



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on January 13, 2020, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 2017 [Updated as needed online](#)

INDEXES & OTHER INFORMATION

Regulation Review Procedure	2021
ARRS Report.....	2190
Other Committee Reports	2191
Locator Index - Effective Dates.....	G - 2

KRS Index.....	G - 14
Certifications	G - 26
Technical Amendments	G - 30
Subject Index.....	G - 31

EMERGENCIES

NONE

AS AMENDED

Department of Revenue

103 KAR 025:050. Factors and agents	2023
103 KAR 025:060. Temporary vendors and transient merchants	2023
103 KAR 026:030. Optometrists, oculists and opticians.....	2024
103 KAR 026:050. Common carriers.....	2024
103 KAR 027:220. Restaurant transactions	2025
103 KAR 030:270. Oil and gas extraction machinery	2025
103 KAR 041:031. Repeal of 103 KAR 041:030, 103 KAR 041:050, 103 KAR 041:060, and 103 KAR 041:200.....	2026

Real Estate Commission

201 KAR 011:121. Standards of professional conduct.....	2027
201 KAR 011:210. Licensing, education, and testing requirements	2031

Board of Emergency Medical Services

202 KAR 007:020. Board organization	2036
---	------

Department of Travel Development

300 KAR 001:010. Procedure for Tourism Marketing Incentive Program	2038
--	------

Department of Fish and Wildlife Resources

301 KAR 003:100. Special commission permits.....	2046
--	------

Department of Agriculture

302 KAR 050:050. THC sampling and testing, post-testing actions	2048
---	------

Department of Natural Resources

805 KAR 001:001. Definitions for 805 KAR Chapter 001 ..	2049
805 KAR 001:020. Protection of fresh water zones.....	2050
805 KAR 001:030. Well location and as-drilled location plat, preparation, form and contents	2052
805 KAR 001:050. Bonds, requirements, cancellation	2053
805 KAR 001:060. Plugging wells	2054
805 KAR 001:080. Gas storage reservoirs; drilling, plugging in vicinity	2056

805 KAR 001:110. Underground injection control.	2058
805 KAR 001:120. Operating or deepening existing wells and drilling deeper than the permitted depth	2064
805 KAR 001:140. Directional and horizontal wells.....	2065
805 KAR 001:160. Posting of an identification sign and a danger sign on a crude oil tank battery site.....	2066
805 KAR 001:170. Content of the operations and reclamation plan.....	2068
805 KAR 001:180. Production reporting	2071
805 KAR 001:190. Gathering lines	2072
805 KAR 001:200. General information associated with oil and gas permits.....	2077
805 KAR 004:050. Records	2078

Department of Insurance

806 KAR 003:230. Standards for safeguarding customer information	2079
806 KAR 005:060. Registration of service contracts for consumer products	2081
806 KAR 009:265. Rental vehicle agent license.....	2083

AMENDED AFTER COMMENTS

Department of Education

703 KAR 005:280. School improvement procedures	2087
--	------

Department for Community Based Services

922 KAR 001:330 & E. Child protective services.....	2093
---	------

PROPOSED AMENDMENTS

Education Professional Standards Board

016 KAR 009:060. The direct training program for preparation of candidates for initial teacher certification.	2100
--	------

Department of Revenue

103 KAR 002:005. Life Mortality Table	2104
103 KAR 030:170. Containers, wrapping, and packing materials.....	2105

103 KAR 040:050. Transporter's reports	2107
Board of Physical Therapy	
201 KAR 022:170. Physical Therapy Compact Commission	2108
Department of Fish and Wildlife Resources	
301 KAR 002:195. Falconry, raptor take, and raptor propagation	2109
301 KAR 002:300. Black bear seasons and requirements	2115
301 KAR 004:090. Taxidermy, cervid meat processors, and the buying and selling of inedible wildlife parts	2118
Department of Natural Resources	
416 KAR 001:010. Administration of Kentucky Soil Erosion and Water Quality Cost-Share Fund	2120
Kentucky State Corrections Commission	
500 KAR 010:001. Definitions for 500 KAR 010.	2124
500 KAR 010:020. Administration and application procedure for community corrections grant program	2126
500 KAR 010:030. Community Corrections Board and Grant Recipient Requirements	2128
500 KAR 010:040. Review for compliance.	2130
Department of Education	
702 KAR 005:080. Bus drivers' qualifications, responsibilities, and training	2132
702 KAR 007:125. Pupil attendance	2137
703 KAR 005:140. Requirements for school and district report cards	2142
703 KAR 005:270. Kentucky's accountability system	2144
704 KAR 003:370. Kentucky framework for personnel evaluation	2149
704 KAR 007:090. Homeless children and youth education program and ensuring educational stability of children in foster care	2152

