewage sumps shall be a minimum twenty four (24) inches in diameter and no less than twenty four (24) inches in depth.

(4) A system that relies solely on a pump shall be equipped with both an audible and visual alarm to be placed within the occupied space.

(5) The sump shall automatically discharge.

Section 17.[18:] Ejectors, Vented. (1) A sewage ejector serving a residential installation shall be vented with a two (2) inch vent.

(2)(a) Except as established in paragraph (b) of this subsection, an ejector serving a commercial or industrial installation shall be vented with a three (3) inch vent.

(b)1. If a three (3) inch vent stack is serving a fixture that empties into the ejector pit and is located within twenty-five (25) feet of the pit, the ejector may be revented with a two (2) inch vent back to the three (3) inch vent stack.

2. The ejector vent shall not be smaller than that recommended by the manufacturer of the pump.

(3) A portion of the building drainage system that is above the cover of the manhole serving the main that can flow by the gravity

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to a sewer shall be installed for gravity flow to the combined sanitary and storm sewer, except for a system designed otherwise by a licensed professional engineer.

Section 18.[49-] Ejector Power: Motors, Compressors, and Air Tanks. (1) A motor, air compressor, or air tank shall be located so that it shall be open for inspection and repair at all times.

(2) An air tank shall be proportioned to furnish sufficient air at suitable pressure to the ejector to completely empty the sump or storage tank with the compressor not operating.

(3) The end pressure in the tank shall not be less than two (2) pounds for each foot of height through which sewage is raised.

Section 19.[20-] Ejectors for Subsoil Drainage. (1) If a subsoil catch basin is installed below the sewer level, an automatic ejector shall be used.

(2) The ejector or a device raising subsoil water shall discharge into a properly trapped fixture or into a storm water[storm-water] drain.

Section 20.[24-] Drainage of Yards, Areas, Roofs, and Traps.

(1) A roof, paved area, court, or courtyard shall be drained into:

(a) A storm water system;

(b) A combined sewerage system; or

(c) A surface drainage area unless prohibited by the local health department or sewer district.

(2) A yard, roof, paved area, court, or courtyard shall not be drained into a sewer intended for sewage only.

(3) Traps.

(a) If a drain is connected to a combined sewerage system, it shall be trapped.

(b) If a roof leader, conductor, or gutter opening is located more than ten (10) feet from a window, scuttle, or air shaft, a trap shall not be required.

(c) A trap shall be set below the frost line or on the inside of the building.

(d) If a drain is not connected to a combined sewer, a trap shall not be required.

Section 21.[22-] Size of Rain Water Leader. An inside leader shall not be less size than as established in the following table:

Area of Roof (In Square Feet)	Leader, Diameter (Inches)
Up to 90	1 1/2
91 to 270	2
271 to 810	3
811 to 1,800	3 1/2
1,801 to 3,600	4
3,601 to 5,550	5
5,501 to 9,600	6

Section 22.[23-] Inside Conductors or Roof Leaders. (1) If a conductor or roof leader is placed within the walls of a building, or in an interior court or ventilating pipe shaft, it shall be constructed of:

(a) Cast iron pipe;

(b) Galvanized wrought iron;

(c) Galvanized steel;

(d) Copper;

(e) Schedule 40 ABS/PVC DWV[DMV] pipe; or

(f) Reinforced thermosetting resin pipe produced and labeled as ASTM F1113 (red and silver thread).

(2)(a) Except as established in paragraph (b) of this subsection, PVC or ABS[plastic] pipe and fittings[(PVC or ABS)] shall be limited to buildings in which the conductor does not exceed forty-five (45) feet in height, measured from the grade plane as defined by the Kentucky Building Code, 815 KAR 7:120, or Kentucky Residential Code, 815 KAR 7: 125, and continuing through the vertical distance of the building to a maximum height of forty-five (45) feet.

(b) PVC or ABS[Plastic] pipe and fittings may be installed in a building in which the conductor exceeds forty-five (45) feet in

height if the installation complies with all of the requirements established in this section.

(c) The use of PVC and ABS piping shall be limited to Schedule 40 or 80 produced and labeled as ASTM D2665 and D1784 for PVC piping and ASTM D2661 for ABS piping.

(d) The installation of the PVC or ABS[plastic] pipe and fittings [(PVC or ABS)] shall be made in compliance with the manufacturer's recommendations, which shall be made available to the inspector.

(e) Firestop systems shall be inspected in accordance with ASTM E2174 by an inspection agency approved by the department.

Section 23.[24-] Outside Conductors. (1) If an outside sheet metal conductor or downspout is connected to a house drain, it shall be connected by means of [a] cast iron pipe extending vertically at least one (1) foot above the grade plane.

(2) If the downspout runs along a public driveway without a sidewalk, it shall be placed in a niche in the walk, protected by wheel guards, or enter the building through the wall at a forty-five (45) degree slope at least twelve 912[(12)] inches above the grade plane.

Section 24.[25-] Defective Conductor Pipes. If an existing sheet metal conductor pipe within the walls of a building becomes defective, the conductor shall be replaced by one that conforms to this administrative regulation.

Section 25.[26-] Vent Connections with Conductors Prohibited.

(1) A conductor pipe shall not be used as a soil, waste, or vent pipe.

(2) A soil, waste, or vent pipe shall not be used as a conductor.

Section 26.[27-] Overflow Pipes. An overflow pipe from a cistern, supply tank, expansion tank, or drip pan shall connect indirectly with a house sewer, house drain, soil pipe, or waste pipe.

Section 27.[28-] Subsoil Drains. A subsoil drain below sewer level shall discharge into a sump or receiving tank and shall be automatically lifted and discharged into the storm drainage system or upon the ground outside the building it serves.

Section 28.[29-] Approvals of New Sewer Connections to Existing Buildings. If the local health department or sanitary sewage system board, plant[,] district, or treatment plant owner prohibits the discharge of a basement floor drain or other apparatus into the sanitary sewer system, an existing basement floor drain or sump pump apparatus shall comply with the construction requirements of this administrative regulation and be inspected prior to the approval of a connection for a new sewer line.

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019, at 10:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the

above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel,
Department of Housing, Buildings and Construction, 101 Sea Hero
Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-
0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the materials and methods of installation that may be used in the construction of house sewers or storm water piping.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the materials and methods of installation that may be used in the construction of house sewers or storm water piping.

(2) If 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 grammatical and technical errors, errors with standards' numbers, and removes superfluous language.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This amendment is also necessary to aid in clarity and accessibility of the administrative regulation to the public.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment aids the department in regulating plumbing, including the construction of house sewers and storm water piping in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the administrative regulation easier to understand and more accessible to both individuals engaged in the plumbing industry and plumbing inspectors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry and Department of Housing, Buildings and Construction personnel.

(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 comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will help the entities in question

(3) read and understand the administrative regulation.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees established by this administrative regulation amendment. There are also no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing.

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 and required by KRS 318.130 and KRS 198B.040(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 amendment is not anticipated to generate additional revenue for the state or local government in the first year.

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction
(Amendment)

815 KAR 20:150. Inspection and tests.

RELATES TO: KRS 318.090, 318.130, 318.134, 318.140,
318.160, 318.170

STATUTORY AUTHORITY: KRS 198B.040(10)(4), 318.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky office, after review by the State Plumbing Code, KRS 318.160 requires a person who constructs, installs, or extensively alters any ~~Committee, to promulgate an administrative regulation establishing the Kentucky State plumbing, sewerage, or water supply system of any public building or establishment to obtain approval of the department in writing~~ [Code]. This administrative regulation establishes the requirements for the tests and inspections that are necessary in order to ensure compliance with 815 KAR Chapter 20, the Kentucky State Plumbing Code.

Section 1. Required Inspections and Tests. (1) Required inspections. The department ~~[The office]~~ shall inspect the following to ensure compliance with the ~~[State Plumbing]~~ code:

- (a) The water distribution system;
- (b) The soil, waste, and vent system;
- (c) The fixtures and fixture traps;
- (d) Appurtenances;
- (e) All connections in a plumbing system.

(2) Required tests. Tests shall be made separately or as follows:

- (a) The house sewer and its branches from the property line to the house drain;
- (b) The house drain including its branches;
- (c) ~~The soil, waste, [In buildings condemned by other authorities because of unsanitary conditions of the plumbing system, the alterations shall be considered as a new plumbing system.]~~

Section 2. Material and Labor for Tests. All equipment, material ~~and vent system;~~

- (d) Inside rain water conductors; and

(e) The final inspection and air test which shall include the complete plumbing system as required by Section 4(2) of this administrative regulation, exclusive of the house sewer.

- (3) Rough-in inspection.

(a) ~~The plumbing [labor necessary for inspections and tests shall be furnished by the persons procuring the plumbing construction permits.]~~

Section 3. Systems of Tests. (1) Test for the potable water supply system. The potable water supply system shall not be covered until it has been inspected, tested, and approved.

(b) A rough-in inspection shall be conducted prior to the covering or concealment [be tested and found without leaks under the normal working pressure under which the system will function.]

- (2) Tests for the soil, waste, and vent system.

(a) The soil, waste, and vent system] of the plumbing system.

(c) If any part of a plumbing system is covered or concealed [shall be tested with water or air in accordance with this administrative regulation] before being inspected, tested, and approved, it shall be uncovered, or unconcealed and tested as required.

(4) Condemned buildings. In buildings condemned by other authorities because of unsanitary conditions of the plumbing system, necessary alterations shall be considered a new plumbing system.

(5) Tests of alterations, extensions, or repairs. Any alterations, repairs, or extensions that require more than ten (10) feet of soil, waste, or vent piping shall be inspected and tested as required by Section 4(2) of this administrative regulation.

Section 3. Permit Holder Requirements. The person procuring the plumbing permit shall:

(1) Furnish all equipment, material, [it is concealed or covered within the floors or walls of a building.]

(b) After the plumbing fixtures have been set and their traps filled with water and before the building is occupied, the entire system, other than the house sewer, shall be subjected to a final air pressure test.

(c) It shall be the responsibility of the person who secured the plumbing construction permit to notify the office representative and request a final inspection and air test upon completion of the installation.

(d) If only a portion of the plumbing fixtures are set, an air test shall be requested] and labor necessary for inspections and tests;

(2) Notify the department representative and request a rough-in [given prior to the time a building is occupied. After the plumbing system is finally completed, another] inspection for the plumbing system prior to the plumbing system being concealed or covered within the floors or walls [and test shall be requested and given.]

(e) The office may require the removal of any clean-outs to ascertain whether or not the pressure has reached all parts] of a building; and

(3) Notify a department representative and request a final inspection and air test upon completion of the installation [the system.]

(3) Tests of the house sewer. The house sewer shall be tested with a water, air, or smoke test].

Section 4. Testing of Systems [Methods of Testing]. (1) The water distribution [potable water supply] system, as well as the water service, shall be:

- (a) Tested with air or water under a pressure of not less than the maximum working pressure under which it is to be used; and
- (b) Free from leaks.

(2)(a) Except as provided in subsection (3) of this section, a water test shall be performed:

- 1. On the entire soil, waste, and vent system; or
- 2. In sections.

(b) If it is applied to the entire system, all openings shall be closed, except the highest opening and the system shall be filled with water to the point of overflow.

(c) If the system is tested in sections, each opening shall be tightly plugged, except the highest opening and it shall be tested with not less than a ten (10) foot head of water. In testing successive sections, at least the upper ten (10) feet of the preceding section shall be retested.

(3) In lieu of a water test, an air pressure test may be used by attaching an air compressor or test apparatus to any suitable opening. All other inlets and outlets to the system shall be closed, forcing air into the system until there is a uniform pressure of five (5) pounds per square inch (PSI). The pressure shall be maintained for fifteen (15) minutes.

(4) After the plumbing fixtures have been set and their traps filled with water and before the building is occupied, the [The] final air test shall test the entire soil, waste, and vent system including the fixtures [fixture] and appurtenances, other than a house sewer, by connecting an air machine to any suitable opening or outlet and applying air pressure equivalent to a one (1) inch water column. It shall be maintained for at least a fifteen (15) minute period. If there are no leaks or forcing of trap seals as may be indicated by the functioning of a drum, float, or water column, the system shall be deemed airtight.

(5) A garage drainage system shall be tested in the same manner as the soil, waste, and vent system.

(6) A house sewer shall be tested by a water, air, or smoke test. [After the sewer trench has been filled with at least two (2) feet of earth cover, it shall be retested.] A four (4) inch test tee or Y connection shall be provided at the property line for testing.

(7) The department may require the removal of any clean-outs to ascertain whether or not the pressure has reached all parts of the system

(8) [distance between cleanouts in sewers shall not exceed 150 feet.

(7) A building sewer not drained by gravity shall have a minimum of twenty-four (24) inches of cover and shall be tested with five (5) pounds per square inch for a period of fifteen (15) minutes.

(9) [Section 5. Required Tests. Tests shall be made separately or as follows:

(1) The house sewer and its branches from the property line to the house drain;

(2) The house drain including its branches;
 (3) The soil, waste, and vent system;
 (4) Inside rain water conductors shall be[-] and
 (5) The final inspection and air test which shall include the complete plumbing system as required by Section 4(2) of this administrative regulation, exclusive of the house sewer.

~~Section 6. Tests of Alterations, Extensions, or Repairs. Any alterations, repairs, or extensions that require more than ten (10) feet of soil, waste, or vent piping shall be inspected and] tested with water, air, or smoke test[as required by Section 3(2) of this administrative regulation.~~

~~Section 7. Covering of Work. The plumbing system shall not be covered until it has been inspected, tested, and approved.~~

~~Section 8. Uncovering of Work. If any part of a plumbing system is covered or concealed before being inspected, tested, and approved, it shall be uncovered, or unconcealed and tested as required].~~

Section 5[9]. Defective Work. If an inspection or a test indicates defective work or material, it shall be replaced and the inspection and the test repeated.

Section 6[10]. Testing Defective Plumbing. An air test shall be used in testing the condition of a plumbing system if there is reason to believe it has become defective.

Section 7[11]. Certificate of Approval. The department[inspections and tests not required for exhibition purposes. Tests and inspections] shall issue a[not be required where a plumbing system shall be used for exhibition purposes and is not directly connected to a sewerage system.

~~Section 12. Inspections and Tests for the Replacement of Old Plumbing Fixtures. Inspections and tests shall not be required if:~~

- ~~(1) Old plumbing fixtures are replaced with new fixtures;~~
- ~~(2) Faucets or valves are replaced; or~~
- ~~(3) Leaks are repaired.~~

~~Section 13.] certificate of approval[-] upon the satisfactory completion and final test of the plumbing system[-, a certificate of approval shall be issued by the office].~~

STEVEN A. MILBY, Commissioner
 K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 23, 2019 at Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the tests and inspections that are necessary in order to ensure compliance with 815 KAR Chapter 20, the Kentucky State Plumbing Code.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This administrative regulation is also necessary to establish the plumbing inspection protocols required by KRS 318.160.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures. KRS 318.160 requires a person who constructs, installs, or extensively alters any plumbing, sewerage, or water supply system of any public building or establishment to obtain approval by the department in writing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for the tests and inspections that are necessary in order to ensure compliance with 815 KAR Chapter 20, the Kentucky State Plumbing Code. This administrative regulation establishes the processes required for a plumbing inspection for a person to obtain approval from the department.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects grammatical errors and removes superfluous language. This amendment also clarifies that inside rain water conductors shall be tested with water, air, or smoke tests and removes the requirement to have a house sewer retested after the sewer trench is backfilled. The amendment reorganizes the administrative regulation to make it easier to read and understand.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This amendment is also necessary to aid in clarity and accessibility of the administrative regulation to the public.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment aids the department in regulating plumbing, including the inspection and testing of plumbing systems.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the administrative regulation easier to understand and more accessible to individuals engaged in the plumbing industry and plumbing inspectors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry in Kentucky and Department of Housing, Buildings and Construction personnel.

(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: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities: This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities: It will help the entities in question (3) read and understand the administrative regulation.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established by this administrative regulation amendment. There are also no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized and required by KRS 198B.040(10) and 318.130.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction (Amendment)

815 KAR 20:170. Manufactured home and mobile home community[park] waste systems, water distribution, and connections.

RELATES TO: KRS 318.130, 318.150

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: ~~[The office is directed by]~~ KRS 318.130 ~~requires~~through the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code~~[Committee]~~ to regulate~~[adopt and put into effect a State]~~ plumbing~~[Code]~~. This administrative regulation establishes the requirements for manufactured home and mobile home community[park] waste systems~~[sys—fortems]~~ and connections, water distribution and connections, and specifies the materials and the methods~~[method]~~ that shall be used in installing the necessary plumbing to serve manufactured homes and mobile homes.

Section 1. Sewers. (1) The main and branch sewers for the connections of manufactured homes and mobile homes shall be laid at a uniform grade of no less than one eighth (1/8) of an inch per foot~~[and alignment and]~~ All joints shall be water tight.

(2) Cleanouts~~[Clean-outs]~~ shall be provided at intervals not to exceed 100 feet for main and branch sewers in sizes six (6) inches and smaller.

(3) The cleanouts shall be extended to the grade with cast-iron soil pipe or schedule 40 ABS or schedule 40 PVC piping and shall be provided with a cleanout plug.

(4) A four (4) inch concrete pad, eighteen (18) inches square, shall be provided around each cleanout.

(5) All main and branch sewers eight (8) inches and larger shall not require cleanouts~~[clean-outs]~~ but shall require standard manholes at intervals not to exceed 400 feet as well as in all changes in direction.

(6) Each manufactured home and mobile home shall be provided with a four (4) inch sewer.

(7) A three (3) inch waste connection shall be provided and extended one (1) inch above the grade using a three (3) inch standard female thread.

(8) A four (4) inch concrete pad twenty-four (24) inches square shall be provided around the waste opening.

(9) A three (3) inch screw plug shall be fastened by a chain to the concrete pad which shall be used if the manufactured home or mobile home opening is not in use.

(10) The waste pipe connection between the manufactured home or mobile home and the sewer waste opening shall be a waterproof connection constructed of either cast-iron, schedule 40 steel pipe, copper pipe, or schedule 40 ABS or schedule 40 PVC piping.

(11) All branch sewers receiving waste from more than one (1) manufactured home or mobile home shall be sized as established in the following table:

Number of Manufactured Homes/Mobile Homes	Branch Sewer Size (in inches)
1 to 10	4
11 to 20	5
21 to 50	6
51 to 150	8
151 to 300	10

Section 2. Individual Residential Manufactured Homes and Mobile Home Waste System and Connection. (1) An individual residential manufactured home or mobile home shall either be connected to a municipal sewer system or to an approved private sewage disposal system in accordance with this section.

(2) Each manufactured home and mobile home shall be provided with at least a three (3) inch waste connection to the house sewer.

(3) All piping that does not have at least an eighteen (18) inch cover shall be cast-iron pipe.

(4) Waste connections between the permanent piping and the manufactured home or mobile home waste connection shall be a waterproof connection constructed of either cast-iron, schedule 40 steel pipe, copper pipe, or schedule 40 ABS or PVC piping.

Section 3. Water Distribution and Connections to Manufactured Homes and Mobile Homes. (1) An adequate and safe water supply shall be provided to each manufactured home and mobile home.

(2) All materials, including the pipe and fitting used for a connection, shall conform with the code.

(3) An individual water connection shall be provided at an appropriate location for each manufactured home and mobile home space.

(a) The connection shall consist of a riser terminating at least four (4) inches above the ground with a minimum two (2), three-fourths (3/4) inch valve.

(b) A frost proof hydrant shall be provided and accessible for lawn watering and fire control outlets with screw connection for the following:

1. One (1) valve outlet for the manufactured home or mobile home water system; and

2. One (1) valve outlet for lawn watering and fire control.

(c) The ground surface around the riser pipe shall be graded to divert surface drainage.

(d) The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect against freezing.

(e) An insulated cover shall encase both valve outlets but not prevent connection to the manufactured home or mobile home during freezing weather.

(f) A shutoff valve may be placed below the frost depth on the water service line, but this shutoff valve shall not be a stop-and-waste cock.

(4) The water line shall be the size established by the following table when installing water service for a manufactured home or mobile home community:

Number of Manufactured Homes/Mobile Homes	Water Line Size (in inches)
1 to 2	3/4
3 to 6	1
7 to 12	1 1/4
13 to 20	1 1/2
21 to 50	2
51 to 100	3
101 to 300	4

STEVEN A. MILBY, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019, at 10:00 a.m., EDT, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-

0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for manufactured home and mobile home community waste systems and connections, and specifies the materials and the methods that shall be used in installing the necessary plumbing to serve manufactured homes and mobile homes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements to install water lines and sewers in manufactured home and mobile home communities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures. This administrative regulation establishes the requirements for the installation of water lines and sewers servicing manufactured home and mobile home communities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for the installation and connection of sewer lines and waste lines to individual manufactured homes and mobile homes within a manufactured home or mobile home community.

(2) If 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 grammatical errors and reorganizes the administrative regulation for ease of use. The amendment also incorporates the water distribution and connection language for manufactured home or mobile home communities previously found in 815 KAR 20:120. The amendment adds two (2) new charts showing the size of sewer pipe and water line pipe for manufactured home or mobile home communities.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. Eliminating superfluous language reduces the likelihood of public confusion and simplifies the regulation, without altering the net effect of the regulation. Adding the water distribution language consolidates the specific requirements for manufactured homes and mobile homes into one administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by promulgating an administrative regulation for the connection of sewers and water distribution in manufactured home or mobile home communities in furtherance of the department's requirement to establish the Kentucky State Plumbing Code to regulate plumbing.

(d) How the amendment will assist in the effective administration of the statutes: These amendments make the administrative regulation easier to understand, and locates all the manufactured home or mobile home community information into one administrative regulation for ease of use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry, manufactured home and mobile home communities, and Department of Housing, Buildings and Construction personnel.

(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 comply with this administrative regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will help the entities in question (3) read and understand the administrative regulation.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the Department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment does not establish any new fees. There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and Department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized and required by KRS 198B.040(10) and 318.130.

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.

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction (Amendment)

815 KAR 20:180. Special connections.

RELATES TO: KRS 318.010, 318.130

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130

requires the ~~department[office, after review by the State Plumbing Code Committee,]~~ to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the methods and materials that may be used in Kentucky. This administrative regulation establishes requirements regarding waste, other than sanitary wastes.

Section 1. Laundries. (1) Commercial Laundry Wastes. Waste from commercial and institutional washing machines and extractors shall not discharge into an open trench, unless the trench is:

(a) Constructed of a material resistant to alkaline waste; and

(b) Drained into at least a four (4) inch trap, with a full-size vent.

~~(2)[The trench shall be constructed of a material resistant to alkaline waste.~~

~~Section 2.] Semicommercial Laundries (Automatic).~~

~~(a)[(4)] Waste from semicommercial washing machines[laundries] shall discharge into a four (4) inch waste line for washing machines only.~~

~~(b)[(2)] The waste line shall have a full-size vent and the base of the stack shall be washed by either a washing machine or starch sink.~~

~~(c)[(3)] A four (4) inch trap shall be provided in the waste line to serve not more than two (2) washing machines.~~

~~(d)[(4)] Floor drains may be placed in the waste line if:~~

~~1. The washing machines[~~

~~(5)-If they] are the pump type; and~~

~~2.[.] A stand pipe is placed for each washing machine to at least two (2) inches above the flood level rim of the washing[shall be provided to the height of the] machine.~~

~~(e)[(6)] Each four (4) inch trap shall constitute four (4) fixture units.~~

~~(f) A washing machine shall not discharge into a trench.~~

Section 2[3]. Washing Machines, Automatic, Residential, (1) ~~[(1) New Buildings[.]].~~

~~(a) An automatic washing machine installed in a new building[.] shall:~~

~~1. Have a two (2) inch trap; and~~

~~2.[shall] Be vented in accordance with 815 KAR 20:080.~~

~~(b) The trap shall be installed twelve (12) inches above the floor with a two (2) inch stand pipe extended to at least two (2) inches above the flood level rim of the washing machine.~~

~~(2) Existing[the height of the washer. If a washing machine discharges into a private disposal system, fifty (50) feet additional lateral shall be added to the sewage system.~~

~~Section 4. Washing Machines, Automatic, Residential (Old Buildings[.]].~~

~~(a) An automatic washing machine installed in an existing[old] building[.] shall be connected to the house sewer by[the use of] a four (4) inch[cast-iron] P-trap. The trap shall:~~

~~1. Be[.] placed on the outside of the building on the opposite side of the wall of the washing machine;~~

~~2.[The trap shall] Have a vented cover extending three (3) inches above the grade line; and~~

~~3. Have[.] a four (4) inch by two (2) inch tee[shall be] installed in the inlet side of the trap with a two (2) inch waste pipe extending into the building through the floor to the height of the washing~~

machine.

(b) All waste piping shall conform with 815 KAR 20:080.

Section 3[5]. Air Conditioning Equipment. (1) Air conditioning equipment installed with a water supply and waste shall conform with 815 KAR 20:090, Sections 28[29] and 31.

(2)(a)[32.] Evaporative cooler, air washer, air handling, or similar air conditioning equipment shall not have any drain pipe directly connected to any soil, waste, or vent pipe. The evaporative cooler, air washer, air handling, or similar air conditioning equipment shall be drained by means of indirect waste pipe.

(b) The indirect waste shall discharge through an air gap or air break into an open floor sink, floor drain, or other approved type receptor which is properly connected to the drainage system, except that an air gap shall be required if the indirect waste pipe may be under vacuum.

(3)[(2)] The condensate or waste pipe from an air conditioning unit shall be classified as a plumbing fixture only if directly connected to the plumbing system.

Section 4[6]. Garage Sand Trap. A garage sand trap shall:

(1) Be constructed of concrete with a heavy cover or grate;

(2) Be at least ~~The minimum size shall be~~ two (2) feet by four (4) feet;

(3)~~and it shall~~ Have sufficient depth so that there is at least a ten (10) inch vertical distance between the bottom of the outlet ell and the bottom of the trap; ~~and~~

(4) Installed~~Sand traps shall be provided~~ with a four (4) inch vent.

Section 5[7]. Inflammable Waste. (1) Liquid waste from buildings using gasoline, benzene, naphtha, or other inflammable oils or compounds shall discharge into a separator before it enters a sanitary sewer.

(2) The waste line receiving the waste shall be trapped and vented as established in~~in accordance with~~ 815 KAR 20:080 and 20:090.

(3) The separator shall be installed~~provided~~ with a three (3) inch vent.

Section 6[8]. Hot Water, Steam Blowoffs or Exhaust. Before entering the house drain or sewer, hot water or steam or exhaust blowoffs shall discharge into a tank or basin with~~before entering the house drain or sewer. The tank or basin shall have~~ an airtight cover and~~be provided with~~ a four (4) inch vent independent of any other venting system.

Section 7[9]. Stable Manure Pits. Before entering the house sewer, all liquid waste from barns, stable manure pits, and stable yard drains shall discharge through a separator ~~before entering the house sewer~~.

Section 8[40]. Pedicure Chairs. (1) A two (2) inch open receptacle may receive the discharge from up to two (2) pedicure chairs. Three (3) to six (6) chairs shall have a minimum of a three (3) inch open receptacle.

(2) A branched tail piece discharge for a pump-type pedicure chair may be used in an existing location only after approval of the division~~of Plumbing~~.

(3) If the water inlet for a pedicure chair is below the flood level rim or is equipped with a spray hose, it will be treated as a high hazard and require a reduced pressure principle backflow preventer on both the hot and cold supply.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 23, 2019 at Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this

agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David R. Startzman, General Counsel
101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412,
Phone (502) 573-0365, Fax (502) 573-1057, Email
david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements regarding waste, other than sanitary wastes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements regarding waste, other than sanitary wastes.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects grammatical errors, removes superfluous language, and reorganizes the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This amendment is also necessary to aid in clarity and accessibility of the administrative regulation to the public.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment aids the Department in regulating plumbing, including specifically waste, other than sanitary waste.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the administrative regulation easier to understand and more accessible to both individuals engaged in the plumbing industry and plumbing inspectors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry and Department of Housing, Buildings and Construction personnel.

(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: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities: It will help the entities in question (3) read and understand the administrative regulation.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established by this administrative regulation amendment. There are also no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized and required by KRS 198B.040(10) and KRS 318.130.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

PUBLIC PROTECTION CABINET Department of Housing, Buildings and Construction (Amendment)

815 KAR 20:195. Medical gas piping installations.

RELATES TO: KRS 198B.050, 318.010, 318.134

STATUTORY AUTHORITY: KRS 198B.040(10)[198B.050(2), (5)], 318.130, 318.134(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto.[KRS 318.130 ~~authorizes the department to promulgate a reasonable rule or administrative regulation to administer the provisions of KRS Chapter 318.~~] This administrative regulation establishes the requirements for medical gas piping installation.

Section 1.[Definitions. (1) "Health care facility" means a hospital, nursing home, limited care facility, clinic, ambulatory care center, or office practice medical or dental office as defined in NFPA 99C.

(2) "Medical gas piping" means a permanent fixed piping system in a health care facility that is used to convey oxygen, nitrous oxide, nitrogen, carbon dioxide, helium, medical air, and mixtures of these gases from its source to the point of use. Medical gas piping includes the fixed piping associated with a medical, surgical, or gas scavenging vacuum system, as well as a bedside suction system.

(3) "NFPA" means the National Fire Protection Association.

—Section 2.] Standards and Procedures. (1) Installation standards. ~~All~~[Except as established in paragraphs (a) and (b) of this subsection, a] new medical gas piping installation or an addition to an existing medical gas piping system shall comply with the applicable provisions of NFPA 99 Health Care Facilities Code, 2012 Edition[99C, Standard on Gas and Vacuum Systems, 2002 Edition.

(a) Section 5.1.10.6.6, Branch Takeoffs, shall not be adopted nor enforced within the commonwealth.

(b) Axially swaged, elastic strain preload fittings providing metal to metal seal having a temperature rating not less than 538 degrees Celsius (1,000 degrees Fahrenheit) and a pressure rating not less than 2,070 kPa (300 psi), and that, at completion, are permanent and nonseparable, shall be permitted to be used to join copper or stainless steel tube. The axially swaged, elastic strain preload fittings shall not be installed within six (6) inches of a brazed joint, and a brazed joint shall not be installed within six (6) inches of an existing axially swaged, elastic strain preload fitting].

(2) Permit required. A licensed master plumber shall apply[make application] for a permit to install medical gas piping prior to the installation. To obtain the permit, the master plumber shall:

(a) Pay a fee of forty-five (45) dollars base permit for the medical gas system for each building;

(b) Pay a fee of fifteen (15) dollars per opening; and

(c) Identify the person who shall perform the installation.

(3) The person installing the medical gas piping[making the installation] shall be:

1. A certified medical gas installer as required by NFPA 99; and

2.[99C as well as] A licensed master plumber or journeyman plumber.

(4)[(3)] Supervision by a[the] master plumber. It shall be the responsibility of the licensed master plumber to ensure that the person doing the installation:

- (a) Is properly certified as required by NFPA 99[99C];
- (b) Uses the proper products and stores them correctly; and
- (c) ~~Request and receive~~[Requests and receives] all inspections at the initial pressure test for the complete system from a ~~qualified~~[certified-state] plumbing inspector.
- (5)[(4)] Final approval. Upon completion of the installation, the master plumber shall furnish the division [ef—Plumbing] with certification from the medical gas system verifier as required by NFPA 99[99C].

Section 3. Incorporation by Reference. (1) "NFPA 99 Health Care Facilities Code, 2012[99C Standard on Gas and Vacuum Systems", 2002] Edition, National Fire Protection Association, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 500 Mero St.[101 Sea Hero Road, Suite 100], Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) A copy may also be obtained by contacting the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 23, 2019 at Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601, Phone (502) 573-0365, Fax (502) 573-1057, Email david.startzman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for medical gas piping installation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.134(3) requires the department to establish a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation establishes the requirements for medical gas piping installation.

(2) If 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 grammatical errors, removes superfluous language, and adopts the 2012 edition of NFPA 99.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This amendment is also necessary to aid in clarity and accessibility of the administrative regulation to the public and to update the adopted NFPA 99 to the 2012 edition.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing the requirements for medical gas installation through administrative regulation in furtherance of the department's requirement to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing.

(d) How the amendment will assist in the effective administration of the statutes: This amendment adopts the 2012 edition of the NFPA 99, synchronizing the Kentucky Plumbing Code with the medical gas installation requirements for licensed medical facilities. This amendment also makes the administrative regulation easier to understand and more accessible to individuals engaged in the plumbing industry and plumbing inspectors.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry, installers of medical gas piping, and Department of Housing, Buildings and Construction personnel.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The identified entities must comply with the adopted 2012 NFPA 99.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The regulated entities may incur a cost increase in expenses for obtaining new codebooks.

(c) As a result of compliance, what benefits will accrue to the entities: It will help the entities in question (3) read and understand the administrative regulation, and matches the medical gas piping installation requirements with the requirements of licensed medical facilities.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not establish any new fees. There are no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry, medical gas piping installers, and Department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized and required by KRS 198B.040(10) and KRS 318.130.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(Amendment)

900 KAR 2:050. Transfer and discharge rights.

RELATES TO: KRS 216.510(2), 216.525, 216.555, 216.557, 216.560, 216B.015(13), 42 U.S.C. 1395, 1396, 42 C.F.R. 483.15, 483.204

STATUTORY AUTHORITY: KRS 216.515(4), 42 C.F.R. 483.204

NECESSITY, FUNCTION, AND CONFORMITY: 42 C.F.R. 483.204 requires that the state shall provide a process for appeals related to involuntary transfer and discharge. This administrative regulation establishes guidelines for this process for long-term care facilities, including long-term care facilities certified in accordance with 42 C.F.R. Part 483. This administrative regulation also establishes the requirements for reasonable notice of involuntary transfer or discharge pursuant to KRS 216.515(4) and appeal rights~~[of the Kentucky Nursing Home Reform Act, KRS Chapter 216, as it relates to residents' transfer and discharge rights]~~.

Section 1. Definitions. (1) "Discharge" or "transfer" means:

(a) Relocation of a resident from a long-term care facility to a noninstitutional setting or another health~~[care]~~ facility as defined by

KRS 216B.015(13)~~[Chapter 216B]~~; or

(b) Any intrafacility relocation of a resident, except between beds within the same distinct Medicare or Medicaid certified or noncertified part of the facility.

(2) "Facility" means a long-term care facility as defined by KRS 216.510(1), except for family care homes licensed pursuant to 902 KAR 20:041.

(3) "Resident" ~~is defined by KRS 216.510(2)~~~~[means a resident of a facility or any legal representative or individual acting on behalf of the resident]~~.

(4) "Transfer or discharge rights" means those rights of notification and appeal guaranteed in KRS 216.515(4) and (26), and as outlined in this administrative regulation.

Section 2. Transfer and Discharge Rights. (1) Transfer and discharge requirements. The facility shall permit each resident to remain in the facility, and shall not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(c) The safety of individuals in the facility is endangered;

(d) The health of individuals in the facility would otherwise be endangered;

(e) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid, or state supplementation) a stay at the facility; or

(f) The facility ceases to operate.

(2) Documentation. Before a facility transfers or discharges a resident under any of the circumstances specified in subsection (1)(a) through (e) of this section, the reasons for the transfer or discharge shall be documented in the resident's clinical record. The documentation shall be made by:

(a) The resident's physician if transfer or discharge is necessary under subsection (1)(a) or (b) of this section; and

(b) A physician if transfer or discharge is necessary under subsection (1)(d) of this section.

(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:

(a) Notify the resident and the responsible party, responsible~~[if known, a family member, or guardian]~~~~[or legal representative of the resident]~~, in writing, of the transfer or discharge and the reasons for the relocation in a language and manner they understand;

(b) Record the reasons in the resident's clinical record; and

(c) Include in the notice the items described in subsection (5) of this section.

(4) Timing of the notice.

(a) Except as specified in paragraph (b) of this subsection, the notice of transfer or discharge required under subsection (3) of this section shall be made by the facility at least thirty (30) days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge if:

1. An immediate transfer or discharge is required by the resident's urgent medical needs, under subsection (1)(a) of this section;

2. The resident's health improves sufficiently to allow a more immediate transfer or discharge, under subsection (1)(b) of this section;

3. The safety of individuals in the facility would be endangered, under subsection (1)(c) of this section;

4. The health of individuals in the facility would be endangered, under subsection (1)(d) of this section; or

5. The resident has not resided in the facility for thirty (30) days.

(5) Contents of the notice. The written notice specified in subsection (3) of this section shall include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) A statement that the resident, responsible party, responsible family member, or guardian has the right to appeal the action to the cabinet;

(e) The name, address (mailing and email), and telephone number of the cabinet office responsible for receiving requests for appeal;

(f) Information on how to obtain assistance with submitting a request for appeal;

(g) The name, address (mailing and email), and telephone number of the state long-term care ombudsman; and

(h) ~~(f)~~ For a nursing facility resident[residents] with a developmental disability[disabilities], or mental illness[who are mentally ill], the mailing and email address and telephone number of Kentucky Protection and Advocacy.

(6) Orientation for transfer or discharge. A facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) Notice of bed-hold policy and readmission.

(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident, responsible party, responsible [and a] family member, or legal guardian[representative] that specifies the following:

1. The duration of the bed-hold policy, which shall be requested if available under the Medicaid state plan and provider agreement, during which a resident who receives Medicaid or has a pending application for Medicaid benefits is permitted to return and resume residence in the facility;

2. The facility's policies regarding bed-hold periods, which shall be consistent with paragraph (c) of this subsection, permitting a resident to return; and

3. For a resident[residents] who does[de] not receive or does[de] not have an application pending for Medicaid, the facility's established policy governing readmission.

(b) Notice upon transfer. Upon transfer of a resident to a hospital or for therapeutic leave, a long-term care facility shall provide written notice to the resident, responsible party, responsible [and a] family member, or legal guardian. The notice shall specify [representative, which specifies] the duration of the bed-hold policy described in paragraph (a) of this subsection.

(c) Permitting resident to return to facility. A long-term care facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the Medicaid state plan, is notified and readmitted to the facility immediately upon the first availability of a bed in a semiprivate room if the resident:

1. Chooses to be readmitted;

2. Requires the services provided by the facility; and

3. Is eligible for Medicaid nursing facility services and the facility is certified to participate in Title XVIII, 42 U.S.C. 1395, or Title XIX, 42 U.S.C. 1396, of the Social Security Act.

(8) Equal access to quality care. A facility shall establish and maintain identical policies and practices regarding transfer, discharge, and the provision of service under the Medicaid state plan for all individuals regardless of source of payment.

Section 3. Appeal[Appeals] Rights. (1) A resident, responsible party, responsible family member, or guardian may appeal any discharge.

(2) A resident, responsible party, responsible family member, or guardian may appeal a transfer if the resident[he or she] is transferred from:

(a) A certified bed into a noncertified bed; or

(b) A bed in a certified entity to a bed in an entity that[which] is certified as a different provider.

(3) A resident, responsible party, responsible family member, or guardian has no appeal rights if the resident[he or she] is moved from a certified bed into another certified bed of the same certification in the same facility.

(4) A resident, responsible party, responsible family member, or guardian[or any person acting on behalf of the resident,] may request that the cabinet review any proposed transfer or discharge. The cabinet shall investigate the proposed transfer or discharge to

ascertain whether there has been a violation of the resident's transfer or discharge rights.

(5)(a) A resident, responsible party, responsible family member, or guardian may appeal any discharge or appealable transfer to the cabinet.

(b) The resident, responsible party, responsible family member, or guardian shall inform the cabinet in writing of his or her intent to appeal within fifteen (15) days from ~~the resident's~~ receipt of notice of the facility's intent to transfer or discharge and include:

1. A copy of the notice of the facility's intent to transfer or discharge the resident; and

2. If not included on the notice, the name and address of the facility.

(c) Hearing procedures for appeals shall be followed, as established in 900 KAR 2:060.

(6) Penalties. The cabinet shall enforce the provision of this administrative regulation pursuant to KRS 216.555, 216.557, and 216.560.

STEVEN D. DAVIS, Inspector General

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In accordance with KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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, Phone (502) 564-2888, Email: stephanie.brammer@ky.gov., and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements related to the transfer and discharge of residents in long-term care facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements related to the transfer and discharge of residents in long-term care facilities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216.515(4), which identifies the circumstances under which a resident may be transferred or discharged, and requires the facility to provide reasonable notice of such action to the resident and the responsible party, responsible family member, or resident's guardian.

(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 transfer and discharge requirements for residents in long-term care facilities.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation currently defines the term "resident" as "a resident of a facility or any legal representative or individual acting on behalf of the resident". However, KRS 216.510(2) defines the term "resident" as "any person who is admitted to a long-term-care facility as defined in KRS 216.515 to 216.530 for the purpose of receiving personal care and assistance". KRS 13A.222(4)(d) prohibits a term that is defined in state law from being defined differently in administrative regulation where it states the following:

Certain words are defined in the Kentucky Revised Statutes. Where applicable, these definitions shall be used. Definitions appearing in the Kentucky Revised Statutes shall not be duplicated in a proposed administrative regulation. A reference shall be made to the chapters and sections of the Kentucky Revised Statutes in which the definitions appear. The format for this reference shall be: ("Defined term") is defined by KRS (specific citation)."

Therefore, this amendment replaces the current definition of "resident" in Section 1(3) with a cross-reference to KRS 216.510(2). Moreover, this amendment updates the language of Section 2(3)(a) to align with the notice requirements of KRS 216.515(4). This amendment also clarifies that a resident's responsible party, responsible family member, or guardian may appeal a facility's notice of transfer or discharge on behalf of the resident, and makes general housekeeping changes as well as technical changes to comply with the drafting requirements of KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to comply with the drafting rules of KRS 13A.222(4)(d) and align Section 2(3)(a) with KRS 216.515(4).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216.515(4), which includes a requirement for reasonable notice of transfer or discharge to be given to the resident and the responsible party, responsible family member, or resident's guardian.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing the transfer and discharge requirements for residents in long-term care facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 316 long-term care facilities in Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional action is required by long-term care facilities as this amendment is needed to comply with the drafting rules of KRS 13A.222(4)(d) and align Section 2(3)(a) with KRS 216.515(4).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Long-term care facilities will not incur any additional expense.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation protects the rights of residents in long-term care facilities.

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

(a) Initially: This amendment imposes no additional costs on the administrative body.

(b) On a continuing basis: This amendment imposes no additional costs on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The source of funding used for the implementation and enforcement of this administrative regulation is from state general funds, agency monies, and federal monies pursuant to the cabinet's contractual agreement with the Department for Health and Human Services that designates the Office of Inspector General as the State Survey Agency, charged with responsibility for monitoring Federally certified nursing facilities for compliance with the requirements for participation in the Medicare and/or Medicaid Programs.

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

(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 applicable as compliance with this administrative regulation applies equally to all entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and long-term care facilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.515(4)

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

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

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

(c) How much will it cost to administer this program for the first year? This amendment imposes no additional costs on the administrative body.

(d) How much will it cost to administer this program for subsequent years? This amendment imposes no additional costs on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. 483.15, Admission, transfer, and discharge rights.

(2) State compliance standards. KRS 216.515(4) establishes transfer and discharge requirements for residents of long-term care facilities, including a requirement for reasonable notice of transfer or discharge to be given to the resident and the responsible party, responsible family member, or resident's guardian.

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. 483.15 establishes the admission, transfer, and discharge rights of residents in long-term care facilities certified in accordance with 42 C.F.R. Part 483.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:040. Definitions for 902 KAR Chapter 8.

RELATES TO: KRS 211.015, 211.170(1), (2), 211.1751, 212.170(4), 212.870, Chapter 337, 29 U.S.C. 207[206], 29 C.F.R. Part 541

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

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. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes definitions for the terms used in 902 KAR Chapter 8.

Section 1. Definitions. (1) "Above minimum salary" means [due to recruitment difficulties the local health department has requested and been given] approval by the department for a minimum salary upon appointment for a specific classification which is higher than the minimum salary established by the Compensation plan or given for additional years of experience above what is required to qualify for the classification.

(2) "Agency" is defined by KRS 211.1751(1).

(3) "Annual Increment" means a yearly salary increase for performance based on annual evaluation as approved by the Board of Health not to exceed five (5) percent of the employee's current salary["Allocate" means assigning a position to an appropriate class on the basis of similarity of work and level of responsibility performed in the position].

(4) "Appeal" means the right [, under 902 KAR 8:140,] to appear before [the Local Health Department Employment Personnel Council or] a hearing officer appointed by the department and be heard on matters of discrimination or disciplinary actions [, provided for under 902 KAR 8:060 through 902 KAR 8:140].

(5) "Appointing authority" means the board of health or public health department director[other individual] authorized under KRS Chapter 212 to make appointments.

(6) ["Available" means an individual on a register for a class of positions willing to accept appointment in specified areas to a particular position of that class.

(7) "Cabinet" is defined by KRS 211.015(1)(a).

(7)[means the Cabinet for Health and Family Services.

(8) "Certification of eligible applicants[eligibles]" means a list of individuals[eligible applicants] issued by the Department for Public Health to the [appointing authority of an] agency certifying that the individuals listed meet the established minimum qualifications of the position, passed the required examination, if any, and may be considered for employment.

(8)[(9)] "Class" means a group of positions similar as to the duties performed; degree of supervision exercised or required; minimum requirements of training, experience, or skill; and other relevant characteristics.

(9)[(40)] "Classified service" means employment subject to 902 KAR 8:060 through 902 KAR 8:130[902 KAR 8:140] except for:

(a)[A health officer or a health department director employed under the provisions of 902 KAR 8:140;

(b) An employee appointed on a provisional[seasonal], temporary, or emergency basis as described in 902 KAR 8:080;

(b)[(e)] An employee appointed as a janitor; or

(c)[(d)] An employee appointed under 902 KAR 8:080 to work a variable[an irregular] schedule as needed by an agency and whose hours of actual work do not exceed 800 hours per year.

(10)[(44)] "Classification plan" is defined by KRS 211.1751(2).

(11)[(12)] "~~Closed Advertisement~~" means ~~the local health department recruits for a position by accepting applications only in response to a designated advertisement having a specified date.~~

(13)] "Compensation plan" is defined by KRS 211.1751(3).

(12)[(44)] "Compensatory time" means the accumulation of leave time for time worked on an hour-for-hour basis in excess of thirty-seven and one-half (37.5) hours per week subject to KRS Chapter 337 and the Fair Labor Standards Act, 29 U.S.C. 207[206].

(13)[(45)] "Continuous open recruitment" means the local health department accepts applications at any time for a designated classification.

(14)[(46)] "Council" is defined by KRS 211.1751(4).

(15)[(47)] "Demotion" means a change of an employee from a position in one (1) class to a position in another class having a lower entrance salary and less discretion or responsibility.

(16)[(48)] "Department" is defined by KRS 211.1751(5).

(17)[(49)] "Detail to special duty" means the assignment of an employee to a position for not more than twenty-six (26) pay periods to fulfill the responsibilities of an employee on leave or the assumption of additional job duties which are temporary.

(18)[(20)] "~~Disabled veteran~~" means ~~a veteran who has established by official records of the United States government the present existence of a service connected disability.~~

(24)] "Discrimination" means any administrative decision that violates KRS 344.040.

(19)[based on a person's race, sex, age, religion, national origin, color, or disability, except if the decision is supported by a valid occupational qualification.

(22)] "Discipline" means a practice to correct behavior or performance that is below acceptable standards.

(20)[any effort to positively instruct or punish an employee concerning inappropriate conduct and behavior or unsatisfactory job performance requiring redirection.

(23)] "Eligible" means an individual whose name appears on a register for a particular class.

(21)[(24)] "Eligible list" means a list of names of persons who have been found qualified for positions or classes of positions.

(25)] "Emergency appointment" means the appointment of a person to a position, for a period not to exceed seven (7) pay periods, if an emergency makes it impractical or impossible to fill the position through standard appointment procedures.

(22)[(26)] "Excessive absenteeism" means absences from the employee's work station or assigned place of work that cause the irregular attendance with or without approval of the agency; including:

(a) Tardiness;

(b) Leaving early;

(c) Abuse in the use of sick leave;

(d) Excessive unexcused absence that causes repetitive disruption of job performance and responsibilities of the employees and the agency;

(e) Abuse in the use of annual leave;

(f) Violating agency break policy; or

(g) Violation of agency lunch policy.

(23)[Absences may include tardiness, leaving early, abuse in the use of sick leave, excessive unexcused absence that causes repetitive disruption of job performance and responsibilities of the employees and the agency, abuse in the use of annual leave, violating agency break policy, or violation of agency lunch policy

(27)] "Exempt" means an employee in an executive, administrative, or professional position who receives an exemption from the minimum wage and overtime pay requirements under the Fair Labor Standards Act, 29 C.F.R. Part 541, based upon salary level, salary basis, and job duties.

(24)[(28)] "Flagrant violation" means:

(a) A breach of:
 1. State law;
 2. An agency rule; or
 3. An agency policy;
 (b) Failure of an employee to follow a directive which constitutes a clear, present, threat or danger to the life, safety, health, or welfare of:
 1. A patient;
 2. Another employee;
 3. The general public; or
 4. The subject employee; or
 (c) Activity or behavior by an employee that seriously disrupts the normal course of business in the agency.
 (29) "Full-time employee" means an employee who works at least thirty-seven and one-half (37.5) hours in a work week and is compensated on a salary basis for a standard biweekly pay period.
 (25) [(30)] "In-Range adjustment" means an increase in an employee's salary because the employee's position duties and responsibilities have changed, but not to the extent that would warrant a reclassification.
 (26) [(31)] "Initial probationary period" means a minimum [the] period of six (6) months that an employee is required to serve prior to becoming a regular employee in an agency.
 (27) [(32)] "Initial salary adjustment" means an adjustment in an employee's salary upon appointment above the classification-grade minimum to reflect additional education or experience the person has which is above the minimum requirements set for that classification.
 (33) "Irregular hours" means the employee:
 (a) Works variable hours and does not follow a regular schedule for work; and
 (b) Is paid per service or paid an hourly rate salary.
 (34) "Insubordination" means the refusal or the ignoring of a request to perform a task or to comply with an order given to the employee by a supervisor under circumstances where:
 (a) The employee understands the order or request; and
 (b) Refusal to perform is not justified by a reasonable safety concern.
 (28) [(35)] "Job description" means a written description for each classification which establishes the:
 (a) Title of the class;
 (b) Duties and responsibilities of the work;
 (c) Minimum requirements for the job; and
 (d) Special requirements for the job, including physical standards necessary to perform the work.
 (36) "Local health department" means an agency subject to 902 KAR 8:040 through 902 KAR 8:140.
 (29) [(37)] "Lump sum merit payment" means a single [lump sum] payment made to an employee based on that employee's outstanding job performance.
 (30) "Midpoint" [(38)] "Material and permanent duties" means a substantial and noticeable difference in status or duties which will be ongoing, without time limitations, and is not expected to change.
 (39) "Mid-point" means the salary is equidistant between the minimum and maximum rates of salary compensation set for a classification.
 (31) [(40)] "Minimum qualifications" means a comprehensive statement which establishes the minimum background required as to education and experience.
 (32) [(41)] "Minimum salary" means the lowest rate of pay in the salary range for a class of positions.
 (33) "Nonexempt" [(42)] "Non-exempt" means the employee is required to receive minimum wage and overtime pay benefits under the Fair Labor Standards Act, [(29 C.F.R. Part 541.]
 (34) [—] [(43)] "Partial year appointment" means the employment [appointment] of a person to a position that shall contain regularly-scheduled hours, with a break [for a period] of time not to exceed seven (7) pay periods per year, during which the incumbent remains an employee but is not at work.
 (35) [(44)] "Part-time employee" means an employee who works an average of less than 100 hours per month.
 (36) [is compensated on a biweekly basis for hours worked and whose hours worked average less than 100 hours of work per

month.

(45) "Part-time 100 hour employee" means an employee who works an [is compensated on a biweekly basis for hours worked and whose hours worked] average of 100 hours per month or more.

(37) [(46)] "Pay status" means a period of time for which an employee receives pay for:

- (a) Time worked;
- (b) A holiday; or
- (c) Approved accumulated leave of absence, including:
 - 1. Sick leave;
 - 2. Extended sick leave;
 - 3. Vacation, using annual or compensatory leave;
 - 4. Military leave; or
 - 5. Another type of paid leave provided by 902 KAR 8:120.

(38) [(47)] "Performance evaluation" means a method of appraising [evaluating] each employee on the employee's capability of performing the duties and responsibilities of the job.

(39) [(48)] "Position description" means a written narrative [description] of responsibilities and duties for an individual employee that:

- (a) The employee is expected to assume for a particular position; and
- (b) Is in line with the job description for the designated classification.

(40) [(49)] "Probationary employee" means an employee serving the required initial probationary period following appointment.

(41) [(50)] "Promotional probationary period" means a period during which an employee is required to demonstrate knowledge of skill in [fitness for] the duties to which the employee has been promoted by actual performance of the duties of the position.

(42) "Reallocated" [(51)] "Reallocation" means the placement of an employee in one position to a newly established class, or to another class due to the employee's current class having been abolished.

(43) "Re-employ" means an employee who was laid off and has been recalled for employment to the same or another position based on needs of the agency. Re-employment rights last for one (1) year.

(44) [(52)] "Reclassification with probation" means the reclassification of an employee who:

- (a) Is reclassified to a supervisory position or to a different classification within the same grade;
- (b) Will serve a six (6) month probationary period; and
- (c) Will receive a three (3) percent salary increase upon successful completion of the probationary period.

(53) "Reemployment list" means a list of persons who may be appointed to a class of positions without further certification or examination due to their prior career status in the classification or related classification.

(54) "Register" means an officially promulgated list of eligible applicants for a job classification.

(45) [(55)] "Regular status employee" means an employee who has successfully completed a required initial probationary period upon appointment, and any extension, and is subject to 902 KAR Chapter 8.

(46) [(56)] "Reinstatement" means to return a former employee to a position which the employee held in previous employment.

(47) [(57)] "Revert" means to return an employee to a previously held position.

(48) [(58)] "Salary range" means the rate and range of pay established for a classification [class] of positions.

(49) "Variable hour position" means the employee:

- (a) Works irregular hours and does not follow a regular schedule for work; and
- (b) Is paid per service or paid an hourly rate salary.

ANGELA T. DEARINGER, M.D., MPH, Deputy Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov., or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation lists the definitions for terms used in 902 KAR Chapter 8.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755 authorizes the cabinet to administer a personnel program for local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation defines the terms related to employment through a local health department.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all interested parties have knowledge of the terms related to employment through a local health department.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies some definitions and removes terms not used in the other administrative regulations within 902 KAR Chapter 8.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure local health department employees are aware of the most current terms for personnel matters and to comply with the drafting requirements of KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755(2) authorizes the cabinet to establish personnel policies and procedures through the promulgation of administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure all affected entities are familiar with terms used throughout the administrative regulations in 902 KAR Chapter 8 related to local health department personnel matters.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts fifty-eight (58) local health departments and approximately 2,300 employees. The Lexington-Fayette County, Louisville Metro Public Health and Wellness, and Northern Kentucky District health

departments are exempt from this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require any action for compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This amendment has no impact on cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health department personnel throughout the state will be aware of the terms used in the applicable administrative regulations.

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

(a) Initially: This is an ongoing program and there will be no initial costs to the administrative body.

(b) On a continuing basis: This is an ongoing program and there will be no increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this amendment affects all regulated entities 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? Local health departments, district health departments, and Local Health Personnel Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.170-1755.

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

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

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

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. The Fair Labor Standards Act, 29 U.S.C. 207 and 29 C.F.R. Part 541.

(2) State compliance standards. The cabinet is to administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal and other incidents of employment for county, city-county, and district agencies.

(3) Minimum or uniform standards contained in the federal mandate. The Fair Labor Standards Act, 29 U.S.C. 207, requires that an employee that works longer than forty (40) hours in a workweek shall receive compensation for his or her work in excess of forty (40) hours at a rate not less than one and one-half (1 1/2) times the regular rate as which he or she is employed. The federal code, 29 C.F.R. Part 541, provides an exemption from the Fair Labor Standards Act's minimum wage and overtime requirements for executive, professional, and administrative employees who meet the salary and duty requirements as described in 29 C.F.R. 541.3.

(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 requirements, or additional or different responsibilities or requirements than those required under the Fair Labor Standards Act.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:060. Salary adjustments for local health departments.

RELATES TO: KRS 211.170(1), (2), 211.1751, 211.1752, 211.1755, 212.170, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

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. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation ~~establishes~~sets forth the policies and procedures regarding salary adjustments for local health departments.

Section 1. Salary Upon Appointment. (1) The entrance salary of an employee entering employment shall be at the minimum of the range established for the class to which the employee is appointed, unless otherwise approved by the department, based on the criteria established in subsections (2) and (3) of this section.

(2)(a) Prior to the start date of a new employee, and upon approval by the department, a new minimum entrance salary may be established by an agency~~[with the approval of the department]~~, if it is determined that it is not possible to recruit qualified employees for a class of positions at the established entrance salary~~[to attract qualified applicants. This shall be approved by the agency and the department before the start date of employment]~~.

(b) If an appointment is made at the newly-established minimum entrance salary, employees of the agency in the same class paid at a lower salary shall have their salaries adjusted to the newly~~[-]~~ established minimum entrance salary.

(c)1. If a new minimum entrance salary is established by an agency for a specified class, in addition to the adjustment required by subsection (3) of this section, based on documented recruitment needs, or a new entrance salary is established by a compensation plan change, the department may approve a salary adjustment for

employees in the same class.

2. The adjustment shall be a fixed amount provided to each employee in the classification and shall not exceed the amount of increase applied to the newly established minimum.

3. In fixing salaries for this adjustment, an appointing authority shall afford equitable treatment to all employees affected by the adjustment.

(3)(a) An appointment of an applicant who meets the minimum requirements for a position may be above minimum~~[made at a higher entrance] salary~~~~[than the established minimum]~~, within the salary range applicable to the class, if:

1. The newly-appointed employee has previous, relevant experience above the minimum requirements of the job;

2. It is necessary to attract qualified applicants; and

3. The newly~~[-]~~ appointed employee's hire rate does not exceed the salary of a present employee in the same classification with the comparable years of relevant experience, education, and training.

(b) If the individual possesses qualifications in training and experience in addition to the minimum requirements for the class, the newly~~[-]~~appointed employee may receive a two (2) percent salary adjustment, not to exceed the midpoint, for each year of appropriate experience and education or training in excess of the minimum requirements for the respective classification.

(c) An employee possessing the same qualifications, in the same class of positions, in the same agency, and who is paid below the entrance salary level as adjusted for the newly~~[-]~~ appointed employee, shall have his or her salary adjusted to the approved entrance salary level.

Section 2. Initial Probationary Salary Adjustment (1) The appointing authority shall grant an employee a five (5) percent increase in salary upon successful completion of the required initial employment probationary period as specified in 902 KAR 8:080 Section 9(2)~~[of thirteen (13) pay periods]~~. The salary adjustment shall take effect the first pay period following completion of the probationary period.

(2) Except as provided for in 902 KAR 8:080, Section 3~~(2)(a)~~~~[(3)]~~, an employee shall not be given an original probationary increment more than once for successful completion of the probationary period in the same classification.

Section 3. In-Range Salary Adjustment. (1) An appointing authority may request a salary adjustment not to exceed five (5) percent if an employee is assigned permanent job duties and responsibilities which are more complex and difficult than current job duties and grade level, but are less than those indicated through a reclassification.

(2) Only one (1) in-range salary adjustment shall be allowed for an employee per classification.

(3) The appointing authority may request to remove the in-range salary adjustment if the in-range duties are removed. The salary shall revert to the previous amount prior to the in-range adjustment.

Section 4. ~~[Salary Adjustment Due to a Position]~~ Reclassification. (1) A position shall be reclassified if the duties and responsibilities of a position have materially changed.

(2) An agency, based on an evaluation of a position, may request a reclassification to a different position:

(a) Within the same classification series that has more complex nonsupervisory job duties and responsibilities and has a higher grade level;

(b) That has supervisory responsibilities and a higher grade level; or

(c) In a different classification series that has the same or higher grade level.

(3) A regular status~~[An]~~ employee~~[that occupies the position]~~ to be reclassified shall:

(a) Meet the minimum requirements of the new classification;

(b) Have not~~[have]~~ previously performed the primary~~[job]~~ duties of the new classification; and

(c) Serve a probationary period of thirteen (13) pay periods if

the reclassification is to a supervisory position or a different classification series within the same grade. If the employee has performed satisfactorily, as determined by the employee's supervisor, the employee shall receive a three (3) percent salary increase at the end of the probationary period.

(4) An employee that is reclassified with or without probation to a position having a higher pay grade shall receive a salary increase that is the higher of:

- (a) Five (5) percent of the employee's current salary;
- (b) Three (3) percent for each grade increase to the new position not to exceed ten (10) percent; or
- (c) The minimum salary of the grade assigned to new position.

Section 5. Promotion of an Employee to a Vacant Position. (1) An employee may be promoted upon the request of an appointing authority if the employee meets the minimum requirements of the vacant position having a higher salary determined by the department to have [and] more extensive and complex job duties and responsibilities.

(2) An employee who is advanced to a higher pay grade through a promotion shall receive a salary increase that is the higher of:

- (a) Five (5) percent;
- (b) Three (3) percent for each grade increase to the new position not to exceed ten (10) percent; or
- (c) The minimum salary of the new position.

(3)(a) The employee shall serve a promotional probationary period of thirteen (13) pay periods and, except as provided by paragraph (b) of this subsection, shall receive a three (3) percent salary increase following satisfactory completion of the probationary period, as documented by the performance evaluation;

(b) If the employee was promoted while serving an initial probation, the employee shall receive a five (5) percent increment in salary instead of a three (3) percent increase.

Section 6. Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(1) If an employee requests a voluntary demotion:

- (a) 1. The employee's salary shall be reduced by five (5) percent for one grade; or
- 2. For multiple grades, three (3) percent for each grade decrease not to exceed ten (10) percent; and

(b) The employee's salary shall be reduced by an additional three (3) percent if the voluntary demotion is to a position that no longer requires supervisory responsibilities;

(2) If the demotion is due to reorganization by the agency, the employee may retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, and [if] funding is sufficient, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files; or

(3) The salary of an employee who is demoted because of a documented disciplinary problem or inability to perform a duty or responsibility required of the position shall be reduced by ~~to the lesser of~~ ten (10) percent of their current salary or to the minimum of the new grade.

(4) The salary of an employee demoted as a result of documented unsatisfactory performance during the promotional probationary period shall be reduced to the level prior to promotion.

Section 7. Salary Upon Reinstatement of a Former Employee. (1) A former employee may be reinstated to a position for which the employee was previously employed.

(2) The salary of an employee that is reinstated shall be at the higher of:

- ~~(a) [At a salary level offered by the appointing authority if not above the salary the employee made at the time of separation;~~
- ~~—(b) At~~ The same pay rate the employee had been paid at the termination of service, if the time period between separation and reinstatement does not exceed three (3) years;
- (b) The current established ~~or~~

~~—(c) At a higher salary rate if justified on the basis of:~~

- ~~—1. Additional qualifications that have been obtained by the employee since separation from the agency;~~
- ~~—2. Established] minimum entrance salary above the former salary; or~~
- (c) [3.] Compensation plan changes.

Section 8. Salary Upon Re-employment. (1) A former employee may be re-employed to a position for which the employee was previously employed up to one (1) year after separation.

(2) The salary of an employee that is re-employed shall be:

(a) At the same pay rate the employee had been paid at the termination of service, if the period between separation and re-employment does not exceed one (1) year; or

(b) In accordance with Section 6(1) of this administrative regulation if re-employed to a lower classification.

Section 9. Lump Sum Merit Payment. (1) The appointing authority, with the approval of the department, may award a regular, full-time, part-time 100 hour, or part-time employee a merit lump sum payment.

(2) The appointing authority may grant a lump sum merit payment to an employee meeting the eligibility criteria of this section in an amount not to exceed eight (8) percent of the employee's current salary or established minimum of the employee's classification grade during the annual evaluation period of twenty-six (26) pay periods.

(3) A lump sum merit payment may be granted by the appointing authority with the approval of the department, to an employee meeting the following eligibility criteria:

(a) The employee has completed the initial probationary period required on appointment; and

(b) 1. The employee's job performance is consistently above what is normally expected or required by the job duties and responsibilities; or

2. The employee has successfully completed a special project of significant importance to warrant special attention.

(4) The appointing authority shall prepare and submit written documentation to the department that shall substantiate that the employee satisfies the eligibility criteria in this section for the lump sum merit payment to be effective.

(5) The appointing authority shall inform the Board of Health the number of lump sum merit payments granted during the fiscal year that exceed \$2,000 per payment unless the payment is based on the 902 KAR 8:096 annual evaluation.

(6) An agency may grant a one (1) time lump sum merit payment across the board during the fiscal year to all regular status employees in recognition of the agency exceeding expectations.

(a) The flat amount per employee shall not exceed \$1,000; and

(b) The appointing authority shall receive prior approval from the Board of Health and the department.

Section 10. ~~[9. Responsibility Pay or]~~ Detail to Special Duty. (1) An employee may be detailed to special duty on a temporary basis, not to exceed twenty-six (26) pay periods, to:

(a) Occupy a position and assume the job duties and responsibilities of an employee on an approved leave of absence or an employee that has separated from the agency; or

(b) To undertake a special project assigned by the appointing authority in addition to the employee's regular duties and responsibilities.

(2) An employee who is approved for detail to special duty shall receive a salary increase of five (5) percent during the ~~ever the salary received prior to~~ detail to special duty.

(3) After completion of the special assignment, the employee shall be transferred to the ~~former~~ classification or resume normal duties with the employee's salary reduced by five (5) percent ~~[the salary rate increase received for the detail assignment].~~

(4) An employee shall be entitled to salary increases provided by the agency during the special assignment.

Section 11[40]. Educational Achievement and Skill Enhancement Pay. (1) The job-related skill enhancement pay shall be granted to recognize and reward an employee who takes the initiative through his or her own efforts to increase job worth and significantly enhance his or her value to the agency by achieving a higher level of performance through a prescribed course of study in the employee's job field.

(2) An agency may elect not to participate in the educational achievement program ~~[and advise the department in writing,]~~ if sufficient funds are not available.

(3) An employee shall not receive more than one (1) educational achievement salary increase~~[award in a fiscal year]~~.

(4) An appointing authority may grant a five (5) percent increase to an employee's salary for obtaining~~[completing]~~ a high school diploma, high school equivalency certificate, or a passing score on the GED test~~[-if:]~~.

(a) ~~[The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test;~~
4.] Outside of work hours; and

~~[b][2:] While in the employment of the agency];~~

~~(b) The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and~~

~~(c) The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate, or a passing score on the GED test].~~

(5) An appointing authority may grant a five (5) percent increase to an employee's salary for postsecondary education or training if:

(a) The department has determined the employee has completed 260 hours of job-related classroom instruction;

(b) The employee began the course work after becoming an employee of the agency and completed the course work after establishing an increment date;

(c) The employee has completed the course work within five (5) years of the date on which it began;

(d) The course work has not previously been applied toward an educational achievement award;

(e) The agency has not paid for the course work or costs associated with it; and

(f) The employee was not on educational or extended sick leave when the courses were taken.

(6) An appointing authority may grant, with the approval of the department, an employee a lump sum merit payment not to exceed three (3) percent of the employee's grade minimum to an employee that presents a certificate, license, or other evidence of mastering a body of knowledge obtained through a prescribed course of study that is directly related to the position held and based on this evidence is identified as an approved program by the department~~[with the advice of the council and agencies]~~.

(7) The salary adjustment for educational achievement shall not include on the job training provided by or required by the agency as part of the assigned job duties and responsibilities.

Section 12[14]. Other Salary Adjustments. (1)(a) An agency may submit a request to the department substantiating the need for a specific salary adjustment to address:

1. Compensation issues of the agency that negated the ability of the agency to commit available financial resources to salary adjustments based on the most recent compensation plan changes;

2. Special working conditions;

3. After hours adjustment if working hours cannot be adjusted;

4. Internal or external equity issues among individual employees or groups of employees; or

5. Other specific circumstances.

(b) The request shall address:

1. The nature of the salary issue~~[problem]~~;

2. The consequences of the salary issue;

3. Recommendation of an equitable resolution; and

4. Other pertinent information substantiating the need for the salary adjustment.

(c) The department may undertake a review of the request to determine the validity of the request, the impact on the submitting agency, and the impact on other agencies.

(2)(a) An agency may grant a one (1)~~[-]~~time salary adjustment for all employees during the fiscal year to:

1. Respond to retention and recruitment needs and issues of the agency based on the inability of the agency to attract and maintain a qualified workforce in order to provide services; or

2. Place the agency in a more favorable competitive market and equity position based on an assessment of comparable agencies.

(b) The salary adjustment shall be a prescribed amount given to an employee determined by:

1. Applying an amount not to exceed five (5) percent to the employee's grade minimum;

2. Applying an amount not to exceed five (5) percent to the employee's grade midpoint; or

3. Specifying a fixed hourly amount that would be provided to an employee.

Section 13[42]. Discretionary Salary Increases. (1) The appointing authority may grant, with the approval of the department, a salary increase not to exceed five (5) percent for a regular status employee or employees who have demonstrated, based on the current performance evaluation, excellent performance and achievement. This increase shall be limited to one (1) increase annually.

(2) The Board of Health may grant, with the approval of the department, a salary increase not to exceed five (5) percent for a regular status public health director or administrator who has demonstrated, based on the current performance evaluation, excellent performance and achievement. The increase shall be limited to one (1) increase annually~~[per twenty-four (24) months]~~.

ANGELA T. DEARINGER, M.D, MPH, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 9, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov., or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation outlines the provision for salary adjustments for local health department personnel.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate

administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755(3)(a)3 and 9 authorizes the cabinet to promulgate through administrative regulations a salary, wage, and price policy and administration; and establish a method of salary increments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation outlines the employee actions that can result in a salary adjustment and establishes the rate for salary increments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all local health department personnel are aware of the activities that can result in a salary adjustment and understand the rate of that adjustment.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation sets a limit on the amount of a salary increase or decrease, and outlines the provisions for establishing a salary upon re-employment.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure all local health departments are aware of salary limits and at what point an employee's salary can be adjusted.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statute requires the cabinet to address salary increments through administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure consistency among local health departments when recommending an employee's salary be adjusted.

(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 fifty-eight (58) local health jurisdictions and 2,300 employees. The Lexington-Fayette County, the Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempted from this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Local health department personnel will need to be familiar with the provisions for salary adjustment and understand the limits placed on these adjustments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There is no anticipated cost for compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation local health department staff will benefit from consistent application of the rules for salary adjustments.

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

(a) Initially: This is an ongoing program, there is no initial cost associated with this amendment.

(b) On a continuing basis: This is an ongoing program, there is no cost associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The budget for a local health department is a mix of state and local funds. The local health department personnel branch within the Division of Administration and Finance is funded with state general fund dollars.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees.

There are no fees established in this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as all local health department personnel are eligible for salary adjustments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, Local Health Personnel Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.1755.

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

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

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

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Administration and Financial Management (Amendment)

902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.040, 212.850, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

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. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes employment categories of permissible appointments, [and] employment probationary periods, and an [the] employee evaluation process.

Section 1. Initial Appointments. (1) The appointing authority of a local health department shall make an initial appointment of an eligible applicant from a certification of eligible applicants issued by the department.

(2) The reemployment of a person shall be an initial appointment if the person:

(a) Was formerly employed by an agency; and

(b) Is receiving retirement benefits from the:

1. Kentucky Employee Retirement System; or

2. Kentucky Teachers Retirement System.

Section 2. Provisional Appointments. (1) If there is an urgent reason for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending ~~examination and~~ establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.

(2) A provisional appointment shall not:

(a) Be made until the position has been classified and minimum qualifications established for the class of position; and
(b) Exceed thirteen (13) pay periods from the date of appointment ~~or within two (2) weeks of the date on which the department notifies the appointing authority that an appropriate register has been established, whichever occurs first~~.

(3) Successive provisional appointments of the same person shall not be permitted. ~~[A position shall not be filled by repeated provisional appointments.]~~

(4) Provisional service immediately prior to initial appointment may be credited, at the request of the appointing authority, toward the required probationary period.

Section 3. Reinstatement. (1) ~~(a)~~ For a period of time not to exceed ~~thirty-six (36) months~~ ~~three (3) years~~ since termination of employment from an agency, a regular-status employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position within the agency, with the same seniority rights and leave status.

~~(b)~~ The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.

~~(c)~~ ~~(2)~~ The individual being considered for reinstatement shall not be required to serve an initial probationary period if the employee has had a break in service of not more than twelve (12) months.

~~(d)~~ The accumulated balance of sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency shall be used to determine the rate at which the employee earns annual leave.

~~(2)~~ ~~(a)~~ ~~(3)~~ If the employee has had a break in service of more than twelve (12) months, and the break in service does not exceed thirty-six (36) months, the employee shall serve an initial probationary period and be eligible to receive a probationary increment based on satisfactory performance.

~~(b)~~ If the employee satisfactorily completes the initial probationary period, the accumulated balance of sick leave earned during prior employment with the agency shall be reinstated and the period of time of prior employment with the agency shall be used to determine the rate at which the employee earns annual leave.

~~(3)~~ ~~(4)~~ The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement.

Section 4. Emergency Appointments. (1) ~~(a)~~ If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for a provisional appointment, the appointing authority may appoint a person with the approval of the department.

~~(b)~~ An emergency appointment shall not exceed seven (7) pay periods in duration and shall not be renewable.

~~(c)~~ The department may make investigations as necessary to determine if an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall not confer upon the incumbent a privilege or right to promotion, transfer, salary

adjustment, or reinstatement to a position under the merit system.

(4) An individual appointed to an emergency position shall be considered in the unclassified service and continued employment shall be subject to the current employment needs of the agency.

Section 5. Temporary Appointment. (1) The appointing authority may, with the approval of the department, establish a position on a temporary basis for up to nineteen (19) pay periods to accommodate the following:

- (a) Increased work activity of a seasonal nature;
- (b) Work study or job training programs;
- (c) Special projects; or
- (d) Summer employment.

(2) An applicant shall not be appointed to a temporary position unless the applicant meets established minimum requirements.

(3) Continuous appointments to the same temporary position shall not be made.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

(5) An individual appointed to a temporary position shall be considered in the unclassified service and continued employment shall be subject to the current employment needs of the agency.

Section 6. Appointment of an Individual to a Variable Hour Position. (1) An agency, because of special working requirements in meeting programmatic service needs, may establish a position having variable hours of work.

(2) An agency may appoint to a variable hour position an individual who meets the minimum requirements of education and experience established for the position.

~~(3)~~ ~~[An individual appointed shall be compensated on a fee for service or hourly rate.]~~

~~(4)~~ The hours of work of the individual shall not exceed 800 hours per year.

~~(4)~~ ~~(5)~~ An individual appointed to the variable hour position shall be considered in the unclassified service and continued employment shall be subject to the current employment needs of the agency.

~~(5)~~ ~~(6)~~ The compensation of the individual employed shall be determined by the appointing authority ~~[and in accordance with 902 KAR 8:070].~~

~~(6)~~ ~~(7)~~ The individual employed shall not be eligible for salary adjustments ~~[provided by 902 KAR 8:060].~~

Section 7. Partial ~~[-]~~year Appointment. (1) An agency may establish a partial ~~[-]~~year position to accommodate foreseeable seasonal fluctuations in staffing, budgetary, operational, programmatic, or other needs.

~~(2)~~ ~~[A partial-year position shall contain regularly-scheduled periods, not to exceed seven (7) pay periods per year, during which an incumbent in the position remains an employee but is not at work.]~~

~~(3)~~ An employee in a designated partial ~~[-]~~year position shall receive the following agency ~~[-]~~provided benefits:

(a) Health and life insurance benefits provided by the agency for full-time and part-time 100-hour employees;

(b) Sick and annual leave, in accordance with 902 KAR 8:120, Sections 2 and 4, for pay periods the employee actually works;

(c) Enrollment in the Kentucky Employee Retirement System and receipt of appropriate service credit for those pay periods of actual work; and

(d) Service credit for computation of seniority for those pay periods the employee has actually worked.