NEW ADMINISTRATIVE REGULATION

Education Professional Standards Board

016 KAR 009:071. Repeal of 016 KAR 009:050 and 009:070	2160
--	------

Board of Veterinary Examiners

201 KAR 016:012. Repeal of 201 KAR 016:010, 201 KAR 016:015, 201 KAR 016:020, 201 KAR 016:030, 201 KAR 016:040, 201 KAR 016:050, 201 KAR 016:060, 201 KAR 016:080, 201 KAR 016:090, 201 KAR 016:100, and 201 KAR 016:110	2161
--	------

Board of Nursing

201 KAR 020:600. Standards for training programs for licensed certified professional midwives	2162
201 KAR 020:610. Approval process for training programs for licensed certified professional midwives	2164
201 KAR 020:620. Licensing requirements for licensed certified professional midwives	2166
201 KAR 020:630. Disciplinary actions for licensed	2168
201 KAR 020:640. Requirements for informed consent for licensed certified professional midwives	2170
201 KAR 020:650. Licensed certified professional midwives permitted medical tests and formulary	2171
201 KAR 020:660. Licensed certified professional midwives duty to report.	2172

201 KAR 020:670. Licensed certified professional midwives consultation, collaboration, and referral provisions.	2174
201 KAR 020:680. Licensed certified professional midwives client records	2176
201 KAR 020:690. Licensed certified professional midwives transfer guidelines	2177

Department of Agriculture

302 KAR 020:012. Repeal of 302 KAR 020:030, 302 KAR 020:050, 302 KAR 020:052, 302 KAR 020:066, 302 KAR 020:090, 302 KAR 020:100, and 302 KAR 020:150	2178
--	------

Office of the State Veterinarian

302 KAR 022:150. Cervids	2179
--------------------------------	------

Kentucky State Corrections Commission

500 KAR 010:050. Prison Industry Enhancement Certification Program	2186
--	------

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

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

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**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Monday, January 13, 2020 1 p.m.
Annex Room 149**



**1. CALL TO ORDER AND ROLL CALL
2. REGULATIONS FOR COMMITTEE REVIEW**

STATE BOARD OF ELECTIONS

Forms and Procedures

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

FINANCE AND ADMINISTRATION CABINET

Kentucky Teachers' Retirement System

General Rules

102 KAR 001:035. Employment by retired members; calculation of the daily wage threshold and average daily rate.
102 KAR 001:036. Part-time service for university, college and community college members.
102 KAR 001:037. Administrative staff memberships.
102 KAR 001:100. Insurance.
102 KAR 001:125. Omitted contributions.
102 KAR 001:135. Interest credited to accounts.

Department of Revenue

General Administration

103 KAR 001:120. Employee access to federal tax information (FTI).

Ad Valorem Tax; State Assessment

103 KAR 008:160. Valuation of municipal solid waste landfill facilities.
103 KAR 008:170. Pollution control facilities exception.

Income Tax; Withholding

103 KAR 018:150. Employer's withholding reporting requirements.

Sales and Use Tax; Administration and Accounting

103 KAR 031:020. Records
103 KAR 031:080. Coupons or redemption certificates.
103 KAR 031:090. Tax-paid purchases resold.
103 KAR 031:200. Energy efficiency projects.

Selective Excise Tax; Alcoholic Beverages

103 KAR 040:010. Maintaining records.

Selective Excise Tax; Cigarettes

103 KAR 041:040. Cigarette vending machine operators.
103 KAR 041:100. Segregation of cigarettes.
103 KAR 041:110. Sample of cigarettes.