~~(3)~~ ~~(4)~~ The employee in a designated partial ~~[-]~~year position shall be considered a regular-status employee following completion of the initial probationary period in accordance with Section 9 of this administrative regulation.

~~(4)~~ ~~(5)~~ The employee in a designated partial ~~[-]~~year position shall:

(a) Work the required number of hours, unless the employee is absent due to illness or needing to provide care for an immediate family member; and

(b) Work at the request of the agency during periods of

nonwork to cover during coworker periods of illness, vacation schedules, and other periods of agency demand.

Section 8. Performance Evaluation[Appraisal]. (1) Except as provided in 902 KAR 8:096, the appointing authority, or designated supervisory staff, shall conduct a performance appraisal pursuant to this administrative regulation[080] using the Employee Performance Appraisal, form CH-40 for a:

- (a) Regular status employee on an annual basis; and
- (b) Probationary employee prior to completion of the required probationary period.

(2) An employee who receives a rating of "meets requirements", "exceeds requirements", or "outstanding", shall receive the Board of Health approved annual increment not to exceed five (5) percent of the employee's salary.

(3) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90) days.

(a) If the employee performance has improved, the appointing authority shall approve the annual increment as approved by the Board of Health.

(b) If employee has not improved or performance deteriorates, the appointing authority shall initiate a disciplinary action.

(c) An employee[whose annual increment is denied] shall be notified by the appointing authority in writing at least fourteen (14) days prior to the annual increment date if the employee:

- 1. Is denied an annual increment; or
- 2. Only receives a portion of the annual increment.

(4)[(3)] Performance evaluations[appraisals] shall be considered in determining:

- (a) An annual and probationary salary advancement;
- (b) Requesting and approving a:
 - 1. Promotion;
 - 2. Demotion; or
 - 3. Dismissal; and
- (c) The order of separation due to a reduction of work force.

(5)[(4)] Each agency shall elect, by Board[-] of[-] Health vote, to participate in one (1) of the following employee performance evaluation programs:

(a) The current employee performance evaluation described in this section; or

(b) The evaluation program described in 902 KAR 8:096.

(6)[(5)](a) An agency choosing the current employee evaluation program described in this section shall notify the department at the beginning of the new fiscal year.

(b) The agency shall remain under the requirements of this section, unless the agency, by vote of the Board of Health, elects to participate in the provisions of 902 KAR 8:096 at the beginning of a subsequent fiscal year.

(c) An agency choosing the current employee evaluation program, as described in this section, shall not be subject to any provision of 902 KAR 8:096.

(7)[(6)] An agency, by vote of the Board of Health that elects to participate in the employee evaluation program of 902 KAR 8:096, shall notify the department at the beginning of the new fiscal year. The agency electing to participate under 902 KAR 8:096 shall not convert to another employee evaluation program.

Section 9. Initial Probationary Period. (1) An employee shall be required to serve a probationary period upon initial employment.

(2) The initial probationary period shall be thirteen (13) pay periods except as provided in subsection (7)[the remaining subsections] of this section.

(3) If the employee has satisfactorily completed the initial probationary period based on a performance evaluation, the appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period that regular status has been confirmed.

(4) An employee may be separated from his position during the initial probationary period and shall not have the right to appeal except as provided by 902 KAR 8:110, Section 1(3)[(4)].

(5)(a) Except as provided by paragraph (b) of this subsection, if an employee is to be dismissed during the initial probationary

period, the employee shall be notified in writing at least seven (7) calendar days prior to the effective date of dismissal and prior to the expiration of the probationary period.

(b) If the employee commits a serious infraction of agency policy as defined by 902 KAR 8:100, Section 4, the employee shall be dismissed in writing immediately without pay.

(c) The dismissed employee shall not be placed on a register.

(6) Unless the appointing authority notifies the employee in writing seven (7) calendar days prior to the end of the initial probationary period that the employee is separated, the employee shall be deemed to have served satisfactorily and shall acquire regular status in the classified service.

(7) The initial probationary period may be extended, by informing the employee in writing, for one (1) of the following reasons:

(a) For the same length of time as leave granted to cover an absence due to medical reasons causing the employee to be absent from work for twenty (20) days or more during the probationary period;

(b) If the employee, acting with due diligence, has been unable to complete a required job related training course during the probationary period; or

(c) The appointing authority may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) [nineteen (19)] pay periods, for determination of competency.

(8) The employee serving a probationary period may be eligible for promotion to a position in a higher class. If an employee is promoted during a probationary period, the new probationary period shall begin with the date the employee was promoted.

Section 10. Resignations. (1) An employee who desires to terminate[his] service with an agency shall submit a written resignation to the appointing authority.

(2) A resignation shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel file.

(3) An employee's lump sum payment for accumulated annual leave may be held by an agency until the employee who has resigned, retired, or been dismissed, returns agency credit cards, keys to buildings and automobiles, or other agency property in the possession of the employee.

Section 11. Voluntary and Involuntary Furlough. (1) An agency may implement a voluntary or involuntary furlough program as part of a layoff plan established in Section 12 of this administrative regulation.

(2) A voluntary or involuntary furlough shall be considered a temporary non disciplinary leave without pay, for a specified period of time if major organizational program and funding changes occur that may result in work reductions of one (1) or more employees of an agency.

(3) A furlough may apply to the entire agency, certain organizational units of the agency, or to one (1) or more employees as the need arises.

(4) A furlough may be for periods of up to twenty-two (22) working days per fiscal year. The furlough may be designated as one (1) continuous period of twenty-two (22) working days or may be discontinuous days or periods, including portions of days.

(5) Employees shall not be paid for days while on furlough. If the furlough is for a continuous period:

(a) An employee's benefits shall not be adversely affected except for the following:

- 1. Retirement contributions shall be based on actual earnings;
- 2. Holidays that occur during a consecutive[the] furlough period shall not be paid;
- 3. Annual leave, compensatory time, and sick leave shall not be used; and
- 4. Medical, dental, life insurance, and flexible spending accounts shall continue to be in effect upon payment of required contributions by the employee; and

(b) Accrual of annual and sick leave, anniversary dates, and

seniority shall be treated as if the employee is in pay status for the duration of the furlough.

(6) An employee who is interested in being placed in a voluntary furlough status shall request prior approval from the appointing authority. The request shall include the reason for and the manner in which the employee proposes to use the furlough period that may include:

- (a) Shorter work days;
- (b) Intermittent days off; or
- (c) Consecutive days off.

(7) An appointing authority may direct an employee to be placed in a furlough status instead~~[in-lieu]~~ of a layoff status. The written notice of the required furlough shall:

- (a) Be received at least fifteen (15) calendar days prior to the beginning date of furlough;
- (b) Include the period of the furlough and if the furlough is continuous or non-continuous;
- (c) Include the status of employee benefits; and
- (d) State that failure to return to work after the completion of the mandatory furlough may be grounds for disciplinary action, up to and including dismissal from employment.

Section 12. Layoffs. (1) An agency shall have a Board of Health approved workforce reduction plan on file with the department to lay off an employee in the classified service if necessary because of:

- (a) Curtailment of work;
- (b) Shortage of funds;
- (c) Abolishment of a position;
- (d) Modification of service requirements; or
- (e) Other material change in the duties or organization of the agency.

(2)(a) Prior to the notification of an employee that he or she is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a layoff plan to the department for approval.

(b) The plan shall contain the names of the employees, months of service, and the reasons, in detail, for the layoff and criteria used to select those employees subject to layoff.

(c) Upon written approval of the plan by the department, the employee shall be notified that the employee [he] is subject to layoff and of the:

- 1. Reason for the layoff;
- 2. Procedures established for the layoff of employees; and
- 3. Rights granted employees subject to layoff.

(3) An agency established under KRS 212.040 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties, and responsibilities for which the employee is qualified within the agency.

(b) If a vacancy does not exist for a position of the same pay grade, level of duties, and responsibilities for which the employee is qualified within the agency, the employee shall be notified of all vacant positions within the agency for which the employee is qualified.

(c) The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another applicant or eligible on a register.

~~(d) [except another laid-off employee with greater seniority already on a reemployment register].~~

(e) If no position is available to an employee subject to layoff, the employee shall be notified in writing:

- 1. That the employee is to be laid off effective at least fifteen (15) calendar days after receipt of the notice; and
- 2. Of the rights and privileges granted laid-off employees.

(4) An agency established under KRS 212.850 shall undertake the following procedures in assisting an employee subject to layoff:

(a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency. The position shall be located in the same county as the position from which the employee is subject to layoff;

(b) If a vacancy does not exist for a position of the same pay grade, level of duties, and responsibilities for which the employee is qualified within the same county as the position from which the employee is subject to layoff, the employee shall be transferred to a vacant position within the agency for which the employee is qualified. The position shall be located in the same county as the position from which the employee is subject to layoff;

(c)1. If a position is not available, the employee shall be notified of all vacant positions within the agency for which the employee is qualified.

2. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified.

3. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another applicant or eligible on a register~~[except another laid-off employee with greater seniority already on a reemployment register];~~ and

(d) If no position is available to an employee subject to layoff, the employee shall be notified in writing:

- 1. That the employee is to be laid off effective at least fifteen (15) calendar days after receipt of the notice; and
- 2. Of the rights and privileges granted laid-off employees.

(5) In the same agency, county and job classification, provisional, temporary, emergency, and probationary employees shall be laid off before regular full-time or regular part-time employees with status. An employee serving a promotional probation shall not be considered a probationary employee for purposes of layoff.

(6) If two (2) or more employees subject to layoff in a layoff plan submitted to the department have the same qualifications, the employee with the lesser seniority shall be laid off first.

(7) An employee who is laid off, upon written request, shall be considered~~[placed on a reemployment register]~~ for the class of position from which the employee was laid off and for any class for which the employee is qualified.

(8) For a period of one (1) year, a laid-off employee shall be given priority consideration by the agency before another applicant or eligible except another laid-off employee with greater seniority~~[who is already on a reemployment register]~~.

(9) For a period of one (1) year, a laid-off employee shall not be removed from a register unless the employee:

- (a) Notifies the agency in writing that the employee no longer desires consideration for a position on a register;
- (b) Declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county or agency, as the position from which the employee was laid off;
- (c) Without good cause, fails to report for an interview after being notified in writing at least ten (10) calendar days prior to the date of the interview;
- (d) Is unable to perform the duties of the class;
- (e) Has been convicted of a job related misdemeanor; or
- (f) Cannot be located by postal authorities at the last address provided by the laid-off employee.

Section 13. Incorporation by Reference. (1) "~~[Form CH-40; Employee Performance Appraisal, CH-40, 4/93, Cabinet for Health and Family Services,]~~ is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ANGELA T. DEARINGER, M.D., MPH, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 9, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov., or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the employment categories, probationary periods, an evaluation process, and lay-off provisions for employees of local health departments.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755 requires the cabinet to administer a personnel program for local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.1755(3)(a)3 and 7 require the cabinet to establish personnel policies related to the conditions of employment and employee performance evaluations. This administrative regulation establishes employment categories, probationary periods and the evaluation process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all interested parties have knowledge of employment categories, probationary periods, the evaluation processes, and the provisions for lay-off related to employment through a local health department.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation clarifies the employment process and employee evaluation procedures for local health departments.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure affected entities are aware of the employment process.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755(2) requires the cabinet to establish personnel policies and procedures through the promulgation of regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure all affected entities are familiar with the conditions of employment and employee performance procedures for local health department personnel.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect fifty-eight (58) local health jurisdictions and 2,300 employees. The Lexington-Fayette County, the Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempted from this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: This amendment does not require any action for compliance.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This amendment has no impact on cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health department personnel throughout the state will be aware of employment categories and the employee evaluation procedures.

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

(a) Initially: This is an ongoing program and there will be no initial costs to the administrative body.

(b) On a continuing basis: This is an ongoing program and there will be no increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? Tiering is applied as those appointed to an emergency position or a temporary position are unclassified employees and are not subject to the right for promotion, transfer, salary adjustment, or reinstatement under the classified system. In addition, tiering is applied in the re-employment of laid off employees as seniority is considered as one (1) of the criteria used when there are multiple laid off employees available for re-employment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local health departments, district health departments, and the Local Health Personnel Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.1755.

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

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

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

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be additional costs.

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

regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management
(Amendment)

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

RELATES TO: KRS 211.090(3), 211.170(1), 211.1751, [(2);] 212.170(4), 212.870, 237.109, 237.115(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

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. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the personnel program for local health departments. This administrative regulation establishes separations and disciplinary procedures applicable to a local health department.

Section 1. Disciplinary Action. (1) An appointing authority may discipline an employee for:

- (a) Lack of good behavior; or
 - (b) Unsatisfactory performance of a job duty.
- (2) A situation that may warrant disciplinary action shall include:
- (a) Inefficiency or incompetency in the performance of a duty;
 - (b) Negligence in the performance of a duty;
 - (c) Careless, negligent, or improper use of local health department property or equipment;
 - (d) Excessive absenteeism;
 - (e) Habitual pattern of failure to report for duty at the assigned time and place;
 - (f) Failure to obtain or maintain a current license or certificate or other qualification required by law or rule as a condition of continued employment;
 - (g) Willful abuse or misappropriation of funds, property, or equipment;
 - (h) Falsification of an official document relating to or affecting employment;
 - (i) Disrupting, disturbing, or interfering with management of agency operation;
 - (j) Abusive behavior towards a patient, coworker, or the public in the performance of a duty;
 - (k) Insubordination;
 - (l) Reporting to work under the influence of alcohol or illegal drugs, or partaking of alcohol or illegal drugs on the job;
 - (m) Sleeping or failure to remain alert during working hours;
 - (n) Violation of confidential information policies of the agency or assigned program;
 - (o) Prohibited political activity;
 - (p) Unauthorized or unreported absence or absence for any period of working without notifying supervisor;
 - (q) Breach of state law, an agency rule, policy, or directive; and
 - (r) Performing an unauthorized duty, or performing a duty requiring special training, licensure, or certification, that[which] the employee has not attained.

Section 2. Administering Disciplinary Actions. (1) A classified employee with regular status shall not be disciplined by the appointing authority except for cause.

(2) Except as provided by subsection (4) of this section, an appointing authority shall apply discipline in a progressive manner, with each disciplinary action more severe, in an effort to correct an employee's performance or behavior problem.

(3) Progressive discipline shall consist of the following actions:

- (a) Verbal admonishment;
- (b) Written admonishment or warning;
- (c) Demotion or suspension; and
- (d) Dismissal.

(4) One (1) or more of the disciplinary actions stated in subsection (3) of this section may be bypassed by the appointing authority based on the severity of the performance or behavior problem.

Section 3. Predisciplinary Action ~~Meeting~~[Hearing]. (1) Except as provided in Section 5(1) of this administrative regulation, prior to a demotion provided by 902 KAR 8:090, Section 3(1)(c), suspension, or dismissal, a classified regular employee with status shall be notified in writing of the intent of the agency to demote, suspend or dismiss the employee. The notice shall also include the following:

(a) The specific reasons for the demotion, suspension, or dismissal including:

1. The statutory, regulatory, or agency policy violation; and
 2. The specific action or activity that resulted in[on which] the intent to demote, suspend, or dismiss[is based];
- (b) The date, time, and place of the action or activity;
 - (c) The name of each party involved; and
 - (d) That the employee has the right to appear personally, or with counsel if the employee has retained counsel, to reply to the appointing authority regarding the intent to demote, suspend, or dismiss.

(2) A request~~in writing~~ to appear to reply to the appointing authority shall be:

- (a) In writing; and
- (b) Made within two (2)[six (6)] working days of receipt of the notice of intent to demote, suspend, or dismiss.

(3) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(4) No later than five (5) working days after the employee appears to reply to the intent to demote, suspend, or dismiss, the appointing authority shall determine whether to demote, suspend, or dismiss the employee or to alter, modify, or rescind the intent to demote, suspend, or dismiss. The appointing authority shall notify the employee in writing of the decision.

(5) If the appointing authority decides to demote, suspend, or dismiss, the employee shall be notified of the following, in writing:

- (a) The effective date of the demotion, suspension, or dismissal; ~~and~~
- (b) The reason for the demotion, suspension, or dismissal, including the:

1. Statutory, regulatory, or agency policy violation; and
2. Specific action or activity that resulted in[on which] the demotion, suspension, or dismissal[is based];

- (c) The date, time, and place of the action or activity;
- (d) The name of each party or witness involved; and
- (e) The[Of his] right to appeal the demotion, suspension, or dismissal in accordance with 902 KAR 8:110; and
- ~~(f) That an appeal shall be:~~

- ~~1. Prepared on a Form CH-41 Request for Appeal; and~~
- ~~2. Filed with the Local Health Department Employment Personnel Council and submitted to the Administrative Hearings Branch within fifteen (15) calendar days of the effective date of the decision of the appointing authority. If an appeal is mailed to the council by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.]~~

(6) The appointing authority shall provide the employee with the appeal request form.

Section 4. Conditions for Bypassing Progressive Discipline and the Issuance of a Notice of Intent for the Suspension or Dismissal of an employee. (1) An appointing authority may issue a notice of intent for the suspension or dismissal of an employee for a serious misconduct infraction.

(2) An example of a misconduct infraction that may be considered serious enough to merit an immediate intent of suspension or dismissal includes[include] the following:

(a) Threatening, assaulting, fighting with, or harassing a supervisor, another employee, or anyone encountered during the normal course of business;

(b) Stealing or deliberately damaging the property of:

1. The agency;
2. A client;
3. A patient; or
4. Another employee;

(c) ~~Carrying a concealed, deadly weapon at work:~~

1. ~~Without a license; or~~
2. ~~in violation of a prohibition established by a local government unit pursuant to KRS 237.115(2);~~

(d) Reporting to work under the influence of alcohol, narcotics, or other drugs, unless the drug was prescribed by a physician;

(e) Taking unauthorized leave or failing to show up at work without notifying a supervisor for more than three (3) consecutive work days;

(f) Engaging in a fraudulent activity;

(g) Breach of the employee confidentiality agreement; or

(h) Performing a procedure on a patient or client for which the employee has neither been certified nor has the current credentials to perform.

(3) The employee shall be notified by the appointing authority regarding the intent to suspend or dismiss.

(4) If an employee wishes to reply to a notice, the employee shall:

(a) Request to appear personally before the appointing authority. The request shall be:

1. In writing; and
2. Made within two (2) ~~six (6)~~ working days of receipt of the notice; and

(b) File the request with the appointing authority. If a request is mailed by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.

(5) An employee may be represented by counsel at an appearance before the appointing authority.

(6) The meeting shall be held within six (6) working days after receipt of the employee's request to appear before the appointing authority, excluding the day the request is received.

(7) Within five (5) working days after the employee appears to reply to the intent to suspend or dismiss, the appointing authority shall determine whether to modify, or rescind the intent to suspend or dismiss. The appointing authority shall notify the employee in writing of the decision.

(8) If the appointing authority decides to suspend or dismiss immediately following the meeting, the employee shall be notified of the following, in writing:

(a) The effective date of the suspension or dismissal;

(b) The reason for the suspension or dismissal, including the:

1. Statutory, regulatory, or agency policy violation; and
2. Specific action or activity on which the suspension or dismissal is based;

(c) The date, time, and place of the action or activity;

(d) The name of each party or witness involved; and

(e) The ~~Of his~~ right to appeal the suspension or dismissal in accordance with 902 KAR 8:110; ~~and~~

(f) That an appeal shall be:

1. ~~Prepared on a Form CH-41 Request for Appeal; and~~

2. ~~Filed with the Local Health Department Employment Personnel Council and submitted to the Administrative Hearings Branch within fifteen (15) calendar days of the effective date of the suspension or dismissal. If an appeal is mailed to the Council by certified mail, return receipt requested, it shall be considered filed on the date it is postmarked.~~

Section 5. Directive to Vacate Premises. (1) If an employee has committed a serious misconduct infraction, and there is a need to diffuse a presently dangerous or disruptive situation, or the appointing authority intends to terminate the employee's employment, a director or designee ~~supervisor~~ may direct the offending employee to vacate the premises. The appointing authority shall, by the most immediate means, contact the department and relate the action taken.

(2) A pre-termination hearing shall be provided within three (3) working days after removal.

(3) The employee may be placed on leave using accumulated leave or on immediate suspension without pay. ~~Section—6, Incorporation by Reference. (1) "Form CH-41 Request for Appeal", 1/98, Cabinet for Health and Family Services, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

ANGELA T. DEARINGER, M.D., MPH, Commissioner

ADAM M. MEIER, Secretary

APPROVED: BY AGENCY: October 10, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov., or Donna Little,

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes separation and disciplinary procedures applicable to local health department employees.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755 authorizes the cabinet to administer a personnel program for local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes disciplinary procedures to be followed by all local health departments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all local health department employees are aware of applicable disciplinary and separation procedures. This administrative regulation also provides the employee the opportunity for a meeting prior to any disciplinary action.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation shortens the number of days an employee has to request either a pre-disciplinary action meeting or a formal administrative hearing

related to disciplinary actions.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure local health department employees are aware of the procedures related to disciplinary actions.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755(3)(a)4 and 6 authorizes the cabinet to establish personnel policies and procedures related to conditions for termination and employee grievance procedures through the promulgation of regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment helps to ensure a timely resolution for employees related to disciplinary or separation actions.

(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 58 local health jurisdictions and 2,300 employees. The Lexington-Fayette County, Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempt from this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: This amendment will require employees facing disciplinary or separation actions to respond in a more timely manner.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This amendment has no impact on cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health department employees aggrieved by disciplinary or separation actions will have a more timely resolution.

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

(a) Initially: This is an ongoing program, and there will be no initial costs to the administrative body.

(b) On a continuing basis: This is an ongoing program, and there will be no increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this amendment affects all regulated entities 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? Local health departments, district health departments, and the Local Health Department Personnel Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 211.1755.

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

the first full year the administrative regulation is to be in effect.

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

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

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Administration and Financial Management (Amendment)

902 KAR 8:110. Disciplinary appeal process applicable for local health department employees.

RELATES TO: KRS Chapter 13B, 194A.050, 211.170(1), 211.1755, 212.170(4), 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755

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. KRS 211.1755 requires the Cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. [KRS 211.1752 provides for an appeal process for employees who are disciplined, applicants or employees who allege discrimination in personnel actions, and eligibles who question their rating in the examination process.] This administrative regulation establishes [provides for] the disciplinary [specific] appeal process for employees.

Section 1. Appeals. (1) An employee with status who is demoted according to 902 KAR 8:090, Section 3(1)(c), suspended, or dismissed shall have the right to appeal the action. The appeal shall be:

(a) In writing, on a [] form CH-41 "Request for Appeal"; and

(b) Filed with or mailed to the department by certified mail, return receipt requested within fifteen (15) days of the demotion, suspension, or dismissal.

~~(2) [An applicant who has taken an oral or written examination may appeal his rating in any part of an examination to assure rating procedures have been applied fairly and equitable. The appeal shall be in writing and mailed to the department no later than thirty (30) days after the date on which the notification of removal was mailed to the eligible.]~~

~~(3) [An eligible whose name has been removed from a register for any of the reasons specified in 902 KAR 8:070, Section 4(5)(a) through (i) may appeal the action. The appeal shall be mailed to the department within thirty (30) days after the date on which the notification of removal was mailed to the eligible.]~~

~~(3) [(4)] An applicant or employee may appeal within thirty (30) days of the alleged discrimination if he or she believes that they have [he has] been discriminated against in a personnel action in violation of KRS 344.040 [because of:~~

~~(a) Sex;~~

~~(b) Religious opinion or affiliation;~~

~~(c) Political opinion or affiliation;~~

~~(d) Race;~~

- (e) National origin;
- (f) Disability; or
- (g) Age).

(4) [(5)] An appeal shall be conducted in accordance with Section 2 of this administrative regulation.

Section 2. Hearing Process. (1) The department shall schedule an administrative hearing upon an appeal to be held within sixty (60) days of receipt of the Request for Appeal. Notice of the hearing and conduct of the proceedings shall be in accordance with the requirements of KRS Chapter 13B.

(2) The hearing shall be conducted by a designated hearing officer.

(3) The hearing officer shall:

- (a) Make findings of fact and conclusions of law; and
- (b) Issue a recommended order to each party.

(4) Each party shall have fifteen (15) days from the date of the recommended order to file exceptions to the recommendations with the cabinet. ~~The recommended order shall be submitted to the Local Health Department Employment Personnel Council at its next meeting.~~

(5) The secretary of the cabinet shall issue a final order in accordance with KRS 13B.120. ~~The Local Health Department Employment Personnel Council may:~~

(a) ~~Adopt the report as submitted;~~

(b) ~~Amend the findings and recommendations based on the evidence contained in the report; or~~

(c) ~~Rehear the appeal.~~

(6) ~~The decision of the Local Health Department Employment Personnel Council shall be a final order, binding upon the employee and appointing authority.~~

Section 3. Incorporation by Reference. ~~[Hearing Process]~~ (1) ~~"[Form CH-41] Request for Appeal", form CH-41, September 2018~~ 1/98, Cabinet for Health and Family Services, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ANGELA T. DEARINGER, M.D., MPH, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov., or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the appeal process for an employee who is disciplined, applicants or employees who allege discrimination in personnel actions, and eligibles who question their rating in the examination process.

(b) The necessity of this administrative regulation: KRS 194A.050 authorizes the secretary of the cabinet to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities of the cabinet. KRS 211.1755 authorizes the cabinet to administer a personnel program for local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures an employee, applicant, or eligible would follow to file an appeal of a personnel action.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that employees, applicants or individuals eligible for employment are not discriminated against in personnel actions and are offered the opportunity to appeal a personnel action.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation changes the listing for the types of discrimination to cite to KRS 344.040, which is the state's unlawful discrimination statute, and removes the process for an appeal of a personnel action to be heard before the Local Health Department (LHD) Personnel Board.

(b) The necessity of the amendment to this administrative regulation: This amendment guarantees the rights of local health department employees, applicants and eligibles to freedom from discrimination in employment, to equal opportunity in hiring, promotion, transfer, recruitment and all other aspects of the employment process, to file a complaint if they believe discrimination has occurred, and to work in an environment free of discrimination and harassment.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.1755(1) authorizes the cabinet to administer a personnel program for local health departments based on the principles of merit governing the recruitment, examination, appointment, discipline, removal and other incidents of employment for local health department personnel.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help to ensure fair employment practices by local health departments.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts fifty-eight (58) local health departments and approximately 2,300 employees. The Lexington-Fayette County, Louisville Metro Public Health and Wellness, and Northern Kentucky District Health Departments are exempt from this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: This amendment will require local health departments and the local health department employment personnel council to be aware of the expanded list of discrimination types and to avoid unfair employment practices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): This amendment has no impact on cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health department employees, applicants and individuals eligible for employment will have fair employment standards and will face less discrimination.

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

(a) Initially: This is an ongoing program, and there will be no initial costs to the administrative body.

(b) On a continuing basis: This is an ongoing program, and there will be no increased costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current agency funds will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees established in this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this amendment affects all regulated entities 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? Local health departments, district health departments, and Local Health Personnel Branch within the Division of Administration and Financial Management.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1) and 211.1755.

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

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

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

(c) How much will it cost to administer this program for the first year? This is an ongoing program, there will be no initial costs.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program, there will be no additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Provider Integrity

(Amendment)

907 KAR 5:005. Health Insurance Premium Payment (HIPP) Program.

RELATES TO: 42 C.F.R. 400.203, 430.10, 26 U.S.C. 4980B, 5000(b)(1), 29 U.S.C. 1161-1169, 42 U.S.C. 1396e(a)-(e)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 42 U.S.C. 1396e(a)-(e)

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. 42 U.S.C. 1396e(a) through (e) authorizes states to establish a health insurance premium payment, or HIPP, program to provide health insurance coverage outside of Medicaid to Medicaid enrollees, and any family member of Medicaid enrollees, if the department determines that HIPP program participation would be cost effective for the department. This administrative regulation establishes the Kentucky integrated health insurance premium payment program requirements as authorized by 42 U.S.C. 1396e(a) through (e).

Section 1. Definitions. (1) "Buying in" means purchasing benefits from Medicare on behalf of an individual.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(4) "Group health insurance plan" means any plan, including a self-insured plan, of, or contributed to by, an employer to provide health care directly or otherwise to the employer's employees, former employees, or the families of the employees or former employees, if the plan:

(a) Meets the criteria established in 26 U.S.C. 5000(b)(1); and

(b) Includes continuation coverage pursuant to 26 U.S.C. 4980B or 29 U.S.C. 1161 to 1169.

(5) "Income" means:

(a) Wages, salary, or compensation for labor or services;

(b) Money received from a statutory benefit including Social Security, Veteran's Administration pension, black lung benefit, or railroad retirement benefit; or

(c) Money received from any pension plan, rental property, or an investment including interest or dividends.

(6) "Income deduction" means a deduction from an individual's income for the purpose of obtaining or trying to obtain Medicaid eligibility.

(7) "Kentucky integrated health insurance premium payment program participant" or "KI-HIPP program participant" means an individual receiving health insurance benefits in accordance with this administrative regulation.

(8) "Medicaid" means the Kentucky Medicaid program.

(9) "Medicaid enrollee" means an individual eligible for and participating in Medicaid pursuant to 907 KAR 1:005, 907 KAR 20:010, 907 KAR 20:020, and 907 KAR 20:025.

(10) "Spend-down program" means a program by which an individual becomes eligible for Medicaid benefits:

(a) By spending down income in excess of the Medicaid income threshold; and

(b) In accordance with 907 KAR 20:020.

(11) "State plan" is defined in 42 C.F.R. 430.10.

(12) "Wrap-around coverage" means coverage of a benefit not covered by an individual's group health insurance plan.

Section 2. KI-HIPP Program Eligibility and Enrollment. (1) A Medicaid enrollee, or a person acting on the Medicaid enrollee's behalf, shall cooperate in providing information to the department necessary for the department to establish availability and cost effectiveness of a group health insurance plan by:

(a) Completing the Kentucky Health Insurance Premium Payment Program Application; and

(b) Submitting the Kentucky Health Insurance Premium Payment Program Application to the individual's local Department for Community Based Services office, the office administering the Kentucky integrated health insurance premium payment program, or on-line via the Kentucky Online Gateway self-service portal.

(2) A Medicaid enrollee or beneficiary shall participate in the KI-HIPP program if the department determines in accordance with this administrative regulation that the Medicaid enrollee or beneficiary's participation in the KI-HIPP program would be cost-effective.

(3) If a Medicaid enrollee, KI-HIPP program applicant, participant, parent, guardian, or caretaker fails to provide

information to the department, within thirty (30) days of the department's request, necessary to determine availability and cost effectiveness of a group health insurance plan, the department shall:

(a)] not enroll the applicant in the KI-HIPP program unless good cause for failure to cooperate is demonstrated to the department within thirty (30) days of the department's denial; and

~~(b) Terminate the individual from the Medicaid program pursuant to 907 KAR 20:060].~~

(4) Good cause for failure to cooperate shall exist if:

(a) There was a serious illness or death of the applicant, participant, parent, guardian, or caretaker or of a member of the applicant's, participant's, parent's, guardian's, or caretaker's immediate family;

(b) There was a fire, tornado, flood, or similar family emergency or household disaster affecting the applicant, participant, parent, guardian, or caretaker or member of his or her immediate family;

(c) The applicant, participant, parent, guardian, or caretaker demonstrates that a good cause beyond that individual's control has occurred; or

(d) There was a failure to receive the department's request for information or notification for a reason not attributable to the applicant, participant, parent, guardian, or caretaker. The lack of a forwarding address shall be attributable to the applicant, participant, parent, guardian, or caretaker.

(5) For a Medicaid enrollee who is a KI-HIPP program participant:

(a) The department shall pay all group health insurance plan premiums and deductibles, coinsurance and other cost-sharing obligations for items and services otherwise covered under Medicaid, up to the Medicaid allowed amount, minus any Medicaid cost-sharing that would normally be paid, including the cost-sharing required under 895 KAR 1:010, 1:015, and 907 KAR 1:604, as applicable; and

(b)1. The individual's group health insurance plan shall be the primary payer; and

2. The department shall be the payer of last resort.

(6) For a KI-HIPP program participating family member who is not a Medicaid enrollee:

(a) The department shall pay a KI-HIPP program premium; and

(b) The department shall not pay a deductible, coinsurance or other cost-sharing obligation.

(7) If an individual who was a Medicaid enrollee at the time the department initiated a KI-HIPP program cost effectiveness review for the individual loses Medicaid eligibility by the time the cost effectiveness review has been conducted, the department shall not enroll the individual or any family member into the KI-HIPP program.

Section 3. Wrap-around Coverage. (1) If a service to which a health insurance premium payment program participant would be entitled via Medicaid is not provided by the individual's group health insurance plan, the department shall reimburse for the service.

(2) For a service referenced in subsection (1) of this section, the department shall reimburse:

(a) The provider of the service; and

(b) In accordance with the department's administrative regulation governing reimbursement for the given service. For example, a wrap-around dental service shall be reimbursed in accordance with 907 KAR 1:626.

Section 4. Cost Effectiveness. (1) Enrollment in a group health insurance plan shall be considered cost effective if the cost of paying the premiums, coinsurance, deductibles and other cost-sharing obligations, and additional administrative costs is estimated to be less than the amount paid for an equivalent set of Medicaid services.

(2) When determining cost effectiveness of a group health insurance plan, the department shall consider the following information:

(a) The cost of:

1. The insurance premium,

2. The coinsurance,

3. Medicaid's anticipated expenses for the:

a. KI-HIPP program participant;

b. KI-HIPP program participant's household; or

c. KI-HIPP program participant's subdivision of a household, and

4. The deductible;

(b) The scope of services covered under the insurance plan, including exclusions for pre-existing conditions, exclusions to enrollment, and lifetime maximum benefits imposed;

(c) The average anticipated Medicaid utilization:

1. By age, sex, and coverage group for persons covered under the insurance plan; and

2. Using a statewide average for the geographic component; and

(d) Annual administrative expenditures of an amount determined by the department per Medicaid participant covered under the group health insurance plan.

Section 5. Cost Effectiveness Review. (1) The department shall complete a cost effectiveness review at least annually for an employer-related group health insurance plan or a non-employer-related group health insurance plan.

(2) The department shall perform a cost effectiveness re-determination if:

(a) A predetermined premium rate, deductible, or coinsurance increases;

(b) Any of the individuals covered under the group health insurance plan lose full Medicaid eligibility; or

(c) There is a:

1. Change in Medicaid eligibility;

2. Loss of employment if the insurance is through an employer; or

3. Decrease in the services covered under the policy.

(3)(a) A health insurance premium payment program participant who is a Medicaid enrollee, or a person on that individual's behalf, shall report all changes concerning health insurance coverage to the Third Party Liability Branch office within the Department for Medicaid Services that administers the Kentucky Integrated Health Insurance Premium Payment program, or to the participant's local Department for Community Based Services (DCBS), Division of Family Support, within thirty (30) days of the change.

(b) Except as allowed in subsection (4) of this section, if a Medicaid enrollee who is a health insurance premium payment program participant fails to comply with paragraph (a) of this subsection, the department shall:

4.] disenroll the KI-HIPP program participating Medicaid enrollee, and any family member enrolled in the KI-HIPP program directly through the individual, if applicable, from the KI-HIPP program]; and

~~2. Terminate the KI-HIPP program participating enrollee, and any family member enrolled in the KI-HIPP program directly through the individual from the Medicaid program unless the family member qualifies for Medicaid eligibility independently of the KI-HIPP participating enrollee].~~

(4) The department shall not disenroll [or terminate] an individual, or any family member enrolled in the KI-HIPP program directly through the individual, from KI-HIPP program participation if the individual demonstrates to the department, within thirty (30) days of notice of KI-HIPP program disenrollment, good cause for failing to comply with subsection (3) of this section.

(5) Good cause for failing to comply with subsection (3) of this section shall exist if:

(a) There was a serious illness or death of the individual, parent, guardian, or caretaker or a member of the individual's, parent's guardian's, or caretaker's immediate family;

(b) There was a fire, tornado, flood, or similar family emergency or household disaster affecting the applicant, participant, parent, guardian, or caretaker or member of his or her immediate family;

(c) The individual, parent, guardian, or caretaker demonstrates

that a good cause beyond that individual's control has occurred; or

(d) There was a failure to receive the department's request for information or notification for a reason not attributable to the individual, parent, guardian, or caretaker. The lack of a forwarding address shall be attributable to the individual, parent, guardian, or caretaker.

Section 6. Kentucky HEALTH participation in KI-HIPP. (1) A Kentucky HEALTH member who has access to employer-sponsored health insurance through an employer shall be eligible for mandatory enrollment within KI-HIPP as follows:

(a) After concurrently or consecutively completing:

1. Twelve (12) months of Kentucky HEALTH enrollment; and

2. Twelve (12) months of employment with access to compatible employer-sponsored health insurance;

(b) If the employer-sponsored health insurance is compatible with the KI-HIPP program; and

(c) If the employer-sponsored health insurance is cost-effective for the entire household.

(2) A Kentucky HEALTH member who is not currently required to participate in KI-HIPP pursuant to subsection (1) of this section may elect to participate in KI-HIPP and submit documentation for an eligibility determination as provided in Section 2 of this administrative regulation.

(3)(a) A Kentucky HEALTH member may elect to participate in KI-HIPP as an employee if the beneficiary's employer sponsored insurance program is determined to be cost-effective for the employee, but not for the entire household; or

(b) A Kentucky HEALTH member may elect to participate in KI-HIPP as a cost-effective subdivision of the beneficiary's household if the employee participates in KI-HIPP but the entire household is determined to not be cost-effective.

(4) A Kentucky HEALTH beneficiary participating in the KI-HIPP program shall:

(a) Receive a MyRewards Account pursuant to 895 KAR 1:030;

(b) Accrue dollars in a MyRewards account by completing any applicable activities pursuant to 895 KAR 1:030;

(c) Receive an exemption from the PATH requirement established in 895 KAR 1:020;

(d) Receive ~~wrap-around~~^{wrap-around} services as provided pursuant to 895 KAR 1:010 depending on the beneficiary's benefits under the beneficiary's employer sponsored insurance program; and

(e) Comply with any cost-sharing requirement established pursuant to KAR Title 895 or 907 KAR 1:604.

Section 7. Coverage of Non-Medicaid Family Members. (1) If determined to be cost effective, the department shall enroll a family member who is not a Medicaid enrollee into the KI-HIPP program if the family member has group health insurance plan coverage through which the department can obtain health insurance coverage for a Medicaid-enrollee in the family.

(2) The needs of a family member who is not a Medicaid enrollee shall not be taken into consideration when determining cost effectiveness of a group health insurance plan.

(3) The department shall:

(a) Pay a KI-HIPP program premium on behalf of a KI-HIPP program participating family member who is not a Medicaid enrollee; and

(b) Not pay a deductible, coinsurance, or other cost-sharing obligation on behalf of a KI-HIPP program participating family member who is not a Medicaid enrollee.

Section 8. Exceptions. The department shall not pay a premium:

(1) For a group health insurance plan if the plan is designed to provide coverage for a period of time less than the standard one-year coverage period;

(2) For a group health insurance plan if the plan is a school plan offered on the basis of attendance or enrollment at the school;

(3) If the premium is used to meet a spend-down obligation and all persons in the household are eligible or potentially eligible

only under the spend-down program pursuant to 907 KAR 20:020. If any household member is eligible for full Medicaid benefits, the premium shall:

(a) Be paid if it is determined to be cost effective when considering only the household members receiving full Medicaid coverage; and

(b) Not be allowed as a deduction to meet the spend-down obligation for those household members participating in the spend-down program.

(4) For a group health insurance plan if the plan is an indemnity policy which supplements the policy holder's income or pays only a predetermined amount for services covered under the policy.

Section 9. Duplicate Policies. (1) If more than one (1) group health insurance plan or policy is available, the department shall pay only for the most cost-effective plan except as allowed in subsection (2) of this section.

(2) If the department is buying in to the cost of Medicare Part A or Part B for an eligible Medicare beneficiary, the cost of premiums for a Medicare supplemental insurance policy shall also be paid if the department determines that it is likely to be cost effective to do so.

Section 10. Discontinuance of Premium Payments. (1) If all Medicaid-enrollee household members covered under a group health insurance plan lose Medicaid eligibility, the department shall discontinue KI-HIPP program payments as of the month of Medicaid ineligibility.

(2) If one (1) or more, but not all, of a household's Medicaid-enrollee members covered under a group health insurance plan lose Medicaid eligibility, the department shall re-determine cost effectiveness of the group health insurance plan in accordance with Section 5(2) of this administrative regulation.

Section 11. Kentucky Integrated Health Insurance Premium Payment Program Payment Effective Date. (1)(a) KI-HIPP program payments for cost-effective group health insurance plans shall begin with the month the health insurance premium payment program application is received by the department, or the effective date of Medicaid eligibility, whichever is later.

(b) If an individual is not currently enrolled in a cost effective group health insurance plan, premium payments shall begin in the month in which the first premium payment is due after enrollment occurs.

(2) The department shall not make a payment for a premium which is used as an income deduction when determining individual eligibility for Medicaid.

Section 12. Premium Refunds. The department shall be entitled to any premium refund due to:

(1) Overpayment of a premium; or

(2) Payment for an inactive policy for any time period for which the department paid the premium.

Section 13. Notice. The department shall inform a Kentucky integrated health insurance premium payment program:

(1) Applicant, in writing, of the department's initial decision regarding cost effectiveness of a group health insurance plan and KI-HIPP program payment; or

(2) Participating household, in writing:

(a) If KI-HIPP program payments are being discontinued due to Medicaid eligibility being lost by all individuals covered under the group health insurance plan;

(b) If the group health insurance plan is no longer available to the family; or

(c) Of a decision to discontinue KI-HIPP program payment due to the department's determination that the policy is no longer cost effective.

Section 14. Federal Financial Participation. (1) The Kentucky integrated health insurance premium program shall be contingent upon the receipt of federal financial participation for the program.

(2) If federal financial participation is not provided to the department for the Kentucky integrated health insurance premium program, the program shall cease to exist.

(3) If the Centers for Medicare and Medicaid Services (CMS) disapproves a provision stated in an amendment to the state plan, which is also stated in this administrative regulation, the provision shall be null and void.

Section 15. Incorporation by Reference. (1) "Kentucky Health Insurance Premium Payment Program Application", KIHIP-100, April 2019 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>.

CAROL H. STECKEL, Commissioner

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: October 9, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonthant.scott@ky.gov; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) Kentucky integrated health insurance premium payment (KI-HIPP) program provisions. The KI-HIPP program is a program by which DMS purchases health insurance coverage for an individual by paying the individual's (and family members if applicable) health insurance premiums, deductibles and coinsurance if doing so would be cost effective to DMS. To qualify for the KI-HIPP program, an individual (or at least one individual in the case of a family enrolling in the KI-HIPP program) must be Medicaid eligible; however, the actual benefits are provided by the individual's group health insurance carrier.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide cost-effective medical benefits to Medicaid beneficiaries; thus, prudently utilizing DMS's resources.

(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 providing cost-effective medical benefits to Medicaid individuals.

(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 cost-effective medical benefits to Medicaid beneficiaries.

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

(a) How the amendment will change this existing administrative regulation: The amendments change this administrative regulation by removing a requirement that individuals be terminated from Medicaid coverage if they are eligible for participation in the KI-HIPP program but do not participate. DMS currently does not terminate individuals for failure to participate with Employer Sponsored Insurance (ESI), and is amending this regulation text to conform.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to reflect the current operation of the KI-HIPP program.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing cost-effective medical benefits to Medicaid beneficiaries.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing cost-effective medical benefits to Medicaid beneficiaries.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid beneficiaries, MCOs, providers, and employers who employ Medicaid beneficiaries.

(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 KI-HIPP program enrollees will need to provide all required information, including their health insurance carrier's information, to DMS.

(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 regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid beneficiaries who have access to private health insurance via their employers will still receive the full benefits provided through the Medicaid program as well as payment of the premiums for the health insurance through the Medicaid program.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates savings of \$350 per KI-HIPP participant per month.

(b) On a continuing basis: The Department for Medicaid Services (DMS) estimates savings of \$350 per KI-HIPP participant per month. DMS intends to aggressively educate potential KI-HIPP program participants regarding the benefits of the KI-HIPP program in order to achieve a high participation rate.

(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 from state 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 are necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied as children are exempt from Medicaid disenrollment pursuant to 42 U.S.C. 1396e(b)(2).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520(3), 205.560(2), 194A.030(2), 194A.050(1), 194A.010(1), and 42 U.S.C. 1396e(a) through (e).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department for Medicaid Services projects no revenue to be generated by the 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? The Department for Medicaid Services projects no revenue to be generated by the administrative regulation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services anticipates no additional costs in the administration of this program in the first year. The Department for Medicaid Services estimates savings of three-hundred and fifty dollars (\$350) per KI-HIPP participant per month.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services anticipates no additional costs in the administration of this program in subsequent years. The Department for Medicaid Services estimates savings of \$350 per KI-HIPP participant per month. The Department for Medicaid Services intends to aggressively educate potential KI-HIPP program participants regarding the benefits of the KI-HIPP program in order to achieve a high participation rate.

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 U.S.C. 1396e(a) through (e).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid).

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 or different responsibilities than the 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 or different responsibilities than the federal requirements.

NEW ADMINISTRATIVE REGULATIONS

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(New Administrative Regulation)

103 KAR 8:170. Pollution control facilities exemption.

RELATES TO: KRS 13B, 132.020, 132.200, 224.01-300, 224.1-310

STATUTORY AUTHORITY: KRS 131.130, 224.1-310

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 the administrative process for obtaining and using the pollution control tax exemption certification pursuant to KRS 224.1-310.

Section 1. Definitions. (1) "Date of the making of the application" means the postmark date, electronic submission date, or date hand-stamped by the department for the "Application for Pollution Control Tax Exemption Certificate", Form 61A216.

(2) "Pollution control facility" is defined by KRS 224.1-300(1).

Section 2. Application Process for Certification. (1) An applicant shall:

(a) File an "Application for Pollution Control Tax Exemption Certificate", Form 61A216;

(b) Submit a copy of the plans or blueprints and a materials and equipment listing with the application;

(c) Provide a detailed explanation of what types of pollution control (water, waste, noise, air, or substance removal) a project addresses and how the primary function of the property installed is to control pollution as required under KRS 224.1-300;

(d) Provide costs of the materials and equipment that the exemption is requested; and

(e) Provide any other information required or requested by the department based on the nature of the project to ensure compliance with KRS 132.020, 132.200, and 224.1-300.

(2) Each "Application for Pollution Control Certificate" shall be specific to a project and location and shall not be a blanket certification for all operations of the applicant.

Section 3. Certificate Issuance, Denial, and Revocation Procedures. (1) Issuance, denial, or revocation of pollution control tax exemption.

(a) Before the department issues or denies, in whole or in part, the "Application for Pollution Control Tax Exemption Certificate," the department shall issue a written notice with an explanation of the issuance or denial to the applicant and the Secretary of the Energy and Environment Cabinet.

(b) If the Department revokes a pollution control exemption tax certificate, the Department shall issue a written notice with an explanation of the revocation to the holder of the certificate and the Secretary of the Energy and Environment Cabinet.

(c) If aggrieved by the issuance, denial, or revocation of pollution control tax exemption, the Energy and Environment Cabinet, the applicant for the pollution control exemption certificate, or the holder of the pollution exemption certificate may request a hearing before the department pursuant to Section 4.

(2) Certificate issuance.

(a) The department shall issue a qualifying applicant a "Pollution Control Tax Exemption Certificate", Form 61A217, upon final approval. The effective date of the certificate shall be the date of making the application to the Department pursuant to KRS 224.1-310(1).

(b) "Pollution Control Tax Exemption Certificate", Form 61A217, shall replace "Pollution Control Tax Exemption Certificate", Form 51A226.

1. "Pollution Control Tax Exemption Certificate", Form 51A226 issued prior to January 1, 2019, shall be a valid pollution control

tax exemption certificate for purposes of KRS 224.1-300, 132.020, and 132.200 unless either of the following applies:

a. The certificate is revoked by the department; or

b. The pollution control facility that an exemption certificate is no longer primarily used for pollution control.

2. Beginning January 1, 2019, a valid pollution control tax exemption certificate for purposes of KRS 224.1-300, 132.020, and 132.200 shall be issued on the "Pollution Control Tax Exemption Certificate", Form 61A217.

Section 4. Administrative Hearing Procedures. (1) If aggrieved by the notice of acceptance; denial, in whole or in part; or revocation of a pollution control exemption tax certification, the Energy and Environment Cabinet, the applicant for the pollution control exemption certificate, or the holder of the pollution exemption certificate may file a written request for a hearing pursuant to KRS 224.1-310 with the commissioner of the department of Revenue within thirty (30) days from the date the notice was mailed.

(2) If a timely written request for hearing is received by the Commissioner of the Department of Revenue, the commissioner shall assign a time and place for the hearing and shall appoint a hearing officer to conduct the hearing, receive evidence, and hear arguments pursuant to the requirements of KRS Chapter 13B.

(3) The hearing officer shall file a written recommended order pursuant to KRS 13B.110 with the Commissioner of the Department of Revenue no later than sixty (60) days after receiving a copy of the official record of the proceeding. The recommended order shall contain a recommendation for the issuance, revocation, or denial, in whole or in part, of the pollution control tax exemption certificate.

(4) The Commissioner of the Department of Revenue shall issue a final order pursuant to KRS 13B.120 within ninety (90) days after the submission of the hearing officer's recommended order, issuing, denying in whole or in part, or revoking the pollution control tax exemption certificate.

(5) Any party to the hearing aggrieved by the issuance of the department's final order may appeal the issuance, revocation, or denial, in whole or in part, of the pollution control tax exemption certificate within thirty (30) days from the date of the mailing of the Department's final order to the Kentucky Claims Commission pursuant to KRS 49.220.

Section 5. Forms. (1) The "Application for Pollution Control Tax Exemption Certificate", Form 61A216, listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(b) At a Kentucky Taxpayer Service Center during business hours; or

(c) On the department Web site at <http://revenue.ky.gov>.

(2) The "Pollution Control Tax Exemption Certificate", Form 61A217, shall be issued by the department upon final approval of the application.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes a new ad valorem tax regulation that outlines the administrative process for obtaining and using the pollution control tax exemption certification as authorized under KRS 224.1-310 due to the repeal of the Sales and Use Tax 103 KAR 30:260.

(b) The necessity of this administrative regulation: This administrative regulation is necessary due to the repeal of 103 KAR 30:260. KRS 139.480 was amended to delete the sales and use tax exemption for pollution control facilities. KRS 132.200 allows for a pollution control exemption for ad valorem property taxes, and thus, this administrative regulation will clarify the process to obtain the exemption.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The propose regulatory language conforms with KRS Chapter 13A, 131.130, 131.131, and 224.1-310.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed administrative regulation outlines the administrative process for the issuance, denial, and revocation of the pollution control exemption certificate, as well as the administrative hearing and appeals process, creating a uniform process.

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

(a) How the amendment will change this existing administrative regulation: 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: Any taxpayer who may apply for a pollution control exemption certificate may be impacted by this administrative regulation. The number of industries or taxpayers this may include is unknown, as the Department of Revenue does not know the potential applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: In order to receive the exemption, they will have to apply for the exemption certificate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Cost should be minimal, if any, associated with the cost of filing the application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be entitled to the pollution control exemption for local ad valorem property tax and a reduced state rate tax for ad valorem property tax.

(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 Chapter 13A, 131.130, 131.131, and 224.1-310.

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? No revenues are expected to be generated by the provisions of this administrative regulation.

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

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs will be incurred as normal operating expenditures of the Department of Revenue.

(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 (Repealer)

103 KAR 43:051. Repeal of 103 KAR 43:050.

RELATES TO: KRS 138.250

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, under the authority of KRS 138.250, prescribes the method of measurement of gasoline and special fuel required by the Department of Revenue. This administrative regulation has not been substantively updated since 1989, and the authorizing statutes contain sufficient guidance negating the need for this regulation. Therefore, this

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administrative regulation is no longer relevant and will not be updated by the Department of Revenue in the future.

Section 1. 103 KAR 43:050, Measurement, is hereby repealed.

DANIEL BORK, Commissioner

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 10, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 27, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: 103 KAR 43:051 repeals 103 KAR 43:050 because it has not been substantively updated since 1989, is no longer needed due to sufficient statutory guidance, and will not be updated by the Department of Revenue going forward.

(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 13A to repeal regulations that will no longer be needed or updated.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will insure that the Department of Revenue is in compliance with KRS 13A.

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

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 428 licensed motor fuel dealers in the state that fall under the requirements of 103 KAR 43:050.

(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. Repealing this regulation may alleviate certain measuring or metering requirements for the

dealers.

(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. They must still comply with the provisions of the authorizing statute, KRS 138.250.

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

(a) Initially: Any costs associated with implementing this repeal will be absorbed by the Department of Revenue operating budget.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: 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 increase in fees or funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are established or increased by this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied 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:

BOARDS AND COMMISSIONS

**Board of Veterinary Examiners
(New Administrative Regulation)**

201 KAR 16:500. Code of ethical conduct for veterinarians.

RELATES TO: KRS 321.351(1)(g)

STATUTORY AUTHORITY: KRS 321.235(3), 321.351(1)(a)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.351 provides for the suspension or revocation of a license, imposition of probationary conditions or an administrative fine, or the issuance

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of a written reprimand for any violation of the code of ethical conduct promulgated by the board. This administrative regulation sets forth certain standards which shall constitute a code of ethical conduct for and upheld by each licensed veterinarian.

Section 1. A veterinarian shall not engage in fraud, deceit, or misrepresentation in the practice of veterinary medicine.

Section 2. A veterinarian shall bill accurately and truthfully for services rendered.

Section 3. A veterinarian shall not engage in false, misleading, or deceptive advertising.

Section 4. A veterinarian shall not issue a certificate of veterinary inspection (CVI) unless the veterinarian has personal knowledge through appropriate examination. A veterinarian shall not issue a CVI unless he or she has complied with all entry requirements of the jurisdiction of destination.

Section 5. A veterinarian shall not represent to the public that he or she is a board certified specialist in any specialty of veterinary medicine unless that veterinarian has been certified by an entity approved by the American Veterinary Medical Association (AVMA) and has submitted the certification for filing with the board.

Section 6. A veterinarian's conduct shall conform to the currently accepted standards in the practice of veterinary medicine.

Section 7. A veterinarian shall maintain adequate equipment to treat patients that he or she is called upon to treat in the practice of veterinary medicine.

Section 8. A veterinarian shall maintain his or her service premises and equipment in a clean and sanitary condition.

Section 9. A veterinarian shall take sufficient time to perform a complete physical exam and recommend the appropriate tests as needed to diagnose the condition of the patient.

Section 10. A veterinarian shall not neglect a patient under his or her care.

Section 11. A veterinarian shall not physically abuse a patient under his or her care.

Section 12. Except as provided for in this administrative regulation, a veterinarian shall have the right to refuse any patient.

Section 13. A veterinarian shall not practice veterinary medicine in a manner that endangers the health of a patient or endangers the health, safety, or welfare of the public.

Section 14. A veterinarian shall not practice veterinary medicine if his or her ability to practice with reasonable skill and safety is adversely affected by the use of alcohol, drugs, narcotics, chemicals, or other substances.

Section 15. A veterinarian shall not overutilize his or her practice. A practice shall be deemed to be overutilized if it exceeds the needs of the patient, considering the patient's history and subjective symptoms; the veterinarian's objective findings, the veterinarian's reasonable clinical judgment, and other information relevant to the practice of veterinary medicine.

Section 16. A veterinarian shall not aid or abet any person in the unlawful practice of veterinary medicine.

Section 17. A veterinarian shall ascertain, before hiring, whether a person who may be hired as a veterinarian has a license to practice veterinary medicine in the Commonwealth of Kentucky and shall be responsible for ensuring that the employee's license remains current.

Section 18. A veterinarian shall not permit a veterinary technician or veterinary assistant to diagnose, prescribe medical treatment, or perform surgical procedures other than the castrating and dehorning of food animals.

Section 19. A veterinarian shall create adequate records to document the veterinarian's examination and treatment of his or her patients.

Section 20. A veterinarian shall retain records of his or her examination and treatment of each patient for a period of at least five (5) years from the most recent examination of the patient.

Section 21. A veterinarian shall provide copies of the veterinarian's medical records of the examination and treatment of a patient upon the request of the client. Copies of records may be released to the client's designee or another veterinarian engaged by the client to examine or treat the patient upon submission of a signed medical release pursuant to KRS 321.185. A veterinarian shall provide copies of the veterinarian's medical records to the board upon request by the board or the board's designee.

Section 22. A veterinarian shall not sell, or offer for sale, prescription medications, including controlled substances, at any place other than in his or her office, clinic, hospital, or mobile unit; or in another place where he or she is treating patients.

Section 23. Except as provided in this Section of this administrative regulation, a veterinarian shall prescribe, dispense, sell, or offer for sale, prescription medications only for his or her own patients. A veterinarian may dispense a non-controlled substance medication for a client that was prescribed by another veterinarian who has established a veterinarian-client-patient relationship (VCPR).

Section 24. A veterinarian shall comply with the requirements of 201 KAR 16:600.

Section 25. A veterinarian shall not write testimonials as to the virtue of medications, remedies, or foods except to report the results of properly controlled, unbiased experiments, or clinical studies.

Section 26. A veterinarian shall post at his or her facility, and make available over the telephone or online, the veterinarian's policy regarding the hours, emergency coverage, and other similar provisions for the operation of the facility.

Section 27. A veterinarian shall maintain a confidential relationship with his or her clients, except as otherwise provided by law, or required by considerations related to public health or animal health.

Section 28. A veterinarian shall obtain the consent of the patient's owner (or the owner's agent) before administering general anesthesia or performing any surgical procedure unless circumstances qualifying as an emergency do not permit obtaining the consent.

Section 29. A veterinarian shall attempt to obtain the consent of a patient's owner (or the owner's agent) in writing, if feasible, before euthanizing a patient or transporting a patient to another facility. If it is not feasible to obtain consent in writing, the veterinarian shall obtain oral consent from the patient's owner (or the owner's agent) and document the consent in the medical record.

Section 30. A veterinarian shall make reasonable efforts to obtain the consent of the owner (or the owner's agent) before disposing of any patient which dies while in the veterinarian's care. Any patient disposal shall be done according to all applicable health and safety laws and regulations.

Section 31. A veterinarian shall, where possible, preserve the body of any patient which dies while in the veterinarian's care while its owner (or the owner's agent) is away, except as otherwise provided by law.

Section 32. A veterinarian shall not abuse or take advantage of the confidence of the client.

Section 33. A veterinarian shall not enter into a business transaction with a client in which the veterinarian and his or her client have differing interests:

(1) If the client reasonably expects the veterinarian to exercise his or her professional judgment for the protection of the client;

(2) If the veterinarian has not fully disclosed his or her interest in the transaction; or

(3) If the client has not given his or her informed consent to the transaction.

Section 34. If a veterinarian performed an inspection of an animal on behalf of a person that the veterinarian knew (or reasonably should have known) planned to sell that animal within sixty (60) days from the date of inspection, then the veterinarian shall not perform an inspection of that animal on behalf of any person that the veterinarian knows (or reasonably should know) is a potential buyer of the animal without first disclosing to the potential buyer the fact and circumstances of the veterinarian's previous inspection of the animal. (The creation, review, or analysis of a radiograph shall constitute an "inspection" for the purposes of this Section.)

Section 35. An applicant for a license shall be truthful in his or her representations to the board.

Section 36. A veterinarian shall comply with the board's request to appear before the board, to provide information to the board, or to make his or her premises available for inspection by the board.

Section 37. A veterinarian shall comply with restrictions on his or her practice of veterinary medicine imposed by the board.

Section 38. A veterinarian shall notify the board within thirty (30) days of a change to his or her legal name.

Section 39. A veterinarian shall notify the board within thirty (30) days of a change to his or her permanent address or mailing address.

Section 40. A veterinarian shall notify the board within thirty (30) days of the occurrence of the following events:

(1) Disciplinary action, revocation, suspension, or, or the voluntary surrender of his or her license to practice veterinary medicine in another jurisdiction;

(2) The suspension, revocation, or voluntary surrender of his or her United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Accreditation;

(3) The suspension, revocation, or voluntary surrender of his or her federal Drug Enforcement Administration (DEA) registration;

(4) The suspension, revocation, or voluntary surrender of his or her state controlled substances license in any jurisdiction; or

(5) The conviction, in any jurisdiction, of any felony or misdemeanor other than a minor traffic violation.

Section 41. A veterinarian shall not refuse treatment of a patient on the basis of the client's race, color, sex, gender identity, age, religion, national origin, veteran status, or disability.

Section 42. A veterinarian shall conduct professional activities in conformity with all federal, state, and municipal laws, ordinances, or regulations.

Section 43. A veterinarian shall not verbally abuse or harass,

nor physically threaten or assault a client, an employee, a board member, or any agent of the board.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the code of ethical conduct for veterinarians.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the ethical code of conduct as required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.351 specifically requires the KVME to create an ethics code.

(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 clearly expressing the ethical code that veterinarians have created and expect of others. This filing makes the ethical code easy to read for members of the general public as well.

(2) If 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: 2528 veterinarians licensed in the Commonwealth, and future applicants.

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

(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: Veterinarians will be required to follow each of the provisions of the code created by their peers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear

communications of the definitions.

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

(a) Initially: No costs are anticipated for the implementation of the ethical code.

(b) On a continuing basis: No costs are anticipated for the ethical code, outside of costs for enforcement of violations.

(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. Fees for the KBVE come from fees related to licensure and certification.

(7) Provide an assessment of whether an 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 related to the ethical code 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? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.351

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? There are no costs associated with this filing.

(d) How much will it cost to administer this program for subsequent years? KDA staff time will be required for record keeping. Costs will be very minimal.

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:

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:510. Fees for veterinarians.

RELATES TO: KRS 321.193, 321.211, 321.240

STATUTORY AUTHORITY: KRS 321.193, 321.211, 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240(5) requires the board to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes those fees for veterinarians.

Section 1. Payment and Submission of Fees. (1) Fees to the board shall be paid by check or money order, or, when available, online payment by debit or credit card. Checks and money orders

shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Application Fees for Veterinarians. (1) The application fee for a veterinarian shall be \$100.

(2) The fee shall be attached to the completed Application for Licensure as a Veterinarian form as found in 201 KAR 16:700 or online equivalent form, including all required attachments.

Section 3. Examination Fees for Veterinarians. (1) The fee for the North American Veterinary Licensing Examination (NAVLE) shall be paid directly to the International Council for Veterinary Assessment (ICVA), its designee, or current test administrator.

(2) The fee for the Kentucky State Board Examination shall be \$100 paid directly to the board.

(3) The fee for an applicant to obtain board approval to retake the NAVLE shall be fifty (50) dollars paid directly to the board and attached to the Application for Retake of the NAVLE form as found in 201 KAR 16:700 or online equivalent form.

Section 4. Renewal Fees for Veterinarians. The following fees shall be paid in connection with licensure renewals:

(1) Except as provided for in subsections (a) and (b) of this section, the biennial renewal fee for licensure as a veterinarian in active status shall be \$200 if the Renewal Application for Veterinarians form as found in 201 KAR 16:700 or online equivalent form is complete, including all required attachments, continuing education credits, and fee payment, and the complete package submitted to the board for review and approval not later than September 30.

(a) For veterinarians who are initially licensed in the second year of the biennium between October 1 and March 31, the licensure renewal fee shall be reduced to \$100 during a licensee's first licensure cycle. The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.

(b) For veterinarians who are initially licensed in the second year of the biennium between April 1 and September 30, the licensure renewal fee shall be waived during a licensee's first licensure cycle.

(2) During the grace period established by KRS 321.211, a licensed veterinarian who failed to meet the September 30 renewal deadline may continue to function as though licensed until a late renewal application is submitted to the board. The late fee for biennial renewal shall be \$100 in addition to the renewal fee as described in Section 4(1), Section 4(2), or Section 6 of this administrative regulation. The veterinarian shall submit the complete renewal form, including all required attachments, continuing education hours, and fee payment, to the board between October 1 and November 30 during the last year of the biennium.

(3) A veterinarian's license shall expire if no renewal application package and all attachments, and late fee if applicable, is paid to the board by November 30.

Section 5. Reinstatement Fees for Veterinarians. (1) Except as provided for in Section 6 of this administrative regulation, if not more than five (5) years have elapsed since the last date of license expiration pursuant to KRS 321.211(3), a veterinarian may pay a reinstatement fee of \$400 and submit a complete Reinstatement Application for Veterinarians form as found in 201 KAR 16:700 or online equivalent form, including all required attachments, to the board for reinstatement of his or her license. A veterinarian may not apply for a new license during this five (5) year window; a reinstatement application is required.

(2) If more than five (5) years have elapsed since the last date of license expiration, a veterinarian must apply as a new applicant to obtain a license in the Commonwealth of Kentucky.

Section 6. Inactive Status of License. (1) A veterinarian may opt to renew his or her license with status of "inactive" during the renewal period by completing the Renewal Application for Veterinarians form as found in 201 KAR 16:700 or online equivalent form, or at any point during the biennium by completing

a Request for Licensure Status Change form as found in 201 KAR 16:700 or online equivalent form. Licensees with an inactive status shall not practice the profession of veterinary medicine in the Commonwealth of Kentucky until the board approves the license to return to active status.

(2) Renewal of an inactive veterinary license.

(a) The biennial renewal fee for inactive veterinarian licensure status shall be \$100 per renewal biennium.

(b) The late fees established in Section 4(2) of this administrative regulation shall apply to a license in an inactive status that was not renewed by September 30 of the biennium.

(c) No continuing education is required while a veterinarian's license is in inactive status.

(d) A license in an inactive status that is not renewed by November 30 shall be deemed to be expired.

(3) Reinstatement of inactive veterinarian license status to active status.

(a) A veterinarian licensee in inactive status may reinstate his or her license to active status at any time by completing and submitting a reinstatement application or designating the status change on a renewal form during the open renewal period, paying a reinstatement fee of \$200, and complying with the provisions established in 201 KAR 16:540, 201 KAR 16:580, and 201 KAR 16:590.

(b) At the time of reinstatement, an inactive licensee shall be required to comply with continuing education requirements established in 201 KAR 16:590.

Section 7. Retirement of a Veterinary License. (1) A veterinarian may request to retire his or her license at any time. The one (1)-time fee for this service is twenty-five (25) dollars, which must be attached to a Request for Licensure Status Change form as found in 201 KAR 16:700 or the renewal form or online equivalent forms provided by the board. Once a license is retired it cannot be reactivated. If a veterinarian holds a retired license and wishes to practice again, he or she must apply to the board for a new license to practice veterinary medicine in the Commonwealth of Kentucky.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the fee for persons seeking a veterinary license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fee that the KBVE board approves for veterinarian licensure.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 321.193, 321.211, 321.240 each require the board to set fees for veterinarian licenses.

(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 clearly expressing what fee has been approved by the KBVE 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 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: 2528 veterinary licenses, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application and renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees associated with licensure.

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

(a) Initially: The KBVE expects costs for their operations to be approximately \$230,000 in the near term.

(b) On a continuing basis: The KBVE expects costs for their operations may exceed \$230,000 after the implementation of their revised administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license and certification fees established in this filing and the other fee filings.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established directly.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.211, 321.240

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 filing will generate approximately \$250,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This filing will generate approximately \$250,000.

(c) How much will it cost to administer this program for the first year? The KBVE estimates expenditures of approximately \$230,000 or more in the near term.

(d) How much will it cost to administer this program for subsequent years? The KBVE estimates expenditures of approximately \$230,000 or more in the near term, with major expenses anticipated for computer systems and other needed items.

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

Revenues (+/-): \$250,000

Expenditures (+/-): \$230,000

Other Explanation: Additional expenses are anticipated by the KBVE.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(New Administrative Regulation)

201 KAR 16:512. Fees for veterinary technicians.

RELATES TO: KRS 321.240, 321.441

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5), 321.441

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240(5) requires the board to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes those fees for veterinary technicians.

Section 1. Payment and Submission of Fees. (1) Fees to the board shall be paid by check or money order, or, when available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Application Fees for Veterinary Technicians. (1) The application fee for a veterinary technician shall be twenty-five (25) dollars.

(2) The fee shall be attached to the completed Application for Licensure as a Veterinary Technician form as found in 201 KAR 16:700 or online equivalent form, including all required attachments.

Section 3. Examination Fees for Veterinary Technicians. (1) The fee for the Veterinary Technician National Exam (VTNE) shall be paid directly to the American Association of Veterinary State Boards (AAVSB), its designee, or current test administrator.

Section 4. Renewal Fees for Veterinary Technicians. The following fees shall be paid in connection with licensure renewals for veterinary technicians:

(1) Except as provided for in subsection (a), the annual renewal fee for licensure as a veterinary technician in active status shall be thirty (30) dollars if the Renewal Application for Veterinary Technicians form as found in 201 KAR 16:700 or online equivalent form is complete, including all required attachments, continuing education credits, and fee payment, to the board not later than September 30.

(a) For a veterinary technician who is initially licensed on or after June 2 of the renewal period, the licensure renewal fee shall be waived during a licensee's first licensure cycle.

(2) During the grace period established by KRS 321.211, the licensed veterinary technician who failed to meet the September 30 renewal deadline may continue to function as though licensed until

a late renewal application is submitted to the board. The late fee for annual renewal shall be fifteen (15) dollars in addition to the renewal fee as described in Section 4(1) of this administrative regulation. The veterinary technician shall submit the complete renewal form, including all required attachments, continuing education credits, and fee payment, to the board between October 1 and November 30.

(3) A veterinary technician's license shall expire if no renewal application package and all attachments, and late fee if applicable, is paid to the board by November 30.

Section 5. Reinstatement Fees for Veterinary Technicians. (1) Except as provided for in Section 5(3) of this administrative regulation, if not more than five (5) years have elapsed since the last date of license expiration pursuant to KRS 321.211(3), a veterinary technician may pay a reinstatement fee of seventy-five (75) dollars and submit a complete Reinstatement Application for Veterinary Technicians form as found in 201 KAR 16:700 or online equivalent form, including all required attachments, to the board for reinstatement of his or her license. A veterinary technician may not apply for a new license during this five (5) year window; a reinstatement application is required.

(2) If more than five (5) years have elapsed since the last date of license expiration, a veterinary technician must apply as a new applicant to obtain a license in the Commonwealth of Kentucky.

Section 6. Inactive Status of a License. (1) A veterinary technician may opt to renew his or her license with status of "inactive" during the renewal period by completing Renewal Application for Veterinary Technicians form as found in 201 KAR 16:700 or online equivalent form, or at any point during the annual cycle by completing the Request for Licensure Status Change form as found in 201 KAR 16:700 or online equivalent form provided by the board. Licensees with an inactive status shall not practice as a veterinary technician in the Commonwealth of Kentucky until the license status is approved by the board to move back to active status.

(2) Renewal of an inactive veterinary technician license.

(a) The annual renewal fee for inactive veterinary technician licensure status shall be ten (10) dollars per renewal period.

(b) The late fees established in Section 4(2) of this administrative regulation shall apply to licenses not renewed annually by September 30.

(c) No continuing education is required while a veterinary technician's license is in inactive status.

(d) A license in an inactive status that is not renewed by November 30 shall be deemed to be expired.

(3) Reinstatement of inactive veterinary technician license status to active status.

(a) A licensed veterinary technician in inactive status may reinstate his or her license to active status by completing and submitting a reinstatement application, paying a reinstatement fee of twenty-five (25) dollars, and complying with the provisions established in 201 KAR 16:540, 201 KAR 16:580, and 201 KAR 16:590.

(b) At the time of reinstatement, an inactive licensee shall still be required to comply with continuing education requirements established in 201 KAR 16:590.

Section 7. Retirement of License. (1) A veterinary technician may request to retire his or her license at any time. The one (1)-time fee for this service is ten (10) dollars, which must be attached to a Request for Licensure Status Change form as found in 201 KAR 16:700 or the renewal form or online equivalent forms provided by the board. Once a license is retired, it cannot be reactivated. If a veterinary technician holds a retired license and wishes to practice again, he or she must apply to the board for a new license to practice the profession of a veterinary technician in the Commonwealth of Kentucky.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the fee for persons seeking a veterinary technician license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fee that the KBVE board approves for veterinary technician licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.241 requires the board to set a fee for veterinary licenses.

(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 clearly expressing what fee has been approved by the KBVE 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 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: 441 veterinary technician licenses, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fees prior to licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application and licensure renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees.

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

(a) Initially: The KBVE expects costs for their operations to be approximately \$230,000 in the near term.

(b) On a continuing basis: The KBVE expects costs for their operations may exceed \$230,000 after the implementation of their revised administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license and certification fees established in this filing and the other fee filings.

(7) Provide an assessment of whether an 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 increases are anticipated by the KBVE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established directly.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.211, 312.235, 321.240

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 filing will generate approximately \$14,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This filing will generate approximately \$14,000.

(c) How much will it cost to administer this program for the first year? The KBVE estimates expenditures of approximately \$230,000 or more in the near term.

(d) How much will it cost to administer this program for subsequent years? The KBVE estimates expenditures of approximately \$230,000 or more in the near term, with major expenses anticipated for computer systems and other needed items.

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

Revenues (+/-): \$14,000

Expenditures (+/-): \$230,000

Other Explanation: Additional expenses are anticipated by the KBVE

BOARDS AND COMMISSIONS

Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:514. Fees for animal control agencies and animal euthanasia specialists.

RELATES TO: KRS 321.207

STATUTORY AUTHORITY: KRS 321.207, 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) authorizes the board to permit qualified animal control agencies in the Commonwealth of Kentucky to apply for a registration certificate from the United States Drug Enforcement Administration (DEA). KRS 321.207(3) authorizes the board to certify animal control agencies to perform euthanasia services for animals. KRS 321.207(4) authorizes the board to issue certificates to those persons who are deemed to be qualified to work as animal euthanasia specialists.

Section 1. Payment and Submission of Fees. (1) Fees to the board shall be paid by check or money order, or, when available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Application Fees. (1) The application fee for issuance of a board certificate authorizing an animal control agency to apply for a restricted controlled substance registration with the United States Drug Enforcement Administration (DEA) shall be fifty (50) dollars. The fee shall be attached to the completed Application for Certification as an Animal Control Agency form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments. The animal control agency shall undergo inspection by an authorized representative of the board in accordance with 201 KAR 16:550 prior to the issuance of a certificate.

(2) The application fee for issuance of a certificate to a certified animal euthanasia specialist shall be fifty (50) dollars. The fee shall be attached to the completed Application for Certification as an Animal Euthanasia Specialist form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments.

Section 3. Renewal Fees for Animal Control Agencies. (1) Except as provided for in subsection (a) of this section, a certified animal control agency shall annually, on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. The animal control agency shall submit the complete Renewal Application for Animal Control Agencies form as found in 201 KAR 16:700 or online equivalent form, including all required attachments, and fee payment to the board.

(a) The renewal fee for the first renewal shall be waived for a certificate issued on or after November 1 of the renewal period.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the animal control agency may continue to function as though certified until a late renewal application is submitted to the board. The late fee for renewal shall be ten (10) dollars in addition to the renewal fee as described in Section 3(1) of this administrative regulation. The animal control agency shall submit the complete renewal form, including all required attachments, and fee payment, to the board between March 2 and April 30 of the annual renewal period. The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.

(3) An animal control agency restricted controlled substance registration certificate shall expire if no renewal package, and late fee if applicable, is paid to the board annually by April 30.

(4) If not more than five (5) years have elapsed since the last date of certificate expiration, an animal control agency that has an expired restricted controlled substance registration certificate may be reinstated upon the submission of a completed Reinstatement Application for Animal Control Agencies form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all attachments, and the payment of a reinstatement fee of seventy-five (75) dollars. The animal control agency shall undergo inspection by an authorized representative of the board in accordance with 201 KAR 16:550 prior to the reinstatement of a certificate. An animal control agency may not apply for a new certificate during this five (5) year window; a reinstatement application is required.

(5) If more than five (5) years have elapsed since the last date of certificate expiration, an animal control agency must reapply to obtain a board certificate authorizing restricted controlled substance registration with the DEA.

Section 4. Renewal Fees for Animal Euthanasia Specialists. (1) Except as provided for in subsection (a) of this section, a certified animal euthanasia specialist shall annually, on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. The animal euthanasia specialist shall submit the complete Renewal Application for Animal Euthanasia

Specialists form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments, and fee payment to the board.

(a) The renewal fee for the first renewal shall be waived for a certificate issued on or after November 1 of the renewal period.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the certified animal euthanasia specialist may continue to function as though certified until a late renewal application is submitted to the board. The late fee for renewal shall be ten (10) dollars in addition to the renewal fee as described in Section 4(1) of this administrative regulation. The animal euthanasia specialist shall submit the complete renewal form, including all required attachments and fee payments, to the board between March 2 and April 30 of the renewal period. The late fee for renewal, if applicable, shall not be reduced without board authorization.

(3) An animal euthanasia specialist certificate shall expire if no renewal package, and late fee if applicable, is paid to the board annually by April 30.

(4) If not more than five (5) years have elapsed since the last date of certificate expiration, an animal euthanasia certificate that has expired may be reinstated upon the submission of a completed Reinstatement Application for Animal Euthanasia Specialists form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all attachments, and the payment of a reinstatement fee of seventy-five (75) dollars. An animal euthanasia specialist may not apply for a new certificate during this five (5) year window; a reinstatement application is required.

(5) If more than five (5) years have elapsed since the last date of certificate expiration, an individual must reapply to obtain a certificate as an animal euthanasia specialist in the Commonwealth of Kentucky.

Section 5. Inactive Status for Animal Euthanasia Specialists. A certified animal euthanasia specialist may opt to renew a certificate with a status of inactive at any time by indicating so on a completed Request for Licensure Status Change form as found in 201 KAR 16:700 or the renewal form or online equivalent forms provided by the board. (1) There is no fee for inactive status for a certified animal euthanasia specialist.

(2) When a certified animal euthanasia specialist's employment with a certified animal control agency terminates or the certificate for the certified animal control agency expires, his or her certificate shall be moved to inactive status for a period not to exceed five (5) years.

(a) During the five (5) year period, the animal euthanasia specialist may apply to reinstate the certificate to active status by completing a reinstatement application.

(b) After five (5) years, the individual must reapply for certification as an animal euthanasia specialist.

(3) A certified animal euthanasia specialist may convert his or her certificate from inactive to active status at any time when he or she is employed with a certified animal control agency by completing and submitting a reinstatement application, paying a fifty (50) dollar reinstatement fee, and complying with the provisions established in 201 KAR 16:514, 201 KAR 16:560, and 201 KAR 16:572.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the fee for persons seeking an animal control agency certificate or animal euthanasia specialist certificate.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fee that the KBVE board approves for animal control agency certificates or animal euthanasia specialist certificates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 requires the board to set a fee for animal control agency certificates or animal euthanasia specialist certificates.

(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 clearly expressing what fee has been approved by the KBVE 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 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: 58 animal control agency certificates, 211 animal euthanasia specialist certificates, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have paid the fee prior to licensure.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application and renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees.

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

(a) Initially: The KBVE expects costs for their operations to be approximately \$230,000 in the near term.

(b) On a continuing basis: The KBVE expects costs for their operations may exceed \$230,000 after the implementation of their revised administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license and certification fees established in this filing and the other fee filings.

(7) Provide an assessment of whether an 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

increases are anticipated by the KBVE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established directly.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.211, 321.235, 321.240

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 filing will generate approximately \$15,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This filing will generate approximately \$15,000.

(c) How much will it cost to administer this program for the first year? The KBVE estimates expenditures of approximately \$230,000 or more in the near term.

(d) How much will it cost to administer this program for subsequent years? The KBVE estimates expenditures of approximately \$230,000 or more in the near term, with major expenses anticipated for computer systems and other needed items.

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

Revenues (+/-): \$15,000

Expenditures (+/-): \$230,000

Other Explanation: Additional expenses are anticipated by the KBVE

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:516. Fees – other fees.

RELATES TO: KRS 321.240, 321.201

STATUTORY AUTHORITY: KRS 321.240, 321.201, 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240 authorizes the board to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes fees for various services provided by the board. KRS 321.201 authorizes the board to issue a special permit for the practice of veterinary medicine and to require a fee for such permits. This administrative regulation establishes the fee for a special permit.

Section 1. Payment and submission of fees. (1) Fees to the board shall be paid by check or money order, or, when available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Fees for special permits. (1) The fee for a special permit issued by the board pursuant to KRS 321.201 shall be fifty (50) dollars. The fee shall be attached to either the Application for

Licensure as a Veterinarian form or the Application for Retake of the NAVLE form as found in 201 KAR 16:700 or online equivalent forms provided by the board.

Section 3. Fees for license verification letters and letters of good standing. (1) The fee for a license verification letter or a letter of good standing is ten (10) dollars. The fee shall be attached to a Request for Licensure Verification form as found in 201 KAR 16:700 or online equivalent form provided by the board. Upon receipt of the request and payment, the board will issue the requested letter and complete any forms required by regulatory bodies in other jurisdictions.

Section 4. Fees for mailing lists. (1) The fee for a request to obtain a copy of the mailing list of the board's licensees is fifteen (15) dollars. The fee shall be attached to a Request for Mailing List form as found in 201 KAR 16:700 or online equivalent form. Upon the receipt of the request and payment, the board will send a current licensee mailing list to the requesting party.

Section 5. Fees for duplicate wall certificates. (1) The fee for a duplicate wall certificate, including the board's seal, is ten (10) dollars.

Section 6. Fees for processing payments. (1) The board shall have authority to require a reasonable service charge for processing payments submitted online or in paper form. Such fees shall be calculated as a percentage of the underlying fee pursuant to the board's current contracted rate for payment processing services. Service charge fees are non-refundable.

Steven J. Wills, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the fees for specific KBVE services as outlined in the filing.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the fee that the KBVE board approves for the various other services that are not specifically related to licensure and renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.240, 321.201, and the balance of that chapter allow the KBVE broad regulatory authority. The KBVE provides additional services that it wishes to capture a portion of the expenses thereof through this filing.

(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 clearly expressing what fee has been approved by the KBVE 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 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: 2528 veterinary licenses, 441 veterinary technician licenses, 58 animal control agency certificate holders, 211 animal euthanasia specialist certificate holders, and future applicants.

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

(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: Persons will be required to have paid the fee prior to the specific service being performed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for a specific service.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the fees.

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

(a) Initially: The KBVE expects costs for their operations to be approximately \$230,000 in the near term.

(b) On a continuing basis: The KBVE expects costs for their operations may exceed \$230,000 after the implementation of their revised administrative regulations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees for the KBVE come from license and certification fees established in this filing and the other fee filings.

(7) Provide an assessment of whether an 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 increases are anticipated by the KBVE.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established directly.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.211, 321.235, 321.240

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 filing will generate approximately \$15,000.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This filing will generate approximately \$15,000.

(c) How much will it cost to administer this program for the first year? The KBVE estimates expenditures of approximately \$230,000 or more in the near term.

(d) How much will it cost to administer this program for subsequent years? The KBVE estimates expenditures of approximately \$230,000 or more in the near term, with major expenses anticipated for computer systems and other needed items.

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

Revenues (+/-): \$2,500

Expenditures (+/-): \$230,000

Other Explanation: Additional expenses are anticipated by the KBVE.

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(New Administrative Regulation)

201 KAR 16:520. Approved veterinary colleges; approved programs for veterinary technicians.

RELATES TO: KRS 321.193, 321.441

STATUTORY AUTHORITY: KRS 321.193, 321.235(3), 321.240(5), 321.441

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.190 requires persons engaging in the practice of veterinary medicine in the Commonwealth of Kentucky to be licensed by the board. KRS 321.190 sets forth the requirements for licensure as a veterinarian. KRS 321.441 provides for the qualification, licensing, and use of veterinary technicians. One (1) of the requirements for veterinarians is the receipt of a degree from a veterinary college approved by the board, and one (1) of the requirements for veterinary technicians is the receipt of a degree from a program approved by the board. This administrative regulation sets forth the veterinary colleges and veterinary technician programs approved by the board.

Section 1. Approved Veterinary Colleges. The board hereby approves any veterinary college which held full accreditation, limited accreditation, or approval by the American Veterinary Medical Association (AVMA) Council on Education on the date when the applicant received a degree from the veterinary college.

Section 2. Licensure of Veterinarians who Graduated from Non-approved Schools. If an applicant for a veterinarian license does not possess a degree from a veterinary college within the scope set forth in Section 1 of this administrative regulation, the applicant shall be eligible for licensure after successfully completing and receiving certification from one of the following programs:

(1) The Educational Commission for Foreign Veterinary Graduates (ECFVG) of the American Veterinary Medical Association (AVMA), or

(2) The Program for the Assessment of Veterinary Education Equivalence (PAVE) of the American Association of Veterinary State Boards (AAVSB).

Section 3. Approved Veterinary Technician Programs. The board hereby approves any veterinary technician program, or veterinary technologist program, or veterinary nurse program, which held full accreditation, limited accreditation, or approval by the American Veterinary Medical Association (AVMA) Committee on Veterinary Technician Education and Activities on the date when the applicant received a degree from the institution.

Section 4. Licensure of Veterinary Technicians who Graduated from Non-approved Schools or Programs. If an applicant for a

veterinary technician license does not possess a degree from a veterinary technician program within the scope set forth in Section 3 of this administrative regulation, the candidate shall be eligible to qualify for licensure and board approval by:

(1) Following graduation, submitting an official copy of final transcripts from the college of study, and any other requested documentation, showing successful completion of the program for the board's review and determination of approval; or

(2) Successfully completing the program and receiving certification from the Program for the Assessment of Veterinary Education Equivalence (PAVE) or its equivalent program of the American Association of Veterinary State Boards (AAVSB) for veterinary technicians; and

(3) Successfully completing all other application requirements for licensure.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the approved veterinary colleges, and veterinary technician programs for persons seeking a veterinary license or veterinary technician license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the degrees and trainings that the KBVE board approves as a requirement for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193 and 321.441 each require the board to approve a degree or program for each applicant for veterinary and veterinary technician licenses.

(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 clearly expressing what degrees and programs have been approved by the KBVE 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 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: 2528 veterinary licenses, 441 veterinary technician licenses, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have a degree or training in a program that has KBVE approval as outlined 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): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(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. Fees for the KBVE come from license and certification 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? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.235, 321.441

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How 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? Staff time will be required for record keeping. Costs will be very minimal.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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:

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:530. Examination requirements for veterinarians and veterinary technicians.

RELATES TO: KRS 321.193, 321.441

STATUTORY AUTHORITY: KRS 321.193, 321.235(3), 321.240(5), 321.441

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193 provides that the examinations required for licensure shall be approved by the board. This administrative regulation identifies the examinations that are required of veterinarians and veterinary technicians for licensure by the board.

Section 1. (1) The examination required for licensure by the board as a veterinarian shall be the successful completion of the North American Veterinary Licensing Examination (NAVLE).

(2) Candidates shall apply to the board for verification of eligibility to take the NAVLE.

(3) Candidates seeking to take the NAVLE shall apply directly to the International Council for Veterinary Assessment (ICVA), its designee, or current administrator of the NAVLE for admission to the examination.

(4) Applicants for veterinarian licensure to the board shall request and pay a fee directly to the ICVA, its designee, the American Association of Veterinary State Boards (AAVSB), or current official records custodian, to have test scores sent directly to the board. Unofficial copies of scores from applicants or other sources will not be accepted.

(5) Candidates for the NAVLE who do not receive a passing score must apply to the board to retake the NAVLE on the Application for Retake of the NAVLE form as found in 201 KAR 16:700 or online equivalent form.

(6) In addition to achieving a passing score on the NAVLE, applicants for licensure shall be required to achieve a score of eighty (80) percent or higher on the Commonwealth of Kentucky State Board Examination which shall cover the specific requirements of KRS Chapter 321 and the administrative regulations promulgated pursuant thereto.

(7) The board shall recognize passing scores on the National Board Examination (NBE) and the Clinical Competency Test (CCT) in lieu of a NAVLE test score if the applicant for licensure completed both examinations prior to May, 2000.

(8) Graduates of veterinary schools or programs not approved by the American Veterinary Medical Association (AVMA) must also submit proof of successful completion of one (1) of the following programs:

(a) The Educational Commission for Foreign Veterinary Graduates (ECFVG) program offered by the AVMA; or

(b) The Program for the Assessment of Veterinary Education Equivalence (PAVE) program offered by the American Association of Veterinary State Boards (AAVSB).

Section 2. (1) Except as provided for in subsection (a), the examination required for licensure by the board as a veterinary technician shall be the successful completion of the Veterinary Technician National Exam (VTNE).

(a) If the veterinary technician graduated from an approved program prior to 1990, and successfully completed one of the following tests prior to 1990,

1. The board will also accept official results showing a passing score from the Animal Technician National Exam (ATNE) if taken during the years 1986 – 1989; or

2. The board will also accept official results showing a passing score from a jurisdictional level competency exam if taken prior to 1986.

(2) Candidates seeking to take the VTNE shall apply directly to the AAVSB, its designee, or current administrator of the VTNE for verification of eligibility and admission to the examination.

(3) Applicants for veterinary technician licensure to the board shall request and pay a fee directly to the AAVSB, PSI Services,

one of their designees, or to the current official records custodian to have test scores sent directly to the board. Copies of scores from applicants or other sources will not be accepted.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the examination requirements for persons seeking a veterinary license or veterinary technician license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the examinations and passing scores that the KBVE board approves as a requirement for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193 and 321.441 each require the board to approve a degree or program for each applicant for veterinary and veterinary technician licenses.

(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 clearly expressing what examinations have been approved by the KBVE 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 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: 2528 veterinary licenses, 441 veterinary technician licenses, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to have passed an examination that has KBVE approval as outlined 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): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(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. Fees for the KBVE come from license and certification 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? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.235, 321.240, 321.441

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How 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? Staff time will be required for record keeping. Costs will be very minimal.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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:

BOARDS AND COMMISSIONS

Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:540. Application requirements for veterinarians and veterinary technicians.

RELATES TO: KRS 321.193, 321.221, 321.441

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193 and 321.221 provides for application requirements for veterinarians. KRS 321.441 sets forth the requirements for licensure as a veterinary technician. This administrative regulation sets forth application requirements for veterinarians and veterinary

technicians applying for licensure in the Commonwealth of Kentucky from the board.

Section 1. New application to the board for licensure as a veterinarian shall include the following components:

(1) A completed application on an Application for Licensure as a Veterinarian form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments;

(2) A current color photograph of the applicant not smaller than 2 in. x 2 in., or a color copy of the applicant's current valid driver's license or passport with photo;

(3) An official copy of final transcripts, or a copy of the applicant's diploma from the issuing school;

(4) A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check. The board has the power to impose additional requirements as a condition of licensure or deny licensure following the board's review of findings from a national background check;

(5) A copy of any court documents, final orders, settlement agreements, or other documents requested by the board in support of the application;

(6) An official copy of an applicant's testing score report. The score report shall be sent directly to the board from the International Council for Veterinary Assessment (ICVA), the American Association of Veterinary State Boards (AAVSB), other board recognized testing body, their designee, or official records custodian. The report shall include results for either:

(a) The North American Veterinary Licensing Exam (NAVLE), or

(b) The National Board Examination (NBE) and the Clinical Competency Test (CCT), if completed prior to May 31, 2000;

(7) The completed State Exam Answer Sheet; and

(8) Payment for the application fee required by 201 KAR 16:510.

(9) In addition to the requirements listed in subsections (1), (2), (4), (5), (7), and (8) of this section, requirements for veterinary license endorsement applications include:

(a) Licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinarian; and

(b) A current credential report, which shall include an applicant's score report for the NAVLE or NBE and CCT, directly from the AAVSB, its designee, or official records custodian.

(10) In addition to the requirements listed in subsections (1), (2), (4), (5), (7), and (8) of this section, requirements for foreign graduate veterinary license applications include,

(a) Licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinarian;

(b) A current credential report, which shall include an applicant's score report for the NAVLE or NBE and CCT, directly from the AAVSB, its designee, or official records custodian; and

(c) An official report or letter showing completion of one (1) of the programs listed in the subparagraphs of Section 1(10)(c) of this administrative regulation. The report or letter shall be sent directly to the board from the testing organization, its designee, or current official records custodian.

1. The Educational Commission for Foreign Veterinary Graduates (ECFVG) Program of the American Veterinary Medical Association (AVMA), or

2. The Program for the Assessment of Veterinary Education Equivalence (PAVE) of the AAVSB.

Section 2. Reinstatement applications to the board for licensure as a veterinarian shall include the following components:

(1) A completed application on a Reinstatement Application for Veterinarians form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments;

(2) A complete national background check from a board approved background check provider, which may include a copy of

the applicant's fingerprints captured at a board approved office for the purpose of a national background check;

(3) A copy of any court documents, final orders, settlement agreements, or other documents requested by the board in support of the application;

(4) Licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinarian;

(5) A current credential report directly from the AAVSB, its designee, or official records custodian;

(6) Proof of a minimum of thirty (30) board approved continuing education credits during the twenty-four (24) months immediately prior to the date of application; and

(7) Payment for the reinstatement application fee pursuant to 201 KAR 16:510.

Section 3. A veterinary license holder of the board shall be required to renew his or her license pursuant to 201 KAR 16:570.

Section 4. New applications to the board for licensure as a veterinary technician shall include the following components:

(1) A completed application on an Application for Licensure as a Veterinary Technician form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments;

(2) A current color photograph of the applicant not smaller than 2 in. x 2 in., or color copy of the applicant's current valid driver's license or passport with photo;

(3) An official copy of final transcripts, or copy of the applicant's diploma from the issuing school;

(4) A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check;

(5) A copy of any court documents, final orders, settlement agreements, or other documents requested by the board in support of the application.

(6) An official copy of an applicant's test scores pursuant to 201 KAR 16:530, Section 2(1), directly from PSI Services, the American Association of Veterinary State Boards (AAVSB), their designee, or official records custodian; and

(7) Payment for the application fee pursuant to 201 KAR 16:512.

(8) In addition to the requirements listed in subsections (1) – (7) in Section 3 of this administrative regulation, requirements for endorsement veterinary technician applications include licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinary technician.

Section 5. In addition to the requirements listed in subsections (1) - (7) of Section 4 of this administrative regulation, requirements for foreign graduate veterinary technician license applications include,

(a) Licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinary technician;

(b) A current credential report directly from the AAVSB, its designee, or official records custodian; and

(c) An official score report or letter showing results for the Program for the Assessment of Veterinary Education Equivalence (PAVE) or equivalent program of the AAVSB for veterinary technicians. The score report shall be sent directly to the board from the testing organization, its designee, or official records custodian.

Section 6. Reinstatement applications to the board for licensure as a veterinary technician shall include the following components:

(1) A completed application on a Reinstatement Application for Veterinary Technicians form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments;

(2) A complete national background check from a board approved background check provider, which may include a copy of

the applicant's fingerprints captured at a board approved office for the purpose of a national background check;

(3) A copy of any court documents, settlement agreements, or other documents requested by the board in support of the application;

(4) Proof of a minimum of six (6) board approved continuing education credits during the twelve (12) months immediately prior to the date of application.

(5) Licensure verifications from all jurisdictions in which the applicant once held or currently holds a license as a veterinary technician;

(6) A current credential report from the AAVSB; and

(7) Payment for the application fee pursuant to 201 KAR 16:512.

Section 6. A veterinary technician license holder of the board shall be required to renew his or her license pursuant to 201 KAR 16:570.

Section 7. Change in licensure status. Veterinarian and veterinary technician license holders may apply to the board for a change in licensure status. Such requests shall include the following components:

(1) A completed application on a Request for Licensure Status Change form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments;

(2) Payment for the application fee pursuant to 201 KAR 16:510 for veterinarians or 201 KAR 16:512 for veterinary technicians.

Section 8. The board is authorized to conduct a national or jurisdictional level background check on each applicant for licensure. The board has the power to impose additional requirements as a condition of licensure or to deny licensure following the board's review of findings from a background check.

STEVEN J. WILLIS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the application requirements for persons seeking a veterinary license or veterinary technician license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the application material that the KBVE board approves as a requirement for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193, 321.221 and 321.441 each require the board to approve a degree or program for each

applicant for veterinary and veterinary technician licenses.

(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 clearly expressing what application requirements are created by the KBVE 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 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: 2528 veterinary licenses, 441 veterinary technician licenses, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to submit application materials as outlined 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): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(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. Fees for the KBVE come from license and certification 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? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.221, 321.235, 321.240, 321.441

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How 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? Staff time for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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:

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(New Administrative Regulation)

201 KAR 16:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.

RELATES TO: KRS 321.207

STATUTORY AUTHORITY: KRS 321.207(2), 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207 permits the board to authorize an animal control agency to apply for a registration certificate by the United States Drug Enforcement Administration (DEA) to euthanize animals. KRS 321.207 requires the applicant agency to comply with administrative regulations that establish standards for the proper storage and handling of the drugs the board has authorized for use, and other provisions that may be necessary to ensure that the drugs are used safely and solely for the purpose of euthanizing animals. This administrative regulation establishes the certification requirements, standards for proper drug storage, and drugs that may be used by certified animal control agencies and the certified animal euthanasia specialists they employ.

Section 1. General Requirements. (1) The applicant animal control agency shall apply to the board for authorization as defined by KRS 321.207.

(2) A complete application to the board shall include the following components:

(a) A completed *Application for Certification as an Animal Control Agency* form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments;

(b) Identification of the agency designated onsite manager;

(c) A complete national background check on the agency designated onsite manager from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check;

(d) A complete and current list of all individuals performing euthanasia activities at the animal control facility; and

(e) Payment of the fee in accordance with 201 KAR 16:514.

(3) Prior to the board's issuance of the certificate of authorization, the applicant shall undergo an inspection of the facility by the board inspector or other designee of the board.

(4) Following board application approval, the applicant shall apply to DEA for registration as a practitioner and designate "animal shelter" on the appropriate DEA form.

(5) A certified animal control agency shall submit to inspection by a board representative at any time, with or without advanced notice.

(6) A certified animal control agency shall designate an onsite manager of the shelter. The agency shall notify the board in writing within ten (10) days of any change in the onsite manager of the shelter. The board is authorized to conduct a national or jurisdictional level background check on each manager. The board has the power to impose additional requirements as a condition of certification or to deny certification following the board's review of

findings from a background check.

(7) Animal control agency certificate renewal requirements.

(a) An animal control agency shall renew the board certification annually in accordance with 201 KAR 16:572.

(b) Failure to renew the certificate for an animal control agency shall result in the following actions by the board:

1. The animal control agency certificate shall be moved to expired status;

2. All certified animal euthanasia specialists under the employment of the formerly certified animal control agency shall be moved to inactive status; and

3. The DEA shall be notified of the lapse in certification.

4. An animal control agency shall have five (5) years to reinstate their certificate, after which the agency must apply for a new certificate in accordance with this administrative regulation and 201 KAR 16:572.

Section 2. Approved Drugs. A certified animal control agency shall be restricted to the purchase of sodium pentobarbital and other euthanasia drugs currently approved by the American Veterinary Medical Association (AVMA) for the purpose of euthanizing animals. DEA's Schedule II order forms (titled "DEA-222") shall be used for each purchase of sodium pentobarbital or other AVMA approved euthanasia drugs.

Section 3. Records. (1) A certified animal control agency shall maintain records of purchases and administration of sodium pentobarbital and other AVMA approved euthanasia drugs for a period of not less than two (2) years.

(2) Records of administration shall include, at a minimum, the following information:

(a) The date of use;

(b) Identification of the animal;

(c) The amount of the drug used;

(d) The signature of the person administering the drug;

(e) The signature of the onsite manager certifying the accuracy of the administration of sodium pentobarbital and other AVMA approved euthanasia drugs not less than once per month; and

(f) The signature of the onsite manager certifying to the accuracy of the records.

(3) Records of purchase and destruction of sodium pentobarbital and other AVMA approved euthanasia drugs shall be maintained in a separate file from the records of administration of such substances.

(4) The records of purchase, destruction, and administration are subject to audit by representatives of the DEA or authorized designees of the board to determine adequacy, accuracy, and validity of the recordkeeping. The board has the power to impose restrictions and administrative penalties on certificate holders as a result of substandard controls or records of said drugs.

(5) The records of purchase, destruction, and administration shall be maintained at the location of the agency.

Section 4. Storage. (1) Sodium pentobarbital and other AVMA approved euthanasia drugs shall be stored in a securely locked cabinet within a locked storage room or other enclosure at the certified animal control agency.

(2) Schedule II order forms shall be stored in a securely locked cabinet, separate from the storage location of the drugs, within a locked storage room or other enclosure at the certified animal control agency.

Section 5. Disposal of Needles and Medical Waste. All needles generated in the process of euthanizing animals shall be disposed of pursuant to KRS 217.177(6).

Section 6. Disciplinary Action. An animal control agency and its employees shall be subject to disciplinary action pursuant to KRS 321.235(7) and KRS 321.351 for a violations of state or federal statutes or administrative regulations.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the application requirements for animal control agencies seeking approval to use restricted controlled substances.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the application material that the KBVE board approves as a requirement for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 requires the board to create qualifications for authorization of applicant to seek DEA approval for use of restricted controlled substances.

(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 clearly expressing what application requirements are created by the KBVE 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 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: 58 animal control agencies and 211 animal euthanasia specialists, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to submit application materials as outlined 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): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(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. Fees for the KBVE come from licensure and certification 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? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207, 321.235, 321.240

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How 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 is not a new program. Staff time will be required for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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:

BOARDS AND COMMISSIONS

Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:560. Certification as an animal euthanasia specialist.

RELATES TO: KRS 321.207

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(3) requires the board to issue a certificate to a person who meets the qualifications of an animal euthanasia specialist and is approved by the board for a certificate. This administrative regulation establishes the qualifications for certification as an animal euthanasia specialist and the duties of an animal euthanasia specialist.

Section 1. In order to be eligible for certification as a certified animal euthanasia specialist an applicant shall:

(1) Be twenty-one (21) years of age;

(2) Be of good moral character;

(3) Not have been convicted of, or entered an "Alford" plea or plea of nolo contendere to, irrespective of an order granting

probation or suspending imposition of any sentence imposed following the conviction or entry of such plea, one (1) or more or the following in the last ten (10) years:

- (a) A felony;
- (b) An act involving moral turpitude or gross immorality; or
- (c) A violation of any law, rule, or administrative regulation of this state, any other state, or the United States government which involves the use or trafficking of illegal substances;
- (4) Have received a high school diploma or general equivalency degree (GED);
- (5) Paid the initial certification fee as specified in 201 KAR 16:514;
- (6) Be employed by a board certified animal control agency; and
- (7) Complete a board approved sixteen (16) hour euthanasia specialist training course as set forth in Section 2 of this administrative regulation within ten (10) years prior to application.

Section 2. Euthanasia Specialist Training Course Curriculum.

(1) The curriculum for the sixteen (16) hour euthanasia specialist course shall provide information on the following subjects:

- (a) Pharmacology, proper administration, and storage of euthanasia solutions that shall consist of a minimum of eight (8) hours;
- (b) Federal and state laws regulating the storage and accountability for euthanasia solutions;
- (c) Euthanasia specialist stress management;
- (d) Proper animal handling with emphasis on easing the trauma and stress to the animal; and
- (e) Disposal of euthanized animals.

(2) A training course for a euthanasia specialist shall be reviewed and approved by the board prior to presentation. A provider of a euthanasia specialist training shall submit the following information to the board:

- (a) A published course or similar description;
- (b) Names and qualifications of current instructors;
- (c) A copy of the program agenda indicating hours of education, coffee, and lunch breaks;
- (d) A copy of the full program curriculum;
- (e) A copy of an official certificate of completion from the sponsoring agency; and
- (f) Upon completion of the instruction of a sixteen (16)-hour euthanasia course, a complete attendee list to the board, including the following:
 1. The dates and locations of the course;
 2. Each attendee's full name and address; and
 3. Notation by an individual's name if the course was not completed.

Section 3. An application to the board for licensure as a certified animal euthanasia specialist shall include the following components:

- (1) A completed application on an Application for Certification as an Animal Euthanasia Specialist form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments;
- (2) An official copy of final transcripts or a copy of the applicant's diploma from high school, or GED certificate, or highest level of education attained;
- (3) A copy of a certificate of completion from a board approved sixteen (16)-hour euthanasia training course;
- (4) A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check; and
- (5) Payment for the application fee pursuant to 201 KAR 16:514.

Section 4. An individual with an expired animal euthanasia specialist certificate may reinstate their certificate. Reinstatement applications seeking board approval for certification as an animal euthanasia specialist shall include the following components:

(1) A completed application on a Reinstatement Application for Animal Euthanasia Specialists form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments;

(2) A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check; and

(3) Payment for the application fee pursuant to 201 KAR 16:514.

Section 5. An application to the board for approval for a change in licensure status shall include the following components:

(1) A completed application on a Request for Licensure Status Change as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments; and

(2) Payment for the application fee pursuant to 201 KAR 16:514.

Section 6. The board is authorized to conduct a national or jurisdictional background check on each applicant for licensure. The board has the power to impose additional requirements as a condition of licensure or deny licensure following the board's review of findings from a background check.

Section 7. Employment and Termination.

(1) A person may function as a certified animal euthanasia specialist only while he or she remains employed by a certified animal control agency in the Commonwealth of Kentucky.

(2) Upon termination of employment with a certified animal control agency or upon expiration of the certified animal control agency's certificate, a certified animal euthanasia specialist's certificate status shall automatically be moved by the board from an active to inactive status. The inactive certified individual shall not perform animal euthanasia until he or she has obtained employment with a certified animal control agency with a certificate in active status, and applied to the board and been approved to move the animal euthanasia specialist certificate back into active status.

Section 8. Duties of a Certified Animal Euthanasia Specialist. The duties of certified animal euthanasia specialist shall include the following:

- (1) Preparing animals for euthanasia;
- (2) Carefully and accurately recording dosages, administration, and drug waste;
- (3) Ordering supplies and drugs;
- (4) Maintaining the security of all controlled substances and drugs in accordance with 201 KAR 16:550 and other applicable federal, state, and local laws;
- (5) Reporting to the board any infraction of KRS Chapter 321 or the administrative regulations promulgated thereunder;
- (6) Humanely euthanizing animals;
- (7) Disposing of the bodies in a manner consistent with KRS 257.160;
- (8) Maintaining his or her certification;
- (9) Reporting to the board any change of address within thirty (30) days; and
- (10) Providing a written response to a grievance or inquiry from the board within thirty (30) days of receipt.

Section 9. Approved Methods of Euthanasia. (1) A certified animal euthanasia specialist shall perform euthanasia by means of lethal injection on an animal by use of sodium pentobarbital or other AVMA approved euthanasia drug and AVMA approved administration methodology, in a manufactured dosage form, whose only indication is for euthanizing animals.

(2) When using a lethal solution to perform euthanasia on an animal, a certified animal euthanasia specialist shall use the appropriate solution in accordance with the following methods and in the following order of preference:

- (a) Intravenous injection by hypodermic needle;
- (b) Intraperitoneal injection by hypodermic needle;

(c) Intracardial injection by hypodermic needle, but only on a sedated or unconscious animal;

(d) Solution or powder added to food.

Section 10. Disciplinary Action. A certified animal euthanasia specialist shall be subject to disciplinary action pursuant to KRS 321.235(7) and 321.351 for violations of state or federal statutes or regulations.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the application requirements for animal euthanasia specialists.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the application material that the KBVE board approves as a requirement for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 requires the board to create qualifications for authorization of applicant to seek board approval as an animal euthanasia specialists.

(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 clearly expressing what application requirements are created by the KBVE 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 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: 211 animal euthanasia specialists, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative

regulation or amendment: Applicants will be required to submit application materials as outlined 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): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(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. Fees for the KBVE come from licensure and certification 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? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207, 321.235, 321.240

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How 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? Staff time will be required for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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:

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:570. License renewal for veterinarians and veterinary technicians; renewal notice.

RELATES TO: KRS 321.193, 321.211, 321.441

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193, 321.221, and 321.441 require the board to issue a license or registration to all persons successfully passing the examination and being qualified to engage in the practice of veterinary medicine

or as a veterinary technician in the Commonwealth of Kentucky. KRS 321.211 and 321.441 provide for the renewal of the license or registration. This administrative regulation requires a renewal notice to all licensed veterinarians and veterinary technicians and requires all licensed veterinarians and veterinary technicians to complete the renewal application and return it, along with the renewal fee, to the board. It further requires all licensed veterinarians and veterinary technicians to keep the board apprised of the legal name and current address of the licensee.

Section 1. (1) The board shall, not later than August 31 of each even-numbered year, email or mail to each licensed veterinarian a biennial renewal notice.

(2) The board shall, not later than August 31 of each year, email or mail to each licensed veterinary technician an annual renewal notice.

(3) The renewal application shall be completed by the licensee and returned to the board, including all required attachments and, if required by the board, proof of course completion for the required continuing education.

(4) Timely receipt of renewal application.

(a) Renewals bearing a postmark, or, in the case of online renewal, a timestamp, of September 30 or earlier shall be considered received on time.

(b) Renewals bearing a postmark, or, in the case of online renewal, a timestamp, between October 1 and November 30 shall be considered late and therefore incur a late fee pursuant to 201 KAR 16:510 for veterinarians and 201 KAR 16:512 for veterinary technicians.

(5)(a) The renewal fee shall be attached to the completed renewal form when it is returned to the board.

(b) The renewal fee shall be paid in accordance with 201 KAR 16:510 for veterinarians and 201 KAR 16:512 for veterinary technicians.

Section 2. (1) Every licensed veterinarian shall list his or her continuing education hours received pursuant to 201 KAR 16:590 on the Renewal Application for Veterinarians form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments, and if required, proof of attendance or completion of training to the board.

(2) Every licensed veterinary technician shall list his or her continuing education hours received pursuant to 201 KAR 16:590 on the Renewal Application for Veterinary Technicians form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments, and if required by the board, proof of course completion of the required continuing education.

(3)(a) The board shall not renew the license of any person who fails to appropriately document the required hours of continuing education.

(b) The veterinarian license shall expire and subsequently be terminated as prescribed by KRS 321.211.

(c) The veterinary technician license shall expire and subsequently be terminated as prescribed by KRS 321.441.

Section 3. The board shall not be held responsible or liable for lost renewal notices, or renewal notices not received, or not received on time. (1) Regardless of cause, the board has no obligation to refund money to a licensee who fails to renew in a timely manner pursuant to Section 1(4) of this administrative regulation.

(2) If a licensee fails to renew by the grace period deadline, the license shall expire. The former licensee has not more than five (5) years from the date of expiration to apply for reinstatement of the license in accordance with 201 KAR 16:540. A reinstatement application is required during this period; an application for a new license will not be accepted until five (5) years after the last date of expiration.

Section 4. Every licensed veterinarian or veterinary technician shall file his or her legal name and proper and current mailing address with the board at its principal office and shall within thirty

(30) days notify the board of any changes of his or her legal name or mailing address.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for persons seeking to renew a veterinary license or veterinary technician license.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the material that the KBVE board approves as a requirement for licensure renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.193, 321.221 and 321.441 each require the board to approve materials needed for veterinary and veterinary technician license renewals.

(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 clearly expressing what renewal requirements are created by the KBVE 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 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: 2528 veterinary licenses, 441 veterinary technician licenses, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to submit renewal materials as outlined 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): No costs are associated with compliance, as this is a prerequisite for renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: Costs of review and administration.

(b) On a continuing basis: Costs of review and administration.

(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. Fees for the KBVE come from license and certification fees that are established in 201 KAR 210.

(7) Provide an assessment of whether an 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 in this regulation. 201 KAR 16:510 and 201 KAR 16:512 establish the renewal fees.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.193, 321.221, 321.235, 321.240, 321.441

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How 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 is not a new program. Staff time is required for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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:

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:572. License renewal for registered animal control agencies and animal euthanasia specialists; renewal notice.

RELATES TO: KRS 321.207

STATUTORY AUTHORITY: KRS 321.207, 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207 requires the board to issue a certificate or registration to all agencies being qualified to register with the United States Drug Enforcement Administration (DEA) to purchase, possess, and use board authorized controlled substances, and to all persons

qualified to engage in the practice of animal euthanasia in the Commonwealth of Kentucky. This administrative regulation requires a renewal notice to all registered animal control agencies and animal euthanasia specialists and requires all registered animal control agencies and animal euthanasia specialists to complete the renewal application and return it, along with the renewal fee to the board. It further requires all registered animal control agencies and animal euthanasia specialists to keep the board apprised of the legal name and current address of the licensee.

Section 1. (1) The board shall, not later than February 1 of each year, email or mail to each registered animal control agencies and animal euthanasia specialists a renewal notice.

(2) The renewal application shall be completed by the certified entity and returned to the board, including all required attachments and fees.

(3) Timely receipt of renewal application.

(a) Renewals bearing a postmark, or, in the case of online renewal, a timestamp, of March 1 or earlier shall be considered received on time.

(b) Renewals bearing a postmark, or, in the case of online renewal, a timestamp, between March 2 and April 30 shall be considered late and therefore incur a late fee pursuant to 201 KAR 16:514.

(5) The renewal fee shall be attached to the completed renewal form when it is returned to the board.

(a) For certified animal control agencies, the renewal form is the Renewal Application for Animal Control Agencies form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments.

(b) For certified animal euthanasia specialists, the renewal form is the Renewal Application for Animal Euthanasia Specialists form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments.

(5) The renewal fee shall be paid in accordance with 201 KAR 16:514.

Section 2. The board shall not be held responsible or liable for lost renewal notices, or renewal notices not received, or not received on time. (1) Regardless of cause, the board has no obligation to refund money to a certificate holder who fails to renew in a timely manner pursuant to Section 1(3) of this administrative regulation.

(2) If a certificate holder fails to renew by the grace period deadline, the certificate shall expire. The former certificate holder has not more than five (5) years from the date of expiration to apply for reinstatement of the license in accordance with 201 KAR 16:550 and 201 KAR 16:560. A reinstatement application is required during this period; an application for a new license will not be accepted until five (5) years after the last date of expiration.

Section 3. Current contact information must be on file with the board. (1)(a) Every certified animal control agency shall file a proper and current mailing address with the board at its principal office and shall within thirty (30) days notify the board of any changes of the agency's mailing address.

(b) Every certified animal control agency shall file an update with the board to notify the board of any changes to the designated onsite manager tasked with management of controlled substances and the euthanasia program pursuant to 201 KAR 16:550, or of any changes of the onsite manager's legal name or personal address.

(c) For new agency designated onsite managers, the certified animal control agency shall submit a complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check. The results shall be submitted to the board within thirty (30) days of designating a new onsite manager.

(2) Every certified animal euthanasia specialist shall file his or her legal name and proper and current mailing address with the board at its principal office and shall within thirty (30) days notify

the board of any changes of his or her legal name or mailing address.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for agencies and persons seeking to renew an animal control agency certification or an animal euthanasia specialist certification.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the material that the KBVE board approves as a requirement for licensure renewal.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207 which requires the board to approve materials needed for renewals of animal control agency certification or an animal euthanasia specialist certification.

(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 clearly expressing what renewal requirements are created by the KBVE.

(2) If 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: 58 certified animal control agencies, 211 certified animal euthanasia specialists, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to submit renewal materials as outlined 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): No costs are associated with compliance, as this is a

perquisite for renewal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: Costs of review and administration.

(b) On a continuing basis: Costs of review and administration.

(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. Fees for the KBVE come from license and certification fees that are established in 201 KAR 16:510 – 16:516.

(7) Provide an assessment of whether an 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. 201 KAR 514 establishes the renewal fees for animal control agency certification or an animal euthanasia specialist certification.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.207, 321.235, 321.240

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How 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 is not a new program. Staff time will be required for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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:

BOARDS AND COMMISSIONS

Board of Veterinary Examiners
(New Administrative Regulation)

201 KAR 16:580. Board issued licenses and certificates, inactive and retired statuses.

RELATES TO: KRS 321.207, 321.211, 321.441

STATUTORY AUTHORITY: KRS 321.190, 321.211, 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.441 provides for the establishment of conditions under which retired or inactive licenses may be renewed. This administrative regulation sets forth those conditions.

Section 1. Inactive License Status for Veterinarians and Veterinary Technicians. (1) A veterinarian or veterinary technician licensee of the board with a license in active status may request inactive licensure status by:

(a) Submitting a completed application Request for Licensure Status Change form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments; or

(b) Designating his or her intent to convert to inactive status on the appropriate renewal form for that license type during a renewal period.

(2) A licensee whose license is designated with an inactive status shall pay a renewal fee during each license cycle in accordance with 201 KAR 16:510 for veterinarians and 201 KAR 16:512 for veterinary technicians.

(3) No continuing education credits are required for licensees in inactive status.

(4) A licensee whose license is in an inactive status shall request reinstatement to an active license status by:

(a) Submitting a completed reinstatement application or online equivalent form provided by the board, including all required attachments, or designating intent to reinstate to active status on the appropriate renewal form for that license type during a renewal period;

(b) Providing proof of continuing education in accordance with 201 KAR 16:590; and

(c) Providing a complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check.

(5) There shall be no time limit on the number of years a veterinarian's license or veterinary technician's license may remain in an inactive status.

(6) A licensee whose license is in an inactive status shall not practice his or her profession in any capacity within the Commonwealth of Kentucky as long as the license remains in inactive status.

Section 2. Inactive License Status for Animal Euthanasia Specialists. (1) A certified animal euthanasia specialist with a certificate in active status may request inactive licensure status by:

(a) Submitting a completed application Request for Licensure Status Change form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments; or

(b) Designating his or her intent to convert to inactive status on the appropriate renewal form during a renewal period.

(2) A certified animal euthanasia specialist with a certificate in active status may be moved to inactive licensure status by the board if:

(a) His or her employment is severed with the animal control agency of record with the certificate holder's file; or

(b) The animal control agency employing the animal euthanasia specialist fails to renew its certificate in a timely manner.

(3) A certified animal euthanasia specialist whose certificate is designated with a status of inactive shall not pay a renewal fee.

(4) A certified animal euthanasia specialist whose certificate is in an inactive status shall request reinstatement to an active certificate status by:

(a) Submitting a completed reinstatement application on a form provided by the board, including all required attachments, or designating his or her intent to reinstate to active status on the appropriate renewal form for that certificate type during a renewal period; and

(b) Providing a complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check.

(5) A certified animal euthanasia specialist whose certificate is in an inactive status due to a board action can have their certificate reinstated to active status by an action of the board following the

reinstatement of the certified animal control agency where the animal euthanasia specialist is employed.

(6) An animal euthanasia specialist certificate in inactive status shall expire after five (5) years.

(7) A certificate holder whose license is in an inactive status shall not practice his or her profession in any capacity within the Commonwealth of Kentucky as long as the certificate remains in inactive status.

Section 3. Retired License Status. (1) A licensee of the board may request retired status by:

(a) Submitting a completed application Request for Licensure Status Change form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments; or

(b) Designating his or her intent to convert to retired status on the appropriate renewal form for that license type during a renewal period.

(2) A licensee whose license is designated in a retired status shall pay a one-time fee in accordance with 201 KAR 16:510 for veterinarians and 201 KAR 16:512 for veterinary technicians.

(3) Once a license has been designated in a retired status, the license cannot be reinstated.

(a) The board shall not authorize a person whose license is in a retired status to reinstate his or her license.

(b) A person whose license is in a retired status who desires to practice again must complete and submit a new application for licensure to the board in accordance with 201 KAR 16:540.

(4) A person whose license is a retired status shall not be able to practice his or her profession in any capacity within the Commonwealth of Kentucky unless he or she holds a new, separate license issued by the board.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for persons with a veterinary license or veterinary technician license that seek retirement or inactive status for that license, and parameters for the inactivation of animal euthanasia specialist certificates.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the KBVE board procedure for licensure retirement or inactive statuses.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.221 requires the board to create a procedure for licensure retirement or inactive status.

(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 clearly expressing what requirements by the KBVE board for licensure and certificate retirement or inactive status.

(2) If 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: 2528 veterinary licenses, 441 veterinary technician licenses, 211 animal euthanasia specialists, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for licensure status change will be required to submit application materials as outlined 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): No costs are associated with compliance, as this is a prerequisite for change in licensure or certificate status.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(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. Fees for the KBVE come from license and certification 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? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.190, 321.193, 321.211, 321.221, 321.235, 321.240, 321.441

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How 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? Staff time for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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:

BOARDS AND COMMISSIONS

Board of Veterinary Examiners

(New Administrative Regulation)

201 KAR 16:590. Continuing education requirements, veterinarians and veterinary technicians.

RELATES TO: KRS 321.211, 321.221, 321.235, 321.441

STATUTORY AUTHORITY: KRS 321.211, 321.235(3), 321.240(5), 321.441

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.211(7) authorizes the board to require a person applying for renewal or reinstatement to show evidence of completion of continuing education. This administrative regulation establishes the requirements for continuing education hours relating to the practice of veterinary medicine and veterinary technicians.

Section 1. Continuing Education Requirements for License Renewal.

(1) A veterinarian shall complete biennially thirty (30) hours of continuing education to be eligible for renewal of his or her license. At least twenty (20) of the thirty (30) hours shall be directly related to the practice of veterinary medicine. No more than ten (10) of the thirty (30) hours shall pertain to practice management or other topics that are not directly related to the practice of veterinary medicine.

(2) A veterinary technician shall annually complete six (6) hours of continuing education to be eligible for renewal of his or her license.

(3) In addition to attendance at a conference, lecture, or seminar, a veterinarian or veterinary technician may complete the hours of continuing education required for renewal by the completion of audio or video recordings or electronic, computer, or interactive material prepared or approved by any of the organizations established in Section 2(1) and (2) of this administrative regulation. There is no limit to the number of online hours a licensee may apply to his or her renewal.

(4) Continuing education shall be earned from October 1 of each renewal period until September 30 at the end of the period, or until November 30 at the end of the grace period with the addition of a late fee.

(a) A licensee may apply continuing education hours to only one (1) renewal cycle. Continuing education hours earned for a given course may not be applied to the total required hours again in the following renewal cycle.

(5) A veterinarian applying for renewal after completing his or her initial term of licensure after graduating from a veterinary college may complete a reduced number of hours of continuing education to be eligible for renewal as established in this subsection:

(a) A veterinarian completing his or her initial term of licensure who graduated from a veterinary college during the first year of the preceding biennium shall complete fifteen (15) hours of continuing education to be eligible for renewal. This paragraph shall not apply to applicants for licensure by endorsement under KRS 321.221.

(b) Continuing education requirements shall be waived for a veterinarian completing his or her initial term of licensure who graduated during the second year of the preceding biennium. This

paragraph shall not apply to applicants for licensure by endorsement under KRS 321.221.

(6) A veterinarian or veterinary technician may submit a written request to the board for approval of a fellowship, internship, or residency in lieu of the continuing education hours required for license renewal. Continuing education requirements shall be waived when the written request has been approved by the board. The request must include a letter of verification from an authorized representative of the organization providing the fellowship, internship, or residency opportunity; must be printed on the organization's letterhead; and must provide a description of the position itself, a summary of assigned tasks, and the anticipated or completed beginning and ending dates of the position.

(7) Continuing education requirements for reinstatement applications:

(a) For veterinarians, thirty (30) hours in a twenty four (24) month period prior to the date of application; and

(b) For veterinary technicians, six (6) hours in a twelve (12) month period prior to the date of application.

Section 2. Approved Continuing Education Courses.

(1) The board hereby approves the following continuing education courses:

(a) All scientific programs of the American Veterinary Medical Association (AVMA), its constituent organizations, and its recognized specialty groups and accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine;

(b) Programs approved by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB);

(c) Accreditation modules offered by the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS), and

(d) All programs approved by the board pursuant to subsection (2) of this section.

(2) By a majority vote, the board may approve programs that are deemed to impart knowledge directly relating to the practice of veterinary medicine, including but not limited to the utilization and application of new techniques, scientific and clinical advances, and the achievement of research to assure expansive and comprehensive care to the public.

Section 3. Continuing Education Documentation Requirements.

(1) A licensee shall:

(a) Secure documentation of completed attendance at a course, detailing the hours earned;

(b) Submit on the Renewal Application for Veterinarians form or Renewal Application for Veterinary Technicians form as found in 201 KAR 16:700 or online equivalent forms provided by the board, as appropriate, the name, dates, and identifying information for each course he or she attended;

(c) Retain copies of continuing education documentation for a period of four (4) years from the date of licensure renewal.

(2) The board may require an applicant or licensee to submit copies of documentation of his or her attendance at continuing education courses.

Section 4. Continuing Education Requirement Waivers. (1) The board may, in individual cases involving medical disability or illness, grant waivers of the continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(a) A written request for an extension or waiver of continuing education requirements for medical disability or illness reasons waiver or extension of time shall be submitted by the licensee. The board may require a signed document from a physician or other health care provider to verify the licensee's claimed disability or illness.

(b) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the requirements shall not be granted by the board for a period of time

exceeding one (1) calendar year.

(c) If the medical disability or illness upon which a waiver or extension has been granted persists beyond the period of the waiver or extension, the licensee shall have the option to apply for another extension.

(2) The board shall grant a waiver to a licensee who is unable to meet the continuing education requirements of this administrative regulation because of obligations arising from military duty.

(a) A licensee engaged in active military duty and deployed outside the United States for more than eight (8) months shall not be required to complete the continuing education requirement for licensure periods during which that status exists.

(b) A licensee who is called to active duty in the armed forces shall not be required to complete the continuing education requirement for licensure periods during which that status exists.

(c) The licensee requesting an extension or waiver pursuant to this subsection shall submit with his or her renewal or reinstatement paperwork, the appropriate military assignment form, deployment orders, or a statement from the licensee's unit commander confirming the call-up or deployment.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the continuing education requirements for persons seeking a veterinary license or veterinary technician license renewal or reinstatement.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the continuing education material that the KBVE board approves as a requirement for licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.211 and 321.441 each require the board to approve continuing education for veterinary and veterinary technician licenses.

(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 clearly expressing what continuing education requirements are created by the KBVE 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 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: 2528 veterinary licenses, 441 veterinary technician licenses, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to submit application materials as outlined 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): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(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. Fees for the KBVE come from license and certification 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? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.221, 321.235, 321.240, 321.441

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How 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 is not a new program. Staff time is required for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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:

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:600. Prescription and dispensation of drugs for animal use.

RELATES TO: KRS 321.181(5)(b)

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.181(5)(b) provides that the practice of veterinary medicine includes the prescribing, administering, or dispensing of drugs and medications for veterinary purposes. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 321. This administrative regulation establishes a procedure for the prescription and dispensation of drugs by licensed veterinarians for use in animals.

Section 1. Definitions. (1) "Legend drug" means veterinary prescription drug.

(2) "Prescription" means an order from a veterinarian to a pharmacist or another veterinarian authorizing the dispensing of a veterinary prescription drug to a client for use on or in a patient;

(3) "Veterinary drug" means:

(a) A drug for animal use recognized in the official United States Pharmacopoeia or official National Formulary of the United States;

(b) A drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals;

(c) A drug, other than feed, medicated feed, or a growth promoting implant intended to affect the structure or function of the body of an animal; or

(d) A drug intended for use as a component of a drug in paragraph (a), (b), or (c).

(4) "Veterinary prescription drug" means:

(a) A drug that is not safe for animal use without a veterinarian using or ordering the use of the product, and that is required by federal law to bear the following statement: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian";

(b) A drug that is required by state law to be dispensed only on order or prescription of a licensed veterinarian;

(c) The extra-label use of an over-the-counter animal drug or human drug; and

(d) A medicament compounded by mixing two (2) or more legally-obtained over-the-counter or prescription drugs.

Section 2. Prescribing and Dispensing. (1) A veterinary prescription shall include all of the following:

(a) The name and address of the veterinarian and, if the prescription is a written order, the signature of the veterinarian;

(b) The name and address of the client;

(c) The species and identity of the patient for which the prescription is issued;

(d) The name, strength, and quantity of the drug prescribed;

(e) The date on which the prescription is issued;

(f) The directions for administering the drug;

(g) If the patient is a food producing animal, the withdrawal time for the veterinary drug;

(h) If the prescription authorizes extra-label use, the manner in which the client may use the drug;

(i) Any cautionary statements required by law; and

(j) Number of refills allowed, not to exceed the limitations set forth in Section 6(2) of this administrative regulation.

(2) A veterinarian shall not prescribe for or dispense to a client a veterinary prescription drug or a drug for extra-label use without first personally examining the patient unless a veterinarian-client-patient relationship (VCPR) already exists between the prescribing veterinarian, client and patient, and the veterinarian determines

that the client has sufficient knowledge to administer the drug properly.

(3) A veterinarian shall not prescribe or dispense a veterinary prescription drug to a client unless the veterinarian indicates in the appropriate records described in Section 4 of this administrative regulation, within seventy-two (72) hours after the prescription is issued or the drug is dispensed, that the prescription has been issued or that the drug has been dispensed.

(4) A veterinarian shall not prescribe a drug to a client for extra-label use on a patient unless all of the following apply:

(a) The VCPR exists between the veterinarian, client and patient, and the veterinarian has made a careful medical diagnosis of the condition of the patient within the context of that VCPR;

(b) The veterinarian determines that there is no drug that is marketed specifically to treat the patient's diagnosed condition, or determines that all of the drugs that are marketed for that purpose are clinically ineffective;

(c) The veterinarian recommends procedures to ensure that the identity of the patient(s) receiving the drug can be readily ascertained in the future; and

(d) If the patient is a food producing animal, the veterinarian prescribes a sufficient time period for drug withdrawal before the food from the patient may be marketed.

(5) A veterinarian shall not transmit a prescription electronically unless the client approves the transmission and the prescription is transmitted to a pharmacist or veterinarian designated by the client.

(6) A veterinarian shall not refuse to write an otherwise appropriate prescription for a patient with a valid VCPR solely because the prescription may be filled at an establishment other than the veterinarian's own clinic or pharmacy.

Section 3. Labeling. (1) A veterinarian shall not dispense a drug that has been prepared, mixed, formulated, or packaged by the veterinarian unless the veterinarian affixes to the container in which the drug is dispensed a label containing all of the information specified in Section 2(1) of this administrative regulation, except the address of the client.

(2) A veterinarian shall not dispense a veterinary prescription drug that has been prepackaged by its manufacturer for dispensing unless the veterinarian affixes to the container in which the drug is dispensed a label containing all of the information specified in Section 2(1) of this administrative regulation, except the address of the client.

(3) A veterinarian may dispense a veterinary over-the-counter drug without affixing any information to the container in which the drug is dispensed if a label that has been affixed to the container by its manufacturer provides adequate information for its use.

Section 4. Prescription Records. (1) A veterinarian shall maintain complete records of each veterinary prescription drug that the veterinarian receives, prescribes, dispenses, or administers, and of each prescription issued by the veterinarian that authorizes extra-label use.

(2) Records of each veterinary prescription drug shall include the name of each veterinary prescription drug that is received, the name and address of the person from whom the drug is received, and the date and quantity received, the name and address of the person to whom the drug is dispensed, and the date and quantity dispensed, and, if the veterinarian prescribes or administers the drug, the information specified in Section 2(1) of this administrative regulation.

(3) Records of each prescription authorizing extra-label use shall include the information specified in Section 2(1) of this administrative regulation.

(4) A veterinarian shall maintain records of each veterinary prescription drug for at least five (5) years after the date on which the veterinarian prescribes, dispenses or administers the drug or extra-label use.

Section 5. (1) A veterinarian may refuse to write a prescription for controlled substances or a prescription for any medication that, in the veterinarian's medical judgment, is not appropriate for the

patient's medical care.

(2) A veterinarian may refuse to write a prescription if it is not directly requested by a client with whom there is, in the veterinarian's opinion, a current and existing VCPR.

(3) A prescription shall be construed to include any manner of authorization for filling a prescription, including verbal or electronic communication.

(4) The veterinarian may delegate to an office employee the authority to communicate a refill of a legend drug to the pharmacy on behalf of the veterinarian pursuant to written protocol established prior to the delegation of that authority.

Section 6. (1) A veterinarian shall ensure that federal legend drugs and veterinary prescription drugs are maintained, logged, administered, prescribed, dispensed, and destroyed in compliance with state and federal laws.

(2) A veterinarian shall not prescribe or dispense a quantity of drug that is greater than that the amount required for one (1) year of treatment for an animal, herd, or flock.

(3) To prescribe, sell, distribute, or dispense any drug requiring a prescription for use in the context of an animal, herd, or flock, a veterinarian shall first do all of the following:

(a) Perform an appropriate history and physical examination;

(b) Make a diagnosis based upon the history, physical examination, and pertinent diagnostic and laboratory tests;

(c) Formulate a therapeutic plan, and discuss it with the animal's owner (or the owner's agent), along with the basis for it and the risks and benefits of various treatments options, a part of which might be a prescription drug; and

(d) Ensure availability of the veterinarian or the veterinarian's staff for appropriate follow-up care.

Section 7. (1) A veterinarian may dispense a prescription drug only if the prescribing veterinarian has established a VCPR.

(2) If the dispensing veterinarian does not have a VCPR, a licensed veterinary technician or a veterinary assistant may assist in the delivery of a veterinary drug, legend drug, or veterinary prescription drug only while he or she is under the direct supervision of a licensed veterinarian.

(3) If the dispensing veterinarian does have a VCPR, a licensed veterinary technician or veterinary assistant may assist in the delivery of a veterinary drug, legend drug, or veterinary prescription drug while he or she is under the indirect supervision of a licensed veterinarian.

(4) If a licensed veterinary technician or a veterinary assistant acts under the provisions of this section, it shall be the responsibility of the licensed veterinarian to ensure that the requirements of this administrative regulation are met.

Section 8. Enforcement. Except as provided in this section of this administrative regulation, if the board has reason to believe that a person is violating or has violated this administrative regulation, the board may:

(1) Inspect the premises on which the person possesses, prescribes, dispenses, labels or administers veterinary drugs;

(2) Inspect relevant records, equipment, materials, containers, or facilities;

(3) Collect samples of veterinary drugs found on the premises; and

(4) Conduct any other investigative activities necessary to open a case and issue a determination and, if necessary, hold hearings and enact discipline on the individual.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the requirements for persons with a veterinary license for prescription and dispensation of drugs for animal use.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the KBVE board requirements for prescription and dispensation of drugs for animal use.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.235 and 321.240 each require the board to create requirements for prescription and dispensation of drugs for animal use. This filing fulfills that requirement.

(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 clearly expressing what requirements are created by the KBVE board for prescription and dispensation of drugs for animal use.

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

(a) How the amendment will change this existing administrative regulation: 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: 2528 veterinary licensees, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to follow approved procedures as outlined 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): No costs are associated with compliance as the requirement is record keeping.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the board approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(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. Fees for the KBVE come from licensure and certification 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? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235, 321.240

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How 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 is not a new program. The licensee is required to keep the records. KBVE may have costs if inspecting or investigating a licensee.

(d) How much will it cost to administer this program for subsequent years? The licensee is required to keep the records. KBVE may have costs if inspecting or investigating a licensee.

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:

BOARDS AND COMMISSIONS

Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:610. Procedures for grievances, investigations, and administrative charges.

RELATES TO: KRS 321.235(2), 321.351, 321.353, 321.360

STATUTORY AUTHORITY: KRS 321.235(2), 321.235(3), 321.240(5), 321.351, 321.353, 321.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(2) authorizes the board to investigate an allegation of a practice which violates the provisions of KRS Chapter 321. This administrative regulation establishes the procedures for handling grievances, investigations, and administrative charges.

Section 1. Intake of Grievances. (1) A complaint, grievance, or other allegation of misconduct (collectively, "grievance") which might constitute a violation of KRS Chapter 321 or 201 KAR Chapter 16 may be submitted by any individual, organization, or entity. The board may submit a grievance on its own initiative based on information in its possession that the board believes is sufficiently credible to justify a request for a response from the licensee (or other individual named in the grievance).

(2) The grievance shall be in writing on a Grievance Form as found in 201 KAR 16:700 or online equivalent form provided by the board, and shall include the complaining party's name, address, telephone number, and signature. Electronic signatures shall be accepted.

(3) The board's chair, or the chair's designee, shall perform an

initial screen of any grievance that was submitted without identifying the complaining party. The initial screen shall require the chair, or the chair's designee, to determine whether the grievance contains sufficient details or other indicators of credibility to justify a request for a response from the licensee (or other individual named in the grievance). If sufficient details or other indicators of credibility are lacking, then the grievance shall be discarded without further action.

(4) The board shall send a copy of the grievance to the licensee (or other individual named in the grievance) along with a request for a response. The response shall be required within thirty (30) days from the date of when the board sent a copy of the written grievance. Failure to respond in writing within thirty (30) days may constitute a violation of the Code of Ethical Conduct.

Section 2. Initial Review of Grievances. (1) After the time period for the licensee's (or named individual's) response has elapsed, at the next scheduled board meeting the Complaints Screening Committee shall consider the grievance, the response if one was received, and other relevant information that is available to the Committee.

(2) The Complaints Screening Committee shall determine if an investigation is warranted after reviewing the information that is available. An investigation shall be warranted if the committee determines, based on upon a totality of the circumstances, that a reasonable probability exists that the grievance has merit.

(3) If, in the opinion of the board, a grievance does not warrant an investigation, then the board shall notify the complaining party and the respondent that the grievance is being dismissed without investigation.

(4) The dismissal of a grievance without an investigation shall constitute a final action of the board. Following such a dismissal, the grievance, the response from the individual named in the grievance, and correspondence which is intended to give notice of the dismissal shall be subject to disclosure pursuant to the Kentucky Open Records Act.

(5) If, in the opinion of the board, a grievance warrants an investigation, then the board shall open an investigation into the matter.

Section 3. Investigations. (1) The Complaints Screening Committee shall have the authority to direct an investigation and shall exercise those powers possessed by the board in regard to investigations as provided by KRS 321.235.

(2) The Complaints Screening Committee shall have the authority to request the participation of any person in an investigation. The refusal or failure of any board licensee or certificate holder to participate when requested, or to provide information and documents requested by the committee within the requested timeframe, shall be considered a violation of 201 KAR 16:500.

(3) Investigative reports shall be reviewed at a meeting of the committee.

Section 4. Reports and Recommendations Following Investigation. (1) If the board determines that the results of an investigation do not warrant the issuance of an administrative charge against the individual named in the grievance, then the board shall notify the complaining party and the individual that the grievance is being dismissed without further action.

(2) The dismissal of a grievance following an investigation shall constitute a final action of the board. Following such a dismissal, the grievance, the response from the individual named in the grievance, correspondence which is intended to give notice of the dismissal, and any other documents obtained or generated during the investigation (other than those documents that are subject to a legitimate claim of privilege or otherwise exempt from disclosure by law) shall be subject to disclosure pursuant to the Kentucky Open Records Act.

(3) If the board determines that the results of an investigation warrant the issuance of an administrative charge against a licensee, then the board shall cause an administrative charge to be prepared.

(4) If the board determines that the results of an investigation warrant proceedings against a person who is not a licensee, then the board shall cause a civil action to be prepared for filing in the Franklin Circuit Court or other court of competent jurisdiction.

Section 5. Administrative Charges. (1) The administrative charge shall:

(a) Be signed and dated by a member of the board or the board's authorized representative;

(b) Be designated with an administrative charge number;

(c) Set forth:

1. The board's jurisdiction in regard to the subject matter of the administrative charge; and

2. In numerical paragraphs, sufficient information to apprise the named licensee or individual of the general nature of the charges.

(d) A licensee's written response shall be due within thirty (30) days after the issuance of the administrative charge. Failure to respond within that time period may be taken by the board as an admission of the charges.

(2) Each notice shall be issued in accordance with KRS 13B.050.

Section 6. Proceedings Following the Issuance of an Administrative Charge. (1) The board shall arrange for the appointment of a hearing officer in accordance with KRS 13B.030 and 13B.040.

(2) The board's legal counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding unless the board appoints a special prosecuting attorney.

(3) The board may appoint a representative of the Attorney General's office or another attorney to act as advisory counsel to the board in regard to any deliberations of the board following the issuance of an administrative charge.

(4) The provisions of KRS Chapter 13B shall govern the conduct of the proceeding.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the procedures for persons holding a board license or certificate accountable for instances of grievances, investigations, and administrative charges.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the procedure that the KBVE board will follow for grievances, investigations, and administrative charges.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 321.235, 321.351 and 321.360 each require the board to approve a procedure for grievances, investigations, and administrative charges.

(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 clearly expressing what requirements are created by the KBVE board for grievances, investigations, and administrative charges.

(2) If 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: 2528 veterinary licenses, 441 veterinary technician licenses, 58 animal control agency certificate holders, 211 animal euthanasia specialist certificate holders, and future applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will be required to submit responses to grievances and other materials as outlined in this filing, and submit to inspection by the board if warranted.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of clear communications of the board approved requirements.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(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. Fees for the KBVE come from license and certification 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? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321.235, 321.240, 321.351, 321.353, 321.360

(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? No revenue will be generated from this filing.

(b) How 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 is not a new program. Staff time for record keeping, and the time of a board investigator if required.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. A board investigator's time may be required if investigation is warranted.

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:

BOARDS AND COMMISSIONS Board of Veterinary Examiners (New Administrative Regulation)

201 KAR 16:700. Material Incorporated by Reference.

RELATES TO: KRS 321.235, 321.351, 321.360

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 321 authorizes the KBVE to promulgate administrative regulations to prescribe rules for veterinary medicine in the Commonwealth of Kentucky. This administrative regulation incorporates the materials and forms used in the in 201 KAR Chapter 16.

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

(a) "Application for Certification as an Animal Control Agency," 2019;

(b) "Application for Certification as an Animal Euthanasia Specialist," 2019;

(c) "Application for Licensure as a Veterinarian," 2019;

(d) "Application for Licensure as a Veterinary Technician," 2019;

(e) "Application for Retake of the NAVLE," 2019;

(f) "Authorization for the Release of Medical Records," 2019;

(g) "Grievance Form," 2019;

(h) "Reinstatement Application for Animal Control Agencies," 2019;

(i) "Reinstatement Application for Animal Euthanasia Specialists," 2019;

(j) "Reinstatement Application for Veterinarians," 2019;

(k) "Reinstatement Application for Veterinary Technicians," 2019;

(l) "Renewal Application for Animal Control Agencies," 2019;

(m) "Renewal Application for Animal Euthanasia Specialists," 2019;

(n) "Renewal Application for Veterinarians," 2019;

(o) "Renewal Application for Veterinary Technicians," 2019;

(p) "Request for Continuing Education Approval," 2019;

(q) "Request for Licensure Status Change," 2019;

(r) "Request for Licensure Verification," 2019;

(s) "Request for Mailing List," 2019; and

(t) "Request for Name or Address Change," 2019.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 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.kybve.com.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2019 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 prior to the end of the hearing. 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the materials incorporated by reference for the KBVE.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the materials incorporated by reference for the KBVE.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321 charged the KBVE with regulation of veterinary medicine. This filing establishes the materials incorporated by reference for the KBVE that are necessary to fulfill that function.

(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 clearly expressing what forms are used by the KBVE.

(2) If 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: 2528 veterinary licenses, 441 veterinary technician licenses, 58 animal control agency certificate holders, 211 animal euthanasia specialist certificate holders, and future applicants.

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

(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: Persons interacting with the KBVE will be required to use the forms in this filing in compliance with the requirements of 201 KAR Chapter 16.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated with compliance, as this is a prerequisite for KBVE interaction.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease and public understanding of a consolidated list of all materials incorporated by reference and all forms utilized by the KBVE.

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

(a) Initially: No costs are anticipated.

(b) On a continuing basis: No costs are anticipated.

(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. Fees for the KBVE come from license and certification 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? The KBVE

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 321, 321.235, 321.240

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 from this filing.

(b) How 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 is not a new program. Staff time for record keeping.

(d) How much will it cost to administer this program for subsequent years? Staff time will be required for record keeping. Costs will be very minimal.

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:

DEPARTMENT OF AGRICULTURE Office of the Commissioner (Repealer)

302 KAR 21:011. Repeal of 302 KAR 21:005.

RELATES TO: KRS 257.020, 257.030, 257.080

STATUTORY AUTHORITY: KRS 257.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 57.08 requires the Kentucky Department of Agriculture to promulgate administrative regulations listing all reportable diseases of livestock, poultry, and fish and set out the conditions under which the diseases shall be reported. This administrative regulation repeals 302 KAR 21:055 because it is being replaced with a new filing in a new chapter.

Section 1. The following administrative regulation is hereby repealed:

(1) 302 KAR 21:005, Animal diseases to be reported.

DR. ROBERT STOUT, Kentucky State Veterinarian
APPROVED BY AGENCY: October 10, 2019

VOLUME 46, NUMBER 5— NOVEMBER 1, 2019

FILED WITH LRC: October 11, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 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 repeals a mandate for reporting a disease deemed needed to be reported to the OSV. It is replaced with a similar updated filing in a new chapter.

(b) The necessity of this administrative regulation: This regulation is necessary make all OSV filing appear in the same chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.080 commands KDA to identify reportable diseases and conditions under which to report said diseases. This regulation repeals a mandate for reporting a disease deemed needed to be reported to the OSV. It is replaced with a similar updated filing in a new chapter.

(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 clearly identifying a list of reportable diseases and ensuring that the Office of the State Veterinarian is aware of the spread of 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, veterinarians, veterinarian practices and personnel; laboratories providing livestock, poultry or fish diagnostic services for Kentucky; Owners of livestock, poultry, or fish; persons associated with any equine, livestock, poultry or fish; sales or event establishments and personnel; transportation providers; slaughter facilities and personnel; and any other persons or entities having knowledge of the existence of any reportable diseases.

(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 in the sister filing.

(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. Entities will also benefit by the prevention of disease.

(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 257.080

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 any costs to be accrued in the administration of this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The KDA does not expect any costs to be accrued in the administration of 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:

DEPARTMENT OF AGRICULTURE Office of the State Veterinarian (New Administrative Regulation)

302 KAR 22:030. Livestock, poultry and fish diseases to be reported.

RELATES TO: KRS 257.020, 257.030, 257.080

STATUTORY AUTHORITY: KRS 257.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.080 requires the Kentucky Department of Agriculture to promulgate administrative regulations listing all reportable diseases of livestock, poultry, and fish and set out the conditions under which

the diseases shall be reported. This administrative regulation establishes a comprehensive list of reportable diseases and the conditions under which the diseases shall be reported.

Section 1. Duty to Notify. (1) Every veterinarian, veterinary practice and personnel; veterinary diagnostic laboratory and personnel; laboratory providing livestock, poultry, or fish diagnostic services for Kentucky; owner of livestock, poultry, or fish; persons associated with any livestock, poultry, or fish; sales or event establishment and personnel; transportation provider; slaughter facility and personnel; or any other person or entity having knowledge of the existence of any reportable disease, as provided in Section (2) of this administrative regulation, shall immediately report the disease or condition to the State Veterinarian.

(2) All laboratories providing diagnostic services for Kentucky livestock, poultry, or fish shall give notification pursuant to Section 3 of this administrative regulation.

Section 2. Diseases to be reported. (1) The following diseases and conditions shall be immediately reported to the State Veterinarian:

- (a) Anaplasmosis;
- (b) Bluetongue;
- (c) Borna disease;
- (d) Botulism;
- (e) Bovine ephemeral fever;
- (f) Bovine Leukemia;
- (g) Bovine Viral Disease (BVD);
- (h) Brucellosis;
- (i) Caprine Arthritis Encephalitis (CAE);
- (j) Capripoxvirus;
- (k) Chronic Wasting Disease;
- (l) Clostridium perfringens epsilon toxin;
- (m) Coccidioides immitis;
- (n) Epizootic Hemorrhagic Disease;
- (o) Epizootic lymphangitis;
- (p) Equine Herpes (Rhinopneumonitis);
- (q) Equine Influenza;
- (r) Equine Viral Arteritis;
- (s) Getah;
- (t) Jembrana;
- (u) Louping-ill;
- (v) Mycoplasma gallisepticum;
- (w) Mycoplasma synoviae;
- (x) Paratuberculosis (Johne's disease);
- (y) Plague (Yersinia pestis);
- (z) Plant and chemical toxicosis;
- (aa) Porcine Epidemic Diarrhea;
- (bb) Pseudorabies;
- (cc) Q Fever;
- (dd) Scabies;
- (ee) Scrapie;
- (ff) Strangles (Streptococcus equi equi);
- (gg) Swine influenza virus;
- (hh) Tuberculosis;
- (ii) Vesicular Stomatitis; and
- (jj) West Nile Virus.

(2) The World Organization for Animal Health (OIE) Listed Diseases;

(3) United States Department of Agriculture National List of Reportable Animal Diseases and Emerging Diseases Framework listed diseases, found at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/program-overview/ct_national_list_reportable_animal_diseases.

(4) Conditions of any etiology that meet any of the following criteria shall be reported immediately:

- (a) Abortion storms in livestock or equine of unknown etiology;
- (b) Encephalitis or other central nervous system disease;
- (c) Unusual number of acute deaths in livestock, equine, poultry, or fish; or
- (d) Highly infectious conditions of any etiology, known or unknown.

Section 3. (1) The notification shall be given to the Office of the State Veterinarian, Kentucky Department of Agriculture, 109 Corporate Drive, Frankfort, Kentucky 40601; telephone 502-573-0282.

(2) The person reporting shall furnish the:

- (a) Name, address, and telephone number of the owner of the equine, livestock, poultry, or fish;
- (b) Livestock, poultry and fish species, breed, age, sex, how many affected, and clinical signs;
- (c) Premises address for the Livestock, poultry and fish tested or affected;
- (d) Name, address, and telephone number of the veterinarian submitting the case; and
- (e) Name, address, and telephone number of the person reporting.

(3) A report submitted to the State Veterinarian by a diagnostic laboratory of a condition suspected or diagnosed by a test result or other laboratory procedure shall constitute notification on behalf of the laboratory and the submitting veterinarian or owner.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The World Organisation for Animal Health (OIE) Listed Diseases", 2006. This list may also be found at http://www.oie.int/eng/maladies/en_classification2010.htm?e1d7.

(b) "United States Department of Agriculture National List of Reportable Animal Diseases and Emerging Diseases Framework" 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 109 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT STOUT, Kentucky State Veterinarian

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 11, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 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 commands individuals with knowledge of the existence of any reportable disease, which is identified within this filing, or any condition which is unknown to report said disease or condition to the Office of the State Veterinarian.

(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 257.080 commands KDA to identify reportable diseases and conditions under which to report said diseases, 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 clearly identifying a list of reportable diseases and ensuring that the Office of the State Veterinarian is aware of the spread of 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, veterinarians, veterinarian practices and personnel; laboratories providing livestock, poultry or fish diagnostic services for Kentucky; Owners of livestock, poultry, or fish; persons associated with any equine, livestock, poultry or fish; sales or event establishments and personnel; transportation providers; slaughter facilities and personnel; and any other persons or entities having knowledge of the existence of any reportable diseases.

(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. Entities will also benefit by the prevention of disease.

(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 257.080

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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 any costs to be accrued in the administration of this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The KDA does not expect any costs to be accrued in the administration of 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:

DEPARTMENT OF AGRICULTURE Office of the State Veterinarian (New Administrative Regulation)

302 KAR 22:070. Restrictions on biological materials in Kentucky.

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 unauthorized use of biological materials in Kentucky.

Section 1. No live pathogenetic bacteria, virus, or disease producing agents of animal origin shall be shipped, transported, or cause to be imported into the Commonwealth of Kentucky without prior written consent of the Office of the State Veterinarian (OSV). Requests for consent by the OSV shall be emailed or sent by U.S. mail to the Office of the State Veterinarian.

Section 2. All biological materials for immunization, treatment, or diagnostic purposes for livestock, poultry, or fish in the Commonwealth shall be approved in advance of use by the OSV or the United State Department of Agriculture when written notice is also provided to the OSV.

Section 3. Any entity distributing BVD-PI diagnostic tests shall request approval from the OSV, and shall maintain records for five (5) years after the sale, and shall make these records available to the Office of the State Veterinarian upon demand.

Section 4. No disease producing organisms shall be sold in or shipped to the Commonwealth of Kentucky unless the buyer or recipient is a licensed veterinarian, pharmacist, or entity authorized under Kentucky Revised Statutes to receive, hold, and sell biologics.

DR. ROBERT STOUT, Kentucky State Veterinarian

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 11, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 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 December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 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:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

704 KAR 8:080. Required academic standards in career studies and financial literacy.

RELATES TO: KRS 156.160, 156.070(1), 158.1411, 158.1413, 158.645, 158:6451, 158.6453, 160.290

STATUTORY AUTHORITY: KRS 156.160, 156.070(1), 158.1411,

NECESSITY, FUNCTION, AND COMFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. Beginning with the 2019-2020 school year, KRS 158.1413 requires each school district to implement essential workplace ethics programs that promote characteristics that are critical to success in the workplace. KRS 158.1411 requires that the ninth grade class of the 2020-2021 school year and each year thereafter, successfully complete one (1) or more courses or programs that meet the financial literacy standards as a Kentucky public high school graduation

requirement. This administrative regulation incorporates by reference the Kentucky Academic Standards for Career Studies, which contain the academic content standards of essential skills, career exploration and financial literacy for use in Kentucky's common schools.

Section 1. (1) The academic standards for career studies outline the minimum content standards that Kentucky students shall learn within each respective grade band. The standards are organized by three (3) domains: essential skills, careers, and financial literacy.

(2) Kentucky schools shall utilize the financial literacy domain standards for grades nine (9) through twelve (12) to design courses and programs that meet the Kentucky high school graduation requirement established in KRS 158.1411.

(3) Pursuant to KRS 158.1413, the essential skills domain standards for all grade bands shall be utilized to design and implement essential workplace ethics programs and to ensure that all students in elementary, middle, and high school receive essential workplace ethics instruction.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Career Studies", August 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

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

WAYNE D. LEWIS, Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 10, 2019

FILED WITH LRC: October 14, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on December 23, 2019, at 10:00 a.m. in the State Board Room, 5th Floor, Kentucky Department of Education, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov .

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation fulfills the requirements of KRS 158.1411, 158.1413 and 158.6453, and establishes the minimum content standards for Career Studies and Financial Literacy for use in Kentucky's common schools.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected

outcomes for students and schools established in KRS 158.6451. KRS 158.1411 requires that the 9th grade class of the 2020-2021 school year and each year thereafter, successfully complete one or more courses or programs that meet the financial literacy standards as a Kentucky public high school graduation requirement. KRS 158.1413 requires each school district to implement essential workplace ethics programs that promote characteristics that are critical to success in the workplace.

(c) How this administrative regulation conforms to the content of the authorizing statute: KRS 158.6453 requires the revision of academic content standards. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. KRS 158.1411 requires that the 9th grade class of the 2020-2021 school year and each year thereafter, successfully complete one or more courses or programs that meet the financial literacy standards as a Kentucky public high school graduation requirement. KRS 158.1413 requires each school district to implement essential workplace ethics programs that promote characteristics that are critical to success in the workplace.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the *Kentucky Academic Standards for Career Studies*, which contain the general courses of study and academic content standards for use in Kentucky's common schools pursuant to KRS 158.6451 and implements the requirements of KRS 158.1411 and 158.1413.

(2) If 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 - This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A - This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statute: N/A - This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A - 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: Those affected by this regulation include: all public schools, school districts, school councils and the Kentucky Department of Education as it will provide support related to this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The standards outlined in 704 KAR 8:080 are the revised standards for career studies and financial literacy. As this regulation includes the minimum content requirements for graduation related to career studies and financial literacy, all public schools, school districts and school-based decision making councils are required to follow the standards outlined in the document incorporated by reference in 704 KAR 8:080. Curriculum and content decisions are made at the local level and will be expected to follow these outlined standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Schools and Districts: Implementation of this administrative regulation may present a number of cost variables, which include curriculum development and vendor fees for program development and implementation, as well as professional learning for appropriate staff. While there are many free resources that exist for supplemental instruction, many districts may choose to purchase curriculum and other supplemental resources that are developed externally. The cost of these resources may vary, depending upon the vendor and product chosen.

Kentucky Department of Education: In the revisionary process of career studies standards required by statute, the Department spent \$15,869.98 as of the date of filing in the development of the standards, in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The compliance of public schools, school districts and school councils will ensure that each student will be qualified for graduation as they will have met the minimum content requirements for career studies and financial literacy. Graduation rates are used as part of each school's accountability model and are reported on each school's report card.

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

(a) Initially: The Department spent \$15,869.98 in administrative costs for the development of the career studies standards that are incorporated by reference in 704 KAR 8:080 to be compliant with KRS 158.6453 and other corresponding statutes, as well as staff time to oversee its administration.

(b) On a continuing basis: Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds have been utilized to develop these standards.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Kentucky Department of Education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453 requires the Kentucky Department of Education (KDE) to implement a comprehensive process for the review of academic standards and assessment. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. KRS 158.1411 requires that the 9th grade class of the 2020-2021 school year and each year thereafter, successfully complete one or more courses or programs that meet the financial literacy standards as a Kentucky public high school graduation requirement. KRS 158.1413 requires each school district to implement essential workplace ethics programs that promote characteristics that are critical to success in the workplace. This regulation fulfills the requirements of these mentioned statutes.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not have any impact on revenue, but may impact expenditures for implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue.

(c) How much will it cost to administer this program for the first year? Schools and Districts: Implementation of this administrative regulation may present a number of cost variables, which include curriculum development and/or vendor fees for program development and implementation, as well as professional learning for appropriate staff. While there are many free resources that exist for supplemental instruction, many districts may choose to purchase curriculum and other supplemental resources that are developed externally. The cost of these resources may vary, depending upon the vendor/product chosen.

Kentucky Department of Education: In the revisionary process of career studies standards required by statute, the Department spent \$15,869.98 as of the date of filing in the development of the standards, in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(d) How much will it cost to administer this program for subsequent years? Minimal staff time at the Kentucky Department of Education will be required on an annual basis after the adoption of these standards and administrative regulation.

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

Revenues (+/-): N/A

Expenditures (+/-): \$15,869.98 in addition to ongoing staff time for implementation. Unknown cost variables for school districts depending on how they choose to develop curriculum.

Other Explanation: N/A

PUBLIC PROTECTION CABINET Department of Insurance (Repealer)

806 KAR 13:071. Repeal of 806 KAR 13:070.

RELATES TO: KRS 304.13-151

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation repeals 806 KAR 13:070, because its necessary provisions have been codified into statute at KRS 304.13-151(6).

Section 1. 806 KAR 13:070, Kentucky Automobile Insurance Plan, is hereby repealed.

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 27, 2019 at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed

administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main St., Frankfort, Kentucky 40601, phone (502) 564-6026, fax (502) 564-1453, email patrick.oconnor@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 806 KAR 13:070.

(b) The necessity of this administrative regulation: The repealer is necessary to eliminate an outdated administrative regulation whose substantive provisions have been appropriately incorporated into the insurance code as part of KRS 304.13-151.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The repealer relies on the specific statutory scheme included within KRS 304.13-151.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repealer eliminates an unnecessary administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: This is a repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repealer will not impact any parties.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not have to take any action to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The repealer will not cost anything to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities: The regulated entities will benefit from increased regulatory efficiencies.

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

(a) Initially: The repealer will not cost anything.

(b) On a continuing basis: The repealer will not cost anything.

(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 the 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: An increase in fees is not necessary to implement the repealer.

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

(9) TIERING: Is tiering applied? Tiering is not applied as the repealer applies to all applicable entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance 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 304.13-151(6) requires all casualty insurance providers to become a signatory of the Kentucky Automobile Insurance Plan as a condition of transacting business in the Commonwealth. The administrative regulation being repealed simply restates and reinforces this requirement.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

(c) How much will it cost to administer this program for the first year? There is no cost to administer this repealer for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this repealer for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Insurance

(Repealer)

806 KAR 13:101. Repeal of 806 KAR 13:100.

RELATES TO: KRS 304.12-090 - 304.12-110, 304.13-051 - 304.13-065, 304.14-110, 304.20-400 - 304.20-450

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to make reasonable administrative regulations necessary or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation repeals 806 KAR 13:100 because provisions of KRS 304.20 establish adequate requirements and process for the calculation and administration of insurance rate discounts for antitheft devices.

Section 1. 806 KAR 13:100, Motor vehicle comprehensive insurance rate discounts for antitheft devices, is hereby repealed.

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 15, 2019

FILED WITH LRC: October 15m 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 27, 2019 at 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be

heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main St., Frankfort, Kentucky 40601, phone (502) 782-5262, fax (502) 564-1453, email patrick.oconnor@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation repeals 806 KAR 13:100.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to eliminate outdated requirements related to discount practices for antitheft devices. The statutory scheme established in KRS 304.13-065 and KRS 304.20-400 through KRS 304.20-440 is sufficient to determine the appropriateness of discounts and their disclosure to potential policyholders.

(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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer eliminates an unnecessary administrative regulation to rely simply on the underlying 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 is a repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This repealer will affect those entities issuing comprehensive automobile insurance policies in Kentucky, and policyholders purchasing comprehensive automobile insurance.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not have to undertake any actions to comply with the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The repealer will not cost anything.

(c) As a result of compliance, what benefits will accrue to the entities: Entities will benefit from the reduced regulatory oversight and the elimination of unnecessary administrative regulations.

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

(a) Initially: The repealer will not cost the Department anything.

(b) On a continuing basis: The repealer will not cost the Department anything.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is not necessary for the 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: The repealer does not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

The repealer does not establish any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repealer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? 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 304.20-400 through KRS 304.20-440.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is a repealer and will not generate any revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? This repealer will not cost anything to administer.

(d) How much will it cost to administer this program for subsequent years? This repealer will not cost anything to administer.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET

Department of Housing, Buildings and Construction
(Repealer)

815 KAR 20:111. Repeal of 815 KAR 20:071, 815 KAR 20:072, 815 KAR 20:073, 815 KAR 20:074, 815 KAR 20:078, 815 KAR 20:084, 815 KAR 20:100, and 815 KAR 20:110.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130

requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures. This administrative regulation repeals 815 KAR 20:071, 815 KAR 20:072, 815 KAR 20:073, 815 KAR 20:074, 815 KAR 20:078, 815 KAR 20:084, 815 KAR 20:100, and 815 KAR 20:110. The necessary substantive provisions of 815 KAR 20:071, 815 KAR 20:072, 815 KAR 20:073, 815 KAR 20:074, 815 KAR 20:078, 815 KAR 20:084, and 815 KAR 20:100 are being concurrently relocated into 815 KAR 20:060 to create a single, concise administrative regulation that includes the minimum requirements for quality, weight, storage, and installation of materials used in plumbing systems. The necessary substantive provisions of 815 KAR 20:110 are being concurrently relocated to 815 KAR 20:090 to make the administrative regulation more accessible and user-friendly.

Section 1. The following administrative regulations are hereby

repealed:

- (1) 815 KAR 20:071. Storage and installation of Schedule 40, ABS and PVC plastic pipe and fittings;
- (2) 815 KAR 20:072. Installation standards for cast iron soil pipe and fittings;
- (3) 815 KAR 20:073. Installation standards for water and waste piping material of types K, L, M, and DWV copper; types R-K, R-L, R-DWV brass tubing and seamless stainless steel tubing, G or H;
- (4) 815 KAR 20:074. Installation standards for steel and wrought iron pipe;
- (5) 815 KAR 20:078. Storage and installation of SDR 11, CPVC plastic pipe and fittings;
- (6) 815 KAR 20:084. Storage and installation of cross-linked polyethylene piping;
- (7) 815 KAR 20:100. Joints and connections; and
- (8) 815 KAR 20:110. Traps and clean-outs.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 23, 2019 at Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David R. Startzman, General Counsel, Department of Housing, Buildings and Construction, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412, phone 502-573-0365, fax 502-573-1057, email david.startzman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David R. Startzman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 815 KAR 20:071, 815 KAR 20:072, 815 KAR 20:073, 815 KAR 20:074, 815 KAR 20:078, 815 KAR 20:084, 815 KAR 20:100, and 815 KAR 20:110 because the necessary substantive provisions of 815 KAR 20:071, 815 KAR 20:072, 815 KAR 20:073, 815 KAR 20:074, 815 KAR 20:078, 815 KAR 20:084, and 815 KAR 20:100 are being concurrently relocated into 815 KAR 20:060 and the necessary substantive provisions of 815 KAR 20:110 are being concurrently relocated to 815 KAR 20:090.

(b) The necessity of this administrative regulation: The necessary substantive provisions of 815 KAR 20:071, 815 KAR 20:072, 815 KAR 20:073, 815 KAR 20:074, 815 KAR 20:078, 815 KAR 20:084, and 815 KAR 20:100 are being concurrently relocated into 815 KAR 20:060 to create a single, concise administrative regulation that includes the minimum requirements for quality, weight, storage, and installation of materials used in plumbing systems. The necessary substantive provisions of 815 KAR 20:110 are being relocated to 815 KAR 20:090 to make the administrative regulation more accessible and user-friendly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is a repealer that conforms with the department's statutory authority in KRS 198B.040(10) and KRS 318.130.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation is a repealer that will aid in the creation of a single, concise administrative regulation that includes the minimum requirements for quality, weight, storage, and installation of materials used in plumbing systems. This administrative regulation will also aid in making 815 KAR Chapter 20, the Kentucky State Plumbing Code, more concise, accessible and user-friendly.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is a repealer.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals engaged in the plumbing industry in Kentucky and Department of Housing, Buildings and Construction personnel.

(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: This administrative regulation will not impose any additional requirements on any of the regulated identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Entities identified in question (3) will not incur any cost to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: It will help the entities in question (3) read, understand, and navigate 815 KAR Chapter 20, the Kentucky State Plumbing Code.

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

(a) Initially: There is no anticipated initial cost to administer this administrative regulation.

(b) On a continuing basis: There are no anticipated costs on a continuing basis to administer this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established by this administrative regulation. There are also no fees directly or indirectly increased by this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because this is a repeal of administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS

198B.040(10) and 318.130.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not anticipated to generate additional revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no costs to administer this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no costs to administer this administrative regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Audits and Investigations

(New Administrative Regulation)

902 KAR 55:130. Electronic prescribing of controlled substances.

RELATES TO: KRS 13B.050, 13B.080, 13B.090, 13B.110, 13B.120, 218A.182

STATUTORY AUTHORITY: KRS 218A.182

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 218A.182, which takes effect on January 1, 2021, electronic prescribing for all schedule II-V controlled substances is required by each practitioner who issues the prescription to a pharmacy. KRS 218A.182(1) identifies certain prescriptions that are exempt from the electronic prescribing mandate, including a temporary waiver for entities that demonstrate economic hardship, technological limitations, or other exceptional circumstances. KRS 218A.182(3) requires the cabinet to promulgate administrative regulations to implement the electronic prescribing mandate, including enforcement mechanisms, waivers of requirements, and the appropriate penalties for violations. This administrative regulation establishes requirements related to the electronic prescribing of controlled substances (EPCS).

Section 1. Prescription Requirements. (1) Beginning January 1, 2021, a prescription for a controlled substance:

(a) Shall be transmitted electronically to a pharmacy, except as provided by KRS 218A.182(1)(a)-(l); and

(b) Shall contain the:

1. Full legal name, gender, address, and date of birth of the ultimate user for whom the controlled substance is intended;

2. Name, address, Drug Enforcement Administration (DEA) registration number, telephone number, and electronic signature of the prescribing practitioner;

3. Drug name, strength, dosage form, quantity prescribed, specific directions for use, and number of refills (if authorized); and

4. Date upon which the prescription was issued and signed electronically by the prescribing practitioner.

(2) In accordance with KRS 218A.182(2), a pharmacist who receives a written, oral, or faxed prescription for a controlled substance:

(a) Shall not be required to verify that the prescription is subject to an exception provided in KRS 218A.182(1)(a)-(l); and

(b) May dispense a controlled substance pursuant to an otherwise valid written, oral, or fax prescription.

Section 2. Waiver from the EPCS Mandate. (1) A practitioner who is unable to comply with the EPCS mandate may petition the cabinet for a temporary waiver based upon:

(a) Economic hardship;

(b) Technological limitations that are not reasonably within the control of the practitioner; or

(c) Other exceptional circumstances.

(2) A practitioner seeking an initial waiver from the EPCS mandate shall submit a completed Temporary Exemption Form, no later than November 1, 2020.

(3) A request for renewal of an approved waiver shall be submitted on the Temporary Exemption Form at least sixty (60) days in advance of the expiration of the waiver.

(4) A completed Temporary Exemption Form shall include:

(a) The name, practice address, phone number of the practice point of contact, professional license number, and Drug Enforcement Administration (DEA) registration number of the practitioner seeking the waiver;

(b) The practitioner's current electronic prescribing capabilities;

(c) The reason the practitioner is seeking the waiver;

(d) Supporting documentation to justify the reason for the waiver, including the following mandatory documentation:

1. For an economic hardship exemption:

a. Attestation of the practitioner's current gross annual income; and

b. At least two (2) quotes documenting the cost to the practitioner of implementing EPCS;

2. For a technological limitation exemption:

a. Documentation showing the:

(i) Available internet service providers;

(ii) Speed and bandwidth available from each provider; and

(iii) Any data caps imposed by the internet service provider; and

b. Documentation showing the minimum technological requirements from at least two (2) electronic prescribing platform vendors;

(e) The anticipated date of compliance with the EPCS mandate; and

(f) If the practitioner is requesting renewal of an approved waiver:

1. Information relating to the practitioner's actions during the previous waiver period to work toward compliance with the EPCS mandate; or

2. An explanation as to why no progress has been made.

(5) Upon consideration of all information provided by the practitioner on a Temporary Exemption Form, the cabinet shall approve or deny the request for an initial or renewal waiver based on the criteria established by this subsection.

(a) If the reason for the waiver is economic hardship and the cost, to the practitioner, of compliance with the EPCS mandate would exceed five (5) percent of the practitioner's gross annual income as self-reported, the cabinet shall approve the request.

(b) If the reason for the waiver is technological limitations and the internet service providers available do not have the technological capabilities required by the electronic prescribing platform, the cabinet shall approve the request.

(c) If the reason for the waiver is other exceptional circumstances, the cabinet shall evaluate the description of the exceptional circumstances on a case-by-case basis.

(d) If the practitioner seeks renewal of a previous waiver, the cabinet shall consider:

1. Updated information as it relates to the practitioner working toward compliance with the EPCS mandate; or

2. The explanation as to why no progress has been made.

(6)(a) The cabinet may approve a waiver, or the renewal of a

current waiver, for a specified period of time not to exceed one (1) year from the date of approval.

(b) The cabinet shall not approve more than two (2) renewal waivers.

Section 3. Enforcement. It shall be the duty of the cabinet to enforce the provisions of this administrative regulation.

Section 4. Penalties. (1) The cabinet shall make a referral to the appropriate professional licensing board and impose a fine of \$1,000 against a practitioner for each violation, not to exceed \$2,000 during a twelve (12) month period, in which the cabinet substantiates that the practitioner has:

(a) Falsified information on the Temporary Exemption Form or the form's supporting documentation;

(b) Failed to request a timely waiver in accordance with KRS 218A.182(1)(i) and Section 2(1) to (4) of this administrative regulation and the practitioner is noncompliant with the EPCS mandate; or

(c) Failed to transmit a prescription for a controlled substance electronically to a pharmacy after expiration of the practitioner's waiver, except for prescriptions that meet the exemption criteria of KRS 218A.182(a)-(h) and (j)-(l).

(2) A practitioner may file an appeal with the cabinet within twenty (20) calendar days of the cabinet's written notice of the violation and fine.

(3) If the practitioner requests an administrative hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) The administrative hearing shall be conducted by a hearing officer appointed by the secretary and held in accordance with KRS 13B.080, 13B.090, and 13B.110.

(5) The secretary shall issue a final order in accordance with KRS 13B.120.

Section 5. Incorporation by Reference. (1) The OIG 55:130, "Temporary Exemption Form", October 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: October 9, 2019

FILED WITH LRC: October 15, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 31, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In accordance with KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: 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, Phone (502) 564-2888, Email: stephanie.brammer@ky.gov; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: In response to the nation's opioid abuse epidemic, electronic prescribing of controlled substances (EPCS) continues to gain momentum among federal and state lawmakers to reduce "doctor shopping" and minimize the risk of altered, stolen, or fraudulent prescriptions. Accordingly, the passage of HB 342 from the 2019 session of the Kentucky General Assembly created a new state law, KRS 218A.182, that requires implementation of EPCS beginning on January 1, 2021. The new law also provides exemptions for prescriptions that will not be required to be transmitted electronically, and allows practitioners who are not able to comply with the EPCS mandate to request a temporary waiver due to economic hardship, technological limitations, or other exceptional circumstances. KRS 218A.182(3) requires the cabinet to promulgate administrative regulations to implement the EPCS mandate, including enforcement mechanisms, waivers of requirements, and the appropriate penalties for violations. Therefore, this new administrative regulation establishes requirements related to the implementation of EPCS.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the passage of HB 342 from the 2019 legislative session.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 218A.182(3), which requires the cabinet to promulgate administrative regulations to implement the EPCS mandate, including enforcement mechanisms, waivers of requirements, and the appropriate penalties for violations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing requirements related to EPCS.

(2) If 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 impacts Kentucky-licensed practitioners who prescribe controlled substances. There are 21,026 DEA-registered, Kentucky-licensed practitioners.

(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: Beginning January 1, 2021, a prescription for a controlled substance shall be transmitted electronically to a pharmacy, unless exempt from the electronic prescribing mandate by KRS 218A.182(1)(a)-(l).

(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 some system costs to prescribers associated with EPCS. However, the return on investment is positive in terms of savings achieved through reducing diversion, reducing the amount of time spent per controlled substance prescription, and enhancing patient safety. As stated previously, an exemption from the EPCS mandate applies to practitioners who

successfully demonstrate economic hardship or otherwise qualify for a waiver established by KRS 218A.182(1)(i).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation provides pharmacies and practitioners with the ability to use modern technology for controlled substance prescriptions. Additionally, this administrative regulation will reduce paperwork for DEA registrants who dispense controlled substances as well as reduce the potential for prescription forgery. This administrative regulation will also have the potential to reduce the number of prescription errors caused by illegible handwriting. Moreover, this administrative regulation will help both pharmacies and practitioners to integrate prescription records into other medical records more directly, which may increase efficiency, and potentially reduce the amount of time patients spend waiting to have their prescriptions filled.

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

(a) Initially: As stated in the cabinet's analysis of HB 342, the fiscal impact to the Office of Inspector General is estimated to be about \$100,000 and is broken down as follows: One FTE (no fringe) at an estimated \$40,000/year to process waivers and monitor compliance; and Approximately \$60,000 initially in costs to KASPER for system development changes to add a new field that tracks origination of the prescription to ensure prescriber compliance.

(b) On a continuing basis: No significant costs would be incurred during subsequent years.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this 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 applicable as compliance with this administrative regulation applies equally to all entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and Kentucky-licensed practitioners who prescribe controlled substances.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 218A.182

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? KRS 218A.182(3) requires the cabinet to establish penalties for violations. Therefore, Section 4 of this administrative regulation allows for a fine of \$1,000, not to exceed \$2,000 during a twelve (12) month period, for certain violations. The cabinet is not able to predict with certainty how much revenue will be generated by this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Please see the response above. However, the cabinet does

not anticipate that this administrative regulation will generate significant revenue generated from fines.

(c) How much will it cost to administer this program for the first year? As stated in the cabinet's analysis of HB 342, the fiscal impact to the Office of Inspector General is estimated to be about \$100,000 and is broken down as follows: One FTE (no fringe) at an estimated \$40,000/year to process waivers and monitor compliance; and

Approximately \$60,000 initially in costs to KASPER for system development changes to add a new field that tracks origination of the prescription to ensure prescriber compliance.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is anticipated to have minimal fiscal impact to the cabinet during subsequent years.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 8, 2019

Call to Order and Roll Call

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 8, 2019 at 1:00 p.m. In Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the September 2019 were approved.

Present were:

Members: Senators Perry Clark, Alice Forgy Kerr, Julie Raque Adams and Stephen West. Representatives David Hale, Deanna Frazier, Marylou Marzian, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Beau Barnes, Teachers' Retirement System; Jeff Allen, Board of Dentistry; Sean Alteri, Melissa Duff, Department for Environmental Protection; Amy Barker, Brandon Lynch, Department of Corrections; Matthew Henderson, Jon Johnson, Larisa Plecha, Connie Semones; Department of Transportation; Stephanie Brammer-Barnes, Steve Davis, Jill Lee, Office Inspector General; Jonathan Scott, Department for Medicaid Services; Cindy Seip.

The Administrative Regulation Review Subcommittee met on Tuesday, October 8, 2019, and submits this report:

Pursuant to KRS 13A.030(2), the subcommittee determined that the following administrative regulation was deficient:

TRANSPORTATION CABINET: Department of Vehicle Licensing: Driver Improvement

601 KAR 13:100. Medical standards for operators of motor vehicles.

This administrative regulation was found deficient and deferred for further consideration at the November meeting of the subcommittee. Please see this administrative regulation in the deferred or removed section of these minutes for discussion and action information.

Compiler's Note: Pursuant to KRS 13A.335(3), a new Section 13 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Teachers' Retirement System: General Rules

102 KAR 1:032. Bona Fide Retirement. Beau Barnes, deputy executive secretary and general counsel, represented the system.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Sections 2 through 4 to clarify requirements. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Dentistry

201 KAR 8:540. Dental practices and prescription writing. Jeff Allen, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting 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 for Air Quality: Attainment and Maintenance of the National Ambient Air Quality Standards

401 KAR 51:010. Attainment status designations. Sean Alteri, deputy commissioner, and Melissa Duff, director, represented the division.

In response to questions by Co-Chair West, Ms. Duff stated that this administrative regulation updated the regional status of Kentucky's attainment of ambient air quality standards. This administrative regulation was not more restrictive than U.S. EPA requirements and did not implement a specific control strategy. Regional status classifications included attainment, nonattainment,

and unclassifiable. Attainment regions were in compliance with national ambient air quality standards, nonattainment regions were not in compliance with national ambient air quality standards, and unclassifiable regions lacked sufficient data to make a determination as to compliance. Louisville and Northern Kentucky were the primary regions where nonattainment was an issue. There was also a region undesignated as attainment, nonattainment, or unclassifiable, which included Webster County and a small portion of Henderson County.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:060. Northpoint Training Center. 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 the NECESSITY, FUNCTION, and CONFORMITY paragraph, Section 1, and the material incorporated by reference to: (1) conform with other departmental policies; and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:140. Bell County Forestry Camp.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 and material incorporated by reference to: (a) conform with other departmental policies; and (b) comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 and BCFC 24-01-01 to require annual review of the social services and counseling program to ensure that the needs of inmates are met. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Audits and Investigations: Controlled Substances

902 KAR 55:070. Emergency medication kits in long-term care facilities. Stephanie Brammer – Barnes, regulation coordinator; Steve Davis, inspector general; and Jill Lee, pharmacist, represented the division.

Department for Medicaid Services: Payments and Services

907 KAR 3:170 & E. Telehealth service coverage and reimbursements. Jonathan Scott, regulatory and legislative advisor, represented the department.

In response to a question by Senator Clark, Mr. Scott stated that the department was monitoring cost savings possibilities related to telehealth.

In response to a question by Representative Frazier, Mr. Scott stated that telehealth was already in the scope of practice for optometrists.

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A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 4(2)(e) to include optometry as a reimbursable store and forward telehealth service. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the October 8, 2019, subcommittee agenda:

COUNCIL ON POSTSECONDARY 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.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:095. Pharmacist interns.

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.

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.

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

301 KAR 2:185. Hunter education.

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.

JUSTICE AND PUBLIC SAFETY CABINET: Asset Forfeiture

500 KAR 9:011. Repeal of 500 KAR 009:010, 500 KAR 009:020, 500 KAR 009:030, and 500 KAR 009:040.

Motorcycle Safety Education Commission

500 KAR 15:010 & E. Motorcycle safety education program.

TRANSPORTATION CABINET: Department of Vehicle Licensing: Driver Improvement

601 KAR 13:090. Medical Review Board; basis for examination, evaluation, tests. Matthew Henderson, commissioner; Larisa Plecha, staff attorney; and Connie Semones, coordinator, Medical Review Program, represented the department. Cindy Seip, Franklin County resident, appeared in opposition to these administrative regulations.

In response to questions by Co-Chair West, Ms. Seip stated that she had an incomplete homonymous hemianopia, which she developed thirty-eight (38) years ago. She had obtained a driver's license for at least thirty (30) years in both Ohio and in Kentucky. The visual field standards established in 601 KAR 13:100 were outdated and unsupported by scientific evidence. An individual with a homonymous hemianopia would most likely be prohibited from obtaining a driver's license due to failure to meet those visual field standards. It was not necessarily unsafe for these individuals to drive; therefore, they should be given the opportunity to prove driver suitability through a road assessment. Ms. Seip took and passed two (2) road tests, for a total of nearly five (5) hours of assessment time, demonstrating her suitability to drive. If 601 KAR 13:100 became effective as currently drafted, the cabinet would be authorized to suspend or revoke her judge-ordered driver's license. Ms. Seip and the cabinet were in the fourth year of litigation regarding this issue. Alexa Beilman, who also had an incomplete homonymous hemianopia was able in 2012 to become a licensed driver in Kentucky after litigation, and the determination in her case should have served as a precedent. One (1) hearing officer had ruled in favor of Ms. Seip in this case, but that determination was rejected by the cabinet. Franklin Circuit Court then determined that Ms. Seip was safe to drive and remanded the case back to the cabinet for further proceedings. The cabinet conducted a second hearing, which included the two (2) road tests. There were other individuals with this condition who were licensed to drive in Kentucky. Ms. Seip was aware of six (6) individuals with this condition, but there might be many more. The cabinet was alerted of Ms. Seip's condition after a physician reported the matter to the cabinet.

In response to questions by Co-Chair Hale, Ms. Seip stated that, as a result of surgery in 1983, an incomplete homonymous hemianopia affected the left peripheral vision in each of her eyes. Eye movement while driving could compensate for lost peripheral vision. All drivers should maintain eye movement while driving. The visual field test assessed peripheral vision from a fixed point only. Most individuals with a homonymous hemianopia were safe to drive and should be afforded the opportunity for a road test. The cabinet required a road test in Louisville; however, the cabinet refused to provide a copy to Ms. Seip. As a result, Ms. Seip requested a second intense, bioptic driving assessment, which she successfully passed. If this administrative regulation became effective as currently written, the cabinet would most likely suspend or revoke her judge-ordered driver's license. This administrative regulation was being amended in response to the litigation of Ms. Seip and Ms. Beilman.

In response to a question by Senator Kerr, Co-Chair West stated that, while the Senate had unwritten general guidelines to avoid legislation regarding issues that involved ongoing litigation, there did not seem to be a prohibition against the subcommittee acting on this administrative regulation.

In response to a question by Representative Marzian, Mr. Henderson stated that this administrative regulation did not relate to bioptic visual issues pertaining to driver's licenses.

In response to questions by Co-Chair West, Mr. Henderson stated that Medical Review Board cases could be appealed in Franklin Circuit Court, as had occurred in Ms. Seip's situation. Ms. Seip's case was not subject matter specific; therefore, the language in 601 KAR 13:100 was not the main issue in that situation. The commissioner's office received reports about possible Medical Review Board cases. The board, which was composed of medical professionals, relied on medical information to make determinations. The board included optometrists and ophthalmologists, among other medical professionals. These administrative regulations were being revised for clarity and ease of use, independent of any particular situation. The medical professionals on the board and in broader medical associations with which the cabinet conferred, initially indicated that hemianopia was such a serious medical condition that it should preclude someone from driving in Kentucky. States varied regarding hemianopia and visual field standards. After public comments, the cabinet opted to remove the reference to hemianopia and retain the existing visual acuity and field of vision standards. 601 KAR 13:100 regulated many conditions beyond visual impairment. A diagnosis of hemianopia would not automatically preclude a person from obtaining a driver's license. Seizure conditions had statutory prohibitions pertaining to driving. Ms. Plecha clarified that the initial proposed amendment to 601 KAR 13:100 referenced hemianopia; however, that reference was deleted in response to public comments. The visual field standards were the same as those in place since the initial promulgation of 601 KAR 13:100. Mr. Henderson stated that these administrative regulations also established processes for the Medical Review Board and those with cases before the board. The process included multiple avenues of appeals. Ms. Plecha stated that a person with a case could resubmit new medical information at any time because the board understood that conditions could improve or worsen. Mr. Henderson stated that some standards in these administrative regulations were specific and some were more general.

In response to questions by Co-Chair West, Ms. Seip stated that a person with a hemianopia would most likely be unable to meet the visual field standards required by 601 KAR 13:100. The point of fixation required to test the visual field would preclude a person with hemianopia from meeting the visual field standard. A driver would not be visually fixed while driving.

In response to questions by Co-Chair West, Mr. Henderson stated that failure to meet the visual field standard in 601 KAR 13:100 would preclude a person from obtaining a driver's license. This standard was not changing from the previous effective version of 601 KAR 13:100. There were many reasons besides just hemianopia why a person might not meet the visual field standard. Ms. Plecha stated that the previous visual standards were implicit and this version clarified the same standards.

Representative Frazier stated that many people only had visual testing at the initial application for driver's licensing. It was important that people be able to reach their full potential while still maintaining the safety of Kentucky's roadways. Ms. Plecha stated that the cabinet was trying to meet that same balance of inclusion and public safety.

In response to questions by Senator Clark, Ms. Semones stated that hemianopia affected a portion of the field of vision in both eyes. How much of the field of vision in each eye was affected depended on whether the homonymous hemianopia was complete or incomplete.

In response to a question by Senator Kerr and Co-Chair West, Mr. Henderson stated that the cabinet was following the order of Franklin Circuit Court but was not authorized to discuss these administrative regulation with Ms. Seip due to the pending litigation.

Senator Kerr made a motion, seconded by Co-Chair Hale to find 601 KAR 13:100, as amended, deficient. Ms. Plecha requested to defer consideration of these administrative regulations to the November meeting of the subcommittee. In response to a question by Co-Chair West, Senator Kerr declined to withdraw her motion to find 601 KAR 13:100 deficient. A roll call vote was conducted and, with five (5) votes to find the administrative regulation deficient and three (3) votes against deficiency, 601 KAR 13:100, as amended, was found deficient.

In response to a question by Co-Chair West, Ms. Plecha stated that the cabinet would agree to defer consideration of these administrative regulations to the November meeting of the subcommittee. A motion was made and seconded to defer consideration of 601 KAR 13:090 and 13:100, found deficient, to the November meeting of the subcommittee. A roll call vote was conducted and, with six (6) votes to defer these administrative regulations, one (1) vote against deferral, and one (1) member passing, these administrative regulations were deferred.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

601 KAR 13:100. Medical standards for operators of motor vehicles.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 and 3 through 11 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 11 to clarify that the visual acuity standard includes 20/61 "or worse." Without objection, and with agreement of the agency, the amendments were approved.

Compiler's Note: Pursuant to KRS 13A.335(3), a new Section 13 was added to this administrative regulation to reflect the finding of deficiency.

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.

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.

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.

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.

Division of Protection and Permanency: Child Welfare

922 KAR 1:320 & E. Service appeals.

The subcommittee adjourned at 2 p.m. The next meeting of the subcommittee is tentatively scheduled for November 12, 2019, at 10 a.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of September 30, 2019

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 30, 2019, having been referred to the Committee on August 7, 2019, pursuant to KRS 13A.290(6):

601 KAR 9:0130

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:

601 KAR 9:130

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 30, 2019 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT
AND WORKFORCE INVESTMENT**
Meeting of October 3, 2019

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Economic Development and Workforce Investment for its meeting of October 03, 2019, having been referred to the Committee on October 02, 2019, pursuant to KRS 13A.290(6):

787 KAR 003:010

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 03, 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

E - 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

E - 12

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

E - 22

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

E - 28

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

E - 29

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

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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. **Please note: Regulations without effective dates may also be published and indexed in Volume 46.**

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	405	9-6-2019
9 KAR 1:040E	3383	5-15-2019
Replaced	405	9-6-2019
200 KAR 3:020E	2304	1-4-2019
Replaced	28	8-2-2019
500 KAR 15:010E	3011	4-5-2019
601 KAR 2:030E	2310	1-8-2019
Withdrawn		8-7-2019
803 KAR 025:270E	2316	12-27-2018
Withdrawn		7-2019
907 KAR 1:604E	3015	3-15-2019
Replaced	937	10-4-2019
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	521	9-9-2019
922 KAR 1:350E	3033	4-1-2019
Replaced	535	9-9-2019
922 KAR 1:495E	3042	4-1-2019
Replaced	944	9-9-2019

ORDINARY ADMINISTRATIVE REGULATIONS:

009 KAR 001:010		
Amended	3439	
009 KAR 001:040		
Amended	3440	
011 KAR 005:145		
Amended	3239	8-2-2019
016 KAR 003:010		
Repealed	2801	7-5-2019
016 KAR 003:011(r)	2801	
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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	
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016 KAR 8:030		
Amended	3240	
031 KAR 004:120		
Amended	2152	
101 KAR 002:034		
Amended	2955	

As Amended	3390	7-5-2019
101 KAR 002:180		
Amended	3443	
101 KAR 002:190	3592	
101 KAR 003:045		
Amended	2960	
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102 KAR 001:060		
Amended	2404	
As Amended	3398	7-5-2019
103 KAR 015:050		
Amended	3445	
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	
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200 KAR 014:201(r)	3596	
201 KAR 001:290	2802	
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201 KAR 001:300		
Amended	2964	
As Amended	3401	7-5-2019
201 KAR 001:310	2804	
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201 KAR 002:010		
Amended	3447	
201 KAR 002:090		
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201 KAR 002:340		
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201 KAR 006:030		
Amended	3464	
201 KAR 006:040		
Amended	3466	
201 KAR 008:581		
Amended	3244	9-11-2019
201 KAR 013:040		
Amended	3246	
201 KAR 013:050		
Amended	3249	8-19-2019
201 KAR 013:055		
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201 KAR 020:370		

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Amended	3469		Amended	3510	
201 KAR 020:506			302 KAR 016:121		
Amended	3471	8-19-2019	Amended	3511	
201 KAR 022:135			302 KAR 016:131		
Amended	3258	7-19-2019	Amended	3513	
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	
201 KAR 025:090			401 KAR 5:010		
Amended	3472		Amended	3514	
201 KAR 041:020			401 KAR 008:030		
Amended	3475	9-6-2019	Amended	3516	
201 KAR 041:030			401 KAR 008:050		
Amended	3477		Amended	3519	
201 KAR 041:040			401 KAR 011:001		
Amended	3478		Amended	3522	
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Amended	3480	9-6-2019	Amended	3524	
201 KAR 041:065			401 KAR 011:040		
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201 KAR 041:070			401 KAR 011:050		
Amended	3483		Amended	3531	
201 KAR 041:080			401 KAR 011:060		
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201 KAR 046:010			405 KAR 010:001		
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201 KAR 046:020			Amended	2982	
Amended	2970	7-5-2019	500 KAR 009:011(r)	3354	
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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	
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202 KAR 007:520			Amended	2989	6-7-2019
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202 KAR 007:560			804 KAR 007:020		
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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
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301 KAR 002:221			Amended	2991	
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301 KAR 002:222			805 KAR 003:110		
Amended	3493	8-20-2019	Amended	3538	
301 KAR 002:300			806 KAR 009:001		
Amended	3498	8-20-2019	Amended	3264	
301 KAR 003:090			Withdrawn		9-3-2019
Repealed	2996	7-5-2019	806 KAR 009:020		
301 KAR 003:091(r)	2996	7-5-2019	Amended	3265	
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Amended	3502		Amended	3539	
302 KAR 016:020			806 KAR 009:061(r)	3361	
Amended	3503		806 KAR 009:070		
302 KAR 016:040			Amended	3267	
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302 KAR 016:070			806 KAR 009:110		
Amended	3506	8-22-2019	Amended	3541	
302 KAR 016:091			806 KAR 009:190		
Amended	3507	8-22-2019	Amended	3542	
302 KAR 016:101			806 KAR 009:200		
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Amended	3269		Amended	2784	
806 KAR 009:321(r)	3362		Am Comments	3419	8-2-2019
806 KAR 009:341(r)	3600		907 KAR 001:330		
806 KAR 009:350			Amended	2790	8-2-2019
Amended	3545		907 KAR 001:340		
806 KAR 010:030			Amended	2793	8-2-2019
Amended	1824		907 KAR 001:441 (r)	2813	8-2-2019
Am Comments	2716		907 KAR 001:436		
As Amended	3411	7-5-2019	Repealed	2813	8-2-2019
806 KAR 010:050			907 KAR 001:604		
Repealed	3363	8-2-2019	Amended	3318	10-4-2019
806 KAR 010:051(r)	3363	8-2-2019	907 KAR 001:755		
806 KAR 015:080			Amended	2796	8-2-2019
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806 KAR 015:081(r)	3601	10-4-2019	Amended	2496	
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806 KAR 047:020	2997		Repealed	2538	8-19-2019
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902 KAR 004:030			Repealed	2828	7-19-2019
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902 KAR 050:101(r)	3364	7-19-2019			
902 KAR 050:110					
Amended	3316	7-19-2019			
907 KAR 001:022					

SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))

*** Withdrawn before being printed in Register

IJC Interim Joint Committee

(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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301 KAR 001:152E	9	5-24-2019	Amended	1584	
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401 KAR 006:310E	313	7-11-2019	102 KAR 001:135		
401 KAR 006:320E	323	7-11-2019	Amended	1586	
401 KAR 006:350E	327	7-11-2019	103 KAR 001:010		
601 KAR 002:030E	849	8-7-2019	Amended	46	
803 KAR 025:271E	333	6-21-2019	As Amended	862	10-4-2019
902 KAR 020:430E	336	6-28-2019	103 KAR 001:060		
902 KAR 045:090E	12	6-14-2019	Amended	48	
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907 KAR 010:830E	347	6-19-2019	Amended	1588	
907 KAR 015:005E	356	6-28-2019	103 KAR 002:005		
907 KAR 015:010E	359	6-28-2019	Amended	50	
907 KAR 015:015E	371	6-28-2019	Withdrawn		7-24-2019
907 KAR 015:020E	374	6-28-2019	103 KAR 002:030		
907 KAR 015:022E	385	6-28-2019	Amended	51	10-4-2019
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922 KAR 001:320E	400	6-28-2019	Repealed	282	10-4-2019
922 KAR 001:330E	855	8-14-2019	103 KAR 005:151(r)	282	10-4-2019
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Amended	100		201 KAR 030:020		
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SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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186.442	601 KAR 002:030E		907 KAR 015:015
186.444	601 KAR 013:090		907 KAR 015:020
	601 KAR 013:100		907 KAR 015:022
186.480	601 KAR 002:030E		907 KAR 015:025
186.531	601 KAR 002:030E	205.559	907 KAR 003:170
186.560	601 KAR 002:030E	205.560	907 KAR 003:170
186.570	601 KAR 002:030E	205.565	907 KAR 010:830
	601 KAR 013:090	205.637	907 KAR 010:830
	601 KAR 013:100	205.638	907 KAR 010:830
186A.060	601 KAR 009:130	205.639	907 KAR 010:830
186A.070	601 KAR 009:130	205.640	907 KAR 010:830
186A.120	601 KAR 009:130	205.641	907 KAR 010:830
189.010	103 KAR 027:100	205.712	601 KAR 002:030E
189A.005	601 KAR 002:030E	205.8451	907 KAR 015:005
189A.010	601 KAR 002:030E	209.020	922 KAR 001:320
189A.040	601 KAR 002:030E	209A.020	922 KAR 001:320
189A.070	601 KAR 002:030E	210.005	902 KAR 020:430
189A.085	601 KAR 002:030E	211.005	902 KAR 045:065
189A.090	601 KAR 002:030E		902 KAR 045:070
189A.103	601 KAR 002:030E	211.015	902 KAR 008:040
189A.105	601 KAR 002:030E		902 KAR 045:065
189A.107	601 KAR 002:030E		902 KAR 045:070
189A.200	601 KAR 002:030E	211.025	902 KAR 045:065
189A.240	601 KAR 002:030E		902 KAR 045:070
189A.250	601 KAR 002:030E	211.090	902 KAR 008:100
189A.340	601 KAR 002:030E	211.170	902 KAR 008:040
189A.345	601 KAR 002:030E		902 KAR 008:060
189A.400	601 KAR 002:030E		902 KAR 008:080
189A.410	601 KAR 002:030E		902 KAR 008:100
189A.420	601 KAR 002:030E		902 KAR 008:110
189A.440	601 KAR 002:030E	211.684	922 KAR 001:330
189A.500	601 KAR 002:030E	211.760	902 KAR 045:065
194A.005	922 KAR 001:320	211.892	805 KAR 001:060
	922 KAR 001:330	211.893	805 KAR 001:060
	922 KAR 001:565	211.1751	902 KAR 008:040
194A.025	907 KAR 015:005		902 KAR 008:060
194A.030	922 KAR 001:320		902 KAR 008:100
194A.050	902 KAR 008:110	211.1752	902 KAR 008:060
	902 KAR 045:065	211.1755	902 KAR 008:060
	902 KAR 045:070		902 KAR 008:110
	922 KAR 001:330	212.040	902 KAR 008:080
	922 KAR 001:565	212.170	902 KAR 008:040
194A.060	907 KAR 003:170		902 KAR 008:060
	922 KAR 001:560		902 KAR 008:100
194A.125	907 KAR 003:170		902 KAR 008:110
196	501 KAR 006:060	212.850	902 KAR 008:080
	501 KAR 006:110	212.870	902 KAR 008:040
	501 KAR 006:140		902 KAR 008:060
197	501 KAR 006:060		902 KAR 008:080
	501 KAR 006:110		902 KAR 008:100

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	902 KAR 008:110		401 KAR 010:031
214.036	922 KAR 001:330	224.20-100	401 KAR 051:010
214.540	902 KAR 021:020		401 KAR 058:005
214.542	902 KAR 021:020	224.20-110	401 KAR 051:010
214.543	902 KAR 021:020		401 KAR 058:005
216.380	907 KAR 010:830	224.20-120	401 KAR 051:010
216.510	900 KAR 002:050		401 KAR 058:005
216.525	900 KAR 002:050	224.20-300	401 KAR 058:005
216.555	900 KAR 002:050	224.20-310	401 KAR 058:005
216.557	900 KAR 002:050	224.20-320	401 KAR 058:005
216.560	900 KAR 002:050	224.43-010 - 224.43-815	401 KAR 006:350
216.875	902 KAR 020:280	224.46-012 - 224.46-870	401 KAR 006:350
216.880	902 KAR 020:280	224.60-100 - 224.60-160	401 KAR 006:350
216.885	902 KAR 020:280	224.70-100 – 224.70-140	401 KAR 010:001
216B.015	900 KAR 002:050		401 KAR 010:026
216B.020	902 KAR 020:370		401 KAR 010:029
216B.042	902 KAR 020:450		401 KAR 010:030
216B.050	902 KAR 020:430		401 KAR 010:031
216B.105	902 KAR 020:430	224.71-100 – 224.71-145	401 KAR 010:001
217.005 – 217.215	902 KAR 045:090		401 KAR 010:026
217.290	902 KAR 045:090		401 KAR 010:029
217.992	902 KAR 045:090		401 KAR 010:030
217B	302 KAR 031:040		401 KAR 010:031
217B.555	902 KAR 045:090	224.73-100 – 224.30-120	401 KAR 010:001
217B.990	902 KAR 045:090		401 KAR 010:026
217C.010	902 KAR 050:005		401 KAR 010:029
217C.070	902 KAR 050:003		401 KAR 010:030
218A.182	902 KAR 055:130		401 KAR 010:031
218A.205	201 KAR 008:540	224.99-010	401 KAR 058:005
223.170	401 KAR 006:211	227.550	103 KAR 027:100
223.180	401 KAR 006:211	237.109	902 KAR 008:100
223.190	401 KAR 006:211	237.115	902 KAR 008:100
223.210	401 KAR 006:211	241.067	804 KAR 010:040
223.400	401 KAR 006:001	241.069	804 KAR 010:040
223.400-223.460	401 KAR 006:001	241.021	804 KAR 010:040
	401 KAR 006:310	243.720	103 KAR 040:091
	401 KAR 006:320	244.150	103 KAR 040:010
	401 KAR 006:350	246.250	302 KAR 015:020
223.991	401 KAR 006:001		302 KAR 015:030
	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
224.071	405 KAR 007:050	247.220	302 KAR 015:010
224.01-300	103 KAR 030:261	257	302 KAR 020:011
224.1-310	103 KAR 030:261	257.020	302 KAR 021:011
224.1-010	103 KAR 008:160		302 KAR 022:010
	401 KAR 010:001		302 KAR 022:020
	401 KAR 010:026		302 KAR 022:030
	401 KAR 010:029		302 KAR 022:070
	401 KAR 010:030		302 KAR 022:080
	401 KAR 010:031	257.030	302 KAR 021:011
224.1-300	103 KAR 008:170		302 KAR 022:010
224.1-310	103 KAR 008:170		302 KAR 022:030
224.1-400	401 KAR 010:001		302 KAR 022:040
	401 KAR 010:026	257.080	302 KAR 021:011
	401 KAR 010:029		302 KAR 022:030
	401 KAR 010:030	257.160	302 KAR 022:040
	401 KAR 010:031	260.010	302 KAR 037:010
224.1-405	401 KAR 006:350	260.850 - 260.869	302 KAR 050:050
224.10-010	401 KAR 006:320	273.161 - 273.405	300 KAR 001:010
224.10-100	401 KAR 006:320	278	807 KAR 005:056
	401 KAR 058:005	286.4	808 KAR 001:170
224.10-110	401 KAR 006:211	286.8-010	808 KAR 001:170
224.10-410	400 KAR 001:110	286.8-020	808 KAR 001:170
224.10-410 - 224.10-470	401 KAR 006:320	286.8-030	808 KAR 001:170
224.16-050	401 KAR 010:001	286.8-032	808 KAR 001:170
	401 KAR 010:026	286.8-034	808 KAR 001:170
	401 KAR 010:029	286.8-036	808 KAR 001:170
	401 KAR 010:030	286.8-060	808 KAR 001:170
	401 KAR 010:031	286.8-070	808 KAR 001:170
224.16-070	401 KAR 010:001	286.8-080	808 KAR 001:170
	401 KAR 010:026	286.8-090	808 KAR 001:170
	401 KAR 010:029	286.8-255	808 KAR 001:170
	401 KAR 010:030	286.8-260	808 KAR 001:170

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286.8-290	808 KAR 001:170		907 KAR 015:005
286.9-010	808 KAR 001:170	311.571	902 KAR 020:280
	808 KAR 009:050	311.840	907 KAR 015:005
286.9-020	808 KAR 001:170	311.860	902 KAR 020:430
	808 KAR 009:050	311A.015	202 KAR 007:020
286.9-030	808 KAR 001:170	311A.020	202 KAR 007:020
	808 KAR 009:050	311A.145	202 KAR 007:020
286.9-040	808 KAR 001:170	313.060	201 KAR 008:540
	808 KAR 009:050	313.085	201 KAR 008:540
286.9-050	808 KAR 001:170	314.011	907 KAR 015:005
	808 KAR 009:050	314.041	902 KAR 020:280
286.9-060	808 KAR 001:170		902 KAR 020:370
	808 KAR 009:050	314.042	902 KAR 020:430
286.9-070	808 KAR 009:050	314.051	902 KAR 020:370
286.9-071	808 KAR 001:170	314A.110	201 KAR 029:015
	808 KAR 009:050	314A.112	201 KAR 029:015
286.9-073	808 KAR 001:170	314A.215	201 KAR 029:015
	808 KAR 009:050	314A.220	201 KAR 029:015
286.9-080	808 KAR 001:170	316	201 KAR 015:010
	808 KAR 009:050	316.010	201 KAR 015:110
286.9-104	808 KAR 009:050	316.030	201 KAR 015:040
304.1-040	806 KAR 010:061		201 KAR 015:050
304.2-110	806 KAR 010:061		201 KAR 015:110
304.2-140	806 KAR 047:010	316.125	201 KAR 015:030
304.4-010	806 KAR 009:025		201 KAR 015:110
	806 KAR 009:221	316.127	201 KAR 015:110
	806 KAR 009:265	316.130	201 KAR 015:030
304.5-070	806 KAR 005:060		201 KAR 015:110
304.7-010 - 304.7-350	806 KAR 007:021	316.132	201 KAR 015:030
304.7-361	806 KAR 007:031	316.140	201 KAR 015:030
304.9-030	806 KAR 009:221		201 KAR 015:120
304.9-105	806 KAR 009:025	316.150	201 KAR 015:080
	806 KAR 009:221	316.165	201 KAR 015:125
304.9-130	806 KAR 009:025	316.170	201 KAR 015:015
304.9-150	806 KAR 009:025	316.210	201 KAR 015:015
304.9-160	806 KAR 009:025	316.260	201 KAR 015:110
	806 KAR 009:221	317A.020	201 KAR 012:030
304.9-190	806 KAR 009:221	317A.050	201 KAR 012:030
304.9-230	806 KAR 009:025	317A.060	201 KAR 012:030
	806 KAR 009:221	318	815 KAR 020:010
304.9-270	806 KAR 009:025		815 KAR 020:080
304.9-295	806 KAR 009:025		815 KAR 020:111
	806 KAR 009:221	318.010	815 KAR 020:020
304.9-320	806 KAR 009:221		815 KAR 020:030
304.9-430	806 KAR 009:025		815 KAR 020:070
	806 KAR 009:221		815 KAR 020:130
304.9-505	806 KAR 009:221		815 KAR 020:180
	806 KAR 009:265		815 KAR 020:195
304.10-030	806 KAR 010:061	318.015	815 KAR 020:020
304.10-040	806 KAR 010:061		815 KAR 020:070
304.10-140	806 KAR 010:061		815 KAR 020:090
304.12-090 - 304.12-110	806 KAR 013:101		815 KAR 020:130
304.13-051 - 304.13-065	806 KAR 013:101	318.020	815 KAR 020:030
304.13-057	806 KAR 013:120	318.030	815 KAR 020:030
304.13-121	806 KAR 013:040		815 KAR 020:050
304.13-151	806 KAR 013:071	318.040	815 KAR 020:030
304.13-167	806 KAR 013:120	318.050	815 KAR 020:030
304.13-400 – 304.13-420	806 KAR 013:120	318.054	815 KAR 020:030
304.14-010	806 KAR 013:101	318.060	815 KAR 020:030
304.14-120	806 KAR 014:061	318.080	815 KAR 020:030
	806 KAR 015:090	318.090	815 KAR 020:150
304.14-642	806 KAR 009:221	318.130	815 KAR 020:020
304.15-075	806 KAR 015:090		815 KAR 020:060
304.15-700	806 KAR 009:221		815 KAR 020:090
304.20-400 - 304.20-450	806 KAR 013:101		815 KAR 020:120
304.17A-257	902 KAR 021:020		815 KAR 020:130
304.47-010	806 KAR 047:010		815 KAR 020:150
304.47-020	806 KAR 047:010		815 KAR 020:170
304.47-040	806 KAR 047:010		815 KAR 020:180
304.47-050	806 KAR 047:010	318.134	815 KAR 020:050
304.47-080	806 KAR 047:010		815 KAR 020:150
304.99-020	806 KAR 003:230		815 KAR 020:195
309.080	907 KAR 015:005	318.140	815 KAR 020:150
309.130	902 KAR 020:430	318.150	815 KAR 020:020

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	815 KAR 020:060		201 KAR 011:170
	815 KAR 020:070		201 KAR 011:210
	815 KAR 020:090		201 KAR 011:220
	815 KAR 020:120	324.020	201 KAR 011:210
	815 KAR 020:130		201 KAR 011:220
	815 KAR 020:170	324.040	201 KAR 011:210
318.160	815 KAR 020:050	324.045	201 KAR 011:190
	815 KAR 020:150		201 KAR 011:210
318.165	815 KAR 020:120	324.046	201 KAR 011:011
318.170	815 KAR 020:150		201 KAR 011:170
318.200	815 KAR 020:020		201 KAR 011:190
	815 KAR 020:055		201 KAR 011:210
	815 KAR 020:070	324.085	201 KAR 011:170
	815 KAR 020:130		201 KAR 011:210
319	907 KAR 015:010	324.090	201 KAR 011:170
319.050	902 KAR 020:430		201 KAR 011:210
319.053	907 KAR 015:005	324.111	201 KAR 011:011
319.056	902 KAR 020:430		201 KAR 011:121
	907 KAR 015:005	324.121	201 KAR 011:121
319.064	902 KAR 020:430	324.117	201 KAR 011:011
	907 KAR 015:005		201 KAR 011:105
319A.010	902 KAR 020:280	324.141	201 KAR 011:210
319C.010	902 KAR 020:430	324.150	201 KAR 011:190
	907 KAR 015:005	324.151	201 KAR 011:190
321.181	201 KAR 016:600	324.160	201 KAR 011:011
321.193	201 KAR 016:510		201 KAR 011:105
	201 KAR 016:520		201 KAR 011:121
	201 KAR 016:530		201 KAR 011:170
	201 KAR 016:540		201 KAR 011:190
	201 KAR 016:570		201 KAR 011:210
321.201	201 KAR 016:516	324.170	201 KAR 011:190
321.207	201 KAR 016:514	324.200	201 KAR 011:190
	201 KAR 016:550	324.281	201 KAR 011:121
	201 KAR 016:560		201 KAR 011:170
	201 KAR 016:572		201 KAR 011:190
	201 KAR 016:580		201 KAR 011:210
321.211	201 KAR 016:510	324.282	201 KAR 011:002
	201 KAR 016:570		201 KAR 011:105
	201 KAR 016:580	324.287	201 KAR 011:210
	201 KAR 016:590	324.310	201 KAR 011:121
321.221	201 KAR 016:540		201 KAR 011:210
	201 KAR 016:590	324.330	201 KAR 011:210
321.235	201 KAR 016:590	324.360	201 KAR 011:121
	201 KAR 016:610	324.395	201 KAR 011:220
	201 KAR 016:700	324.410	201 KAR 011:011
321.240	201 KAR 016:510	324.420	201 KAR 011:011
	201 KAR 016:512	324.990	201 KAR 011:210
	201 KAR 016:516	324A	201 KAR 030:010
321.351	201 KAR 016:500	324A.020	201 KAR 030:190
	201 KAR 016:610	324A.015	201 KAR 030:021
	201 KAR 016:700		201 KAR 030:040
321.353	201 KAR 016:610	324A.020	201 KAR 030:070
321.360	201 KAR 016:610		201 KAR 030:110
	201 KAR 016:700	324A.030	201 KAR 030:190
321.441	201 KAR 016:512		201 KAR 030:330
	201 KAR 016:520	324A.035	201 KAR 030:040
	201 KAR 016:530		201 KAR 030:110
	201 KAR 016:540		201 KAR 030:130
	201 KAR 016:570		201 KAR 030:190
	201 KAR 016:580		201 KAR 030:330
	201 KAR 016:590	324A.040	201 KAR 030:110
322	401 KAR 006:320		201 KAR 030:190
322.010	405 KAR 008:010	324A.045	201 KAR 030:110
322.340	405 KAR 008:010		201 KAR 030:190
322A	401 KAR 006:320	324A.047	201 KAR 030:110
323A.040	201 KAR 010:050	324A.050	201 KAR 030:040
323A.050	201 KAR 010:050		201 KAR 030:070
323A.060	201 KAR 010:050	324A.052	201 KAR 030:070
323A.070	201 KAR 010:050		201 KAR 030:190
323A.100	201 KAR 010:050	324A.065	201 KAR 030:110
	201 KAR 010:080		201 KAR 030:190
323A.210	201 KAR 010:080	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

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324A.155	201 KAR 030:330		405 KAR 008:010
324A.163	201 KAR 030:330		405 KAR 008:030
325.240	201 KAR 001:100		405 KAR 010:050
325.261	201 KAR 001:190		405 KAR 026:011
325.270	201 KAR 001:190	350.062	405 KAR 026:011
325.330	201 KAR 001:100	350.064	405 KAR 010:050
327.010	902 KAR 020:280		405 KAR 026:011
334A.020	902 KAR 020:280	350.070	400 KAR 001:110
335.080	902 KAR 020:430		405 KAR 008:010
	907 KAR 015:005		405 KAR 026:011
335.090	902 KAR 020:280	350.085	405 KAR 008:010
335.100	902 KAR 020:430		405 KAR 026:011
	907 KAR 015:005	350.090	400 KAR 001:110
335.300	902 KAR 020:430		405 KAR 007:050
	907 KAR 015:005		405 KAR 008:010
335.500	201 KAR 036:060		405 KAR 026:011
	902 KAR 020:430	350.093	400 KAR 001:110
	907 KAR 015:005		405 KAR 010:050
335.505	201 KAR 036:060		405 KAR 016:210
335.525	201 KAR 036:060		405 KAR 018:220
337	902 KAR 008:040		405 KAR 026:011
342.020	803 KAR 025:260	350.095	405 KAR 010:050
	803 KAR 025:271E		405 KAR 016:210
342.035	803 KAR 025:260		405 KAR 018:220
	803 KAR 025:271E		405 KAR 026:011
342.640	702 KAR 003:130	350.100	405 KAR 016:100
342.0011	803 KAR 025:260		405 KAR 016:210
	803 KAR 025:271E		405 KAR 018:100
343	787 KAR 003:010		405 KAR 018:220
344.030	101 KAR 002:102		405 KAR 020:040
	101 KAR 003:015		405 KAR 026:011
349.015	805 KAR 001:030	350.110	405 KAR 026:011
	805 KAR 001:140	350.113	405 KAR 026:011
	805 KAR 001:170	350.130	400 KAR 001:110
	805 KAR 009:011		405 KAR 005:032
349.035	805 KAR 001:140		405 KAR 008:010
	805 KAR 009:011		405 KAR 010:050
349.040	805 KAR 001:140	350.131	405 KAR 010:050
	805 KAR 009:011	350.135	405 KAR 008:010
349.075	805 KAR 001:140		405 KAR 026:011
	805 KAR 009:011	350.151	405 KAR 010:050
349.335	805 KAR 001:080		405 KAR 018:100
349.045	805 KAR 001:020		405 KAR 018:220
349.105	805 KAR 001:170		405 KAR 026:011
349.110	805 KAR 001:020	350.240	405 KAR 005:002
	805 KAR 009:011		405 KAR 005:032
349.115	805 KAR 001:030	350.255	400 KAR 001:110
349.120	805 KAR 001:050	350.300	405 KAR 005:002
	805 KAR 001:140		405 KAR 005:032
	805 KAR 001:170	350.405	405 KAR 016:210
	805 KAR 001:200		405 KAR 020:040
	805 KAR 009:011	350.410	405 KAR 007:040
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

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	405 KAR 018:220	353.745	805 KAR 001:190
	405 KAR 020:040	353.990	805 KAR 001:060
	405 KAR 026:011	353.991	805 KAR 001:140
350.500 - 350.521	405 KAR 008:010		805 KAR 001:170
350.990	400 KAR 001:110		805 KAR 001:190
	405 KAR 026:011	353.992	805 KAR 001:110
350.0301	400 KAR 001:110	363.410	302 KAR 081:010
351.315	400 KAR 001:110	363.510	302 KAR 075:130
351.330	805 KAR 004:050		302 KAR 076:100
331.335	805 KAR 004:050		302 KAR 080:010
331.360	805 KAR 004:050		302 KAR 081:010
351.345	400 KAR 001:110	363.610	302 KAR 081:010
351.350	400 KAR 001:110	363.710	302 KAR 076:100
352.340	805 KAR 007:101	363.720	302 KAR 075:130
353.050	805 KAR 001:140	363.730	302 KAR 075:130
353.060	805 KAR 001:140	363.770	302 KAR 076:100
353.120	805 KAR 001:060	363.780	302 KAR 076:100
353.160	805 KAR 001:190	363.800	302 KAR 076:100
353.170	805 KAR 001:060	365.650	103 KAR 025:060
353.180	805 KAR 001:060	365.665	103 KAR 025:060
	805 KAR 001:110	365.680	103 KAR 025:060
	805 KAR 001:140	369.101 - 369.120	907 KAR 015:010
	805 KAR 001:170	369.102	601 KAR 009:130
353.500	805 KAR 001:080	369.107	601 KAR 009:130
	805 KAR 001:160	383.085	902 KAR 045:065
	805 KAR 001:190		902 KAR 045:070
353.500 - 353.730	805 KAR 001:001	387	922 KAR 001:565
353.510	805 KAR 001:110	387.010	902 KAR 045:065
	805 KAR 001:140		902 KAR 045:070
	805 KAR 001:170	403.270 - 403.355	922 KAR 001:565
353.520	805 KAR 001:020	405.024	922 KAR 001:565
	805 KAR 001:080	422.317	201 KAR 008:540
	805 KAR 001:110		907 KAR 003:170
	805 KAR 001:120	424	805 KAR 001:140
	805 KAR 001:140	424.110 - 424.120	405 KAR 008:010
	805 KAR 001:170	424.260	702 KAR 003:130
353.540	805 KAR 001:080	431.600	922 KAR 001:330
353.550	805 KAR 001:030	434.840 - 434.860	907 KAR 003:170
	805 KAR 001:060	439	501 KAR 006:060
	805 KAR 001:080		501 KAR 006:110
	805 KAR 001:110		501 KAR 006:140
	805 KAR 001:180		501 KAR 006:160
	805 KAR 001:200	439.3401	902 KAR 020:430
353.560	805 KAR 001:080		902 KAR 020:450
353.561 - 353.564	805 KAR 001:140	503.110	922 KAR 001:330
	805 KAR 001:170	527.100	922 KAR 001:565
353.570	805 KAR 001:110	527.110	922 KAR 001:565
353.590	805 KAR 001:030	529.010	922 KAR 001:330
	805 KAR 001:050	532.045	922 KAR 001:330
	805 KAR 001:110	600.010	922 KAR 001:330
	805 KAR 001:140	600.020	922 KAR 001:320
	805 KAR 001:170		922 KAR 001:330
	805 KAR 001:190		922 KAR 001:565
353.5901	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		922 KAR 001:330
353.656	805 KAR 001:160	620.010 - 620.050	922 KAR 001:320
353.6601 - 353.6606	805 KAR 001:140	620.020	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

KRS SECTION	REGULATION	KRS SECTION	REGULATION
620.142	922 KAR 001:320	12 U.S.C.	201 KAR 030:010
	922 KAR 001:565		201 KAR 030:040
620.157	922 KAR 001:320		201 KAR 030:110
620.170	922 KAR 001:565		201 KAR 030:130
620.180	922 KAR 001:320		201 KAR 030:190
	922 KAR 001:330	15 U.S.C.	201 KAR 030:330
620.230	922 KAR 001:320		806 KAR 003:230
620.350	922 KAR 001:330	16 U.S.C.	405 KAR 008:010
620.363	922 KAR 001:320		405 KAR 008:030
620.990	922 KAR 001:330	18 U.S.C.	501 KAR 006:160
625.065	922 KAR 001:560		601 KAR 002:030E
2019 RS HB220	806 KAR 003:240	20 U.S.C.	013 KAR 001:020
7 C.F.R.	405 KAR 008:030		702 KAR 007:065
	405 KAR 010:001		703 KAR 005:280
12 C.F.R.	201 KAR 030:040		902 KAR 020:430
	201 KAR 030:190		907 KAR 015:010
	201 KAR 030:330		907 KAR 015:020
16 C.F.R.	201 KAR 015:110	21 U.S.C.	902 KAR 045:090
21 C.F.R.	902 KAR 045:090	26 U.S.C.	102 KAR 001:032
	902 KAR 055:120		105 KAR 001:390
24 C.F.R.	201 KAR 011:121		301 KAR 003:100
26 C.F.R.	102 KAR 001:032		907 KAR 005:005
	105 KAR 001:390	29 U.S.C.	101 KAR 002:102
27 C.F.R.	405 KAR 008:010		101 KAR 003:015
28 C.F.R.	201 KAR 011:210		201 KAR 015:110
	902 KAR 045:065		902 KAR 008:040
	902 KAR 045:070		902 KAR 020:430
29 C.F.R.	101 KAR 002:102		907 KAR 005:005
	101 KAR 003:015		907 KAR 015:005
	902 KAR 008:040		907 KAR 015:010
	902 KAR 045:065		907 KAR 015:020
	902 KAR 045:070	30 U.S.C.	400 KAR 001:110
30 C.F.R.	400 KAR 001:110		401 KAR 010:030
	405 KAR 008:010		405 KAR 008:010
	405 KAR 008:030		405 KAR 008:030
	405 KAR 010:001		405 KAR 010:050
	405 KAR 010:050		405 KAR 016:100
	405 KAR 016:100		405 KAR 016:210
	405 KAR 016:210		405 KAR 018:100
	405 KAR 018:100		405 KAR 018:220
	405 KAR 018:220	31 U.S.C.	045 KAR 001:050
40 C.F.R.	302 KAR 031:040	33 U.S.C.	401 KAR 010:029
	401 KAR 010:001	42 U.S.C.	201 KAR 008:540
	401 KAR 010:029		202 KAR 006:050
	401 KAR 051:010		401 KAR 051:010
	401 KAR 058:005		805 KAR 001:110
	405 KAR 008:030		815 KAR 020:060
	405 KAR 010:001		900 KAR 002:050
	805 KAR 001:110		902 KAR 020:370
	805 KAR 001:190		902 KAR 020:430
42 C.F.R.	900 KAR 002:050		902 KAR 020:450
	902 KAR 020:450		902 KAR 021:020
	907 KAR 003:170		907 KAR 005:005
	907 KAR 005:005		907 KAR 010:830
	907 KAR 010:830		907 KAR 015:010
	907 KAR 015:005		907 KAR 015:015
	907 KAR 015:010		907 KAR 015:020
	907 KAR 015:020		907 KAR 015:022
44 C.F.R.	201 KAR 011:121		907 KAR 015:025
45 C.F.R.	902 KAR 020:370		922 KAR 001:320
	902 KAR 020:430		922 KAR 001:330
	902 KAR 020:450		922 KAR 001:565
	907 KAR 015:010	47 U.S.C.	202 KAR 006:010
	907 KAR 015:020		202 KAR 006:020
	922 KAR 001:320		202 KAR 006:030
49 C.F.R.	302 KAR 031:040		202 KAR 006:050
	805 KAR 001:190		202 KAR 006:060
7 U.S.C.	302 KAR 050:050		202 KAR 006:070
9 U.S.C.	202 KAR 006:010		202 KAR 006:080
	202 KAR 006:050		202 KAR 006:090
	202 KAR 006:080		202 KAR 006:100
	202 KAR 006:090		

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 Review Effective Date*	13A 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

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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
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

CERTIFICATION LETTER SUMMARIES

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
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, effective 9-9-2019.
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 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.

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201 KAR 026:215	07-17-2017	09-05-2019	Remain in Effect without Amendment
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.
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, effective 6-14-2019.
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
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

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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
803 KAR 025:015	03-16-1998	08-20-2019	To be amended. Amendment due 2-20-21.
803 KAR 025:021	08-10-2006	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.
804 KAR 007:020	05-14-1975	03-26-2019	To be amended. Amendment filed 4-15-19, effective 8-2-2019.
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
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
902 KAR 100:015	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:021	06-03-2011	08-16-2019	Remain in Effect without Amendment
902 KAR 100:040	11-16-2011	08-16-2019	Remain in Effect without Amendment
902 KAR 100:041	09-11-2000	08-16-2019	Remain in Effect without Amendment
902 KAR 100:045	10-16-2000	08-16-2019	Remain in Effect without Amendment
902 KAR 100:050	06-27-1990	08-16-2019	Remain in Effect without Amendment
902 KAR 100:065	02-01-2001	08-16-2019	Remain in Effect without Amendment
902 KAR 100:105	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:110	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:115	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:120	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:125	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:130	01-10-1992	08-16-2019	Remain in Effect without Amendment

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902 KAR 100:136	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:137	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:140	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:145	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:150	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:155	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:160	01-10-1992	08-16-2019	Remain in Effect without Amendment
902 KAR 100:165	06-03-2011	08-16-2019	Remain in Effect without Amendment
902 KAR 100:170	08-01-1996	08-16-2019	Remain in Effect without Amendment
201 KAR 008:550	09-05-2014	07-29-2019	To be amended, filing deadlkne 1-29-21.
601 KAR 009:140	02-04-2011	09-25-2019	Remain in Effect without Amendment
032 KAR 001:080	01-06-2006	09-27-2019	Remain in Effect without Amendment
032 KAR 001:090	03-04-1986	09-27-2019	Remain in Effect without Amendment
032 KAR 001:100	01-06-2006	09-27-2019	To be amended, filing deadline 3-27-21.
032 KAR 001:190	03-04-2011	09-27-2019	To be amended, filing deadline 3-27-21.
032 KAR 002:020	01-04-1993	09-27-2019	Remain in Effect without Amendment
032 KAR 002:030	01-04-1993	09-27-2019	Remain in Effect without Amendment
032 KAR 002:040	01-04-1993	09-27-2019	Remain in Effect without Amendment
032 KAR 002:050	01-19-1999	09-27-2019	Remain in Effect without Amendment
032 KAR 002:060	07-12-1993	09-27-2019	Remain in Effect without Amendment
032 KAR 002:070	01-06-2006	09-27-2019	Remain in Effect without Amendment
032 KAR 002:080	01-04-1993	09-27-2019	Remain in Effect without Amendment
032 KAR 002:100	04-07-1993	09-27-2019	Remain in Effect without Amendment
032 KAR 002:110	04-07-1993	09-27-2019	Remain in Effect without Amendment
032 KAR 002:130	06-03-2011	09-27-2019	Remain in Effect without Amendment
032 KAR 002:170	01-06-2006	09-27-2019	Remain in Effect without Amendment
032 KAR 002:180	06-02-1994	09-27-2019	Remain in Effect without Amendment
032 KAR 002:190	06-02-1994	09-27-2019	Remain in Effect without Amendment
032 KAR 002:200	06-02-1994	09-27-2019	Remain in Effect without Amendment
032 KAR 002:210	03-19-1999	09-27-2019	Remain in Effect without Amendment
032 KAR 002:220	01-06-2006	09-27-2019	Remain in Effect without Amendment
902 KAR 010:030	08-01-1996	10-02-2019	Remain in Effect without Amendment
902 KAR 010:035	11-09-1992	10-02-2019	Remain in Effect without Amendment
902 KAR 010:120	08-01-1996	10-02-2019	Remain in Effect without Amendment
902 KAR 010:121	03-06-2001	10-02-2019	Remain in Effect without Amendment

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2017 Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Copies of the technical amendments are usually posted on the Legislative Research Commission Web site for a short time before they are finalized. Regulations are available for viewing on the Legislative Research Commission Web site at <https://legislature.ky.gov/law/kar/pages/default.aspx>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
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		
	09-25-2019		
401 KAR 042:060	05-07-2019		
	09-25-2019		
401 KAR 042:250	05-07-2019		
	09-25-2019		
401 KAR 042:330	05-07-2019		
	09-25-2019		
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		
401 KAR 059:020	09-04-2019		
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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