Selective Excise Tax; Motor Fuels

103 KAR 043:010. Accountable losses.
103 KAR 043:051. Repeal of 103 KAR 043:050.

BOARDS AND COMMISSIONS

Board of Landscape Architects

201 KAR 010:050. Fees.
201 KAR 010:080. Continuing education.

Board of Veterinary Examiners

201 KAR 016:500. Code of ethical conduct for veterinarians.
201 KAR 016:510. Fees for veterinarians.
201 KAR 016:512. Fees for veterinary technicians.
201 KAR 016:514. Fees for animal control agencies and animal euthanasia specialists.
201 KAR 016:516. Fees – other fees.
201 KAR 016:520. Approved veterinary colleges; approved programs for veterinary technicians.
201 KAR 016:530. Examination requirements for veterinarians and veterinary technicians.
201 KAR 016:540. Application requirements for veterinarians and veterinary technicians.
201 KAR 016:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.
201 KAR 016:560. Certification as an animal euthanasia specialist.
201 KAR 016:570. License renewal for veterinarians and veterinary technicians.
201 KAR 016:572. License renewal for registered animal control agencies and animal euthanasia specialists; renewal notice.
201 KAR 016:580. Board issued licenses and certificates, inactive and retired statuses.
201 KAR 016:590. Continuing education requirements, veterinarians and veterinary technicians.
201 KAR 016:600. Prescription and dispensation of drugs for animal use.

VOLUME 46, NUMBER 7– JANUARY 1, 2020

201 KAR 016:610. Procedures for grievances, investigations, and administrative charges.
201 KAR 016:700. Material incorporated by reference.

Real Estate Appraisers

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

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 002:185. Hunter education. (Deferred from September)
301 KAR 002:251. Hunting and trapping seasons and limits for furbearers.

GENERAL GOVERNMENT

Department of Agriculture

Office of Agricultural Marketing

Fairs and Shows

302 KAR 015:010. Administration; state aid to local fairs.
302 KAR 015:020. Dairy cattle shows and sales.
302 KAR 015:030. Beef cattle shows and sales.

Livestock

302 KAR 021:011. Repeal of 302 KAR 021:005.

Office of the State Veterinarian

Livestock, Poultry, and Fish

302 KAR 022:010. Authority to inspect, test, identify, remove and dispose of livestock, poultry, and fish. (Deferred from December)
302 KAR 022:020. Restriction of transportation of livestock, poultry, and fish. (Deferred from December)
302 KAR 022:030. Livestock, poultry, and fish diseases to be reported.
302 KAR 022:040. Carcass transport and composting. (Deferred from December)
302 KAR 022:070. Restrictions on biological materials in Kentucky.
302 KAR 022:080. Feed restrictions. (Deferred from December)

Office of Consumer and Environmental Protection

Pesticides

302 KAR 031:040. Storage and handling of pesticides and bulk fertilizer.

Office of Agriculture Marketing

Hay Grading

302 KAR 037:010. Forage Testing Program.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Mine Reclamation and Enforcement

Surface Effects of Noncoal Mining

405 KAR 005:002. Definitions for 405 KAR Chapter 005. (Deferred from December)
405 KAR 005:032. Permit requirements. (Deferred from December)

General Provisions

405 KAR 007:040. General obligations of operators and permittees. (Deferred from December)
405 KAR 007:050. Coal processing waste disposal sites. (Deferred from December)

Permits

405 KAR 008:010. General provisions for permits. (Deferred from December)
405 KAR 008:030. Surface coal mining permits. (Deferred from December)

Bond and Insurance Requirements

405 KAR 010:050. Bond forfeiture. (Deferred from December)

Performance Standards for Surface Mining Activities

405 KAR 016:100. Permanent and temporary impoundments. (Deferred from December)
405 KAR 016:210. Post mining land use capability. (Deferred from December)

Performance Standards for Underground Mining Activities

405 KAR 018:100. Permanent and temporary impoundments. (Deferred from December)
405 KAR 018:220. Post mining land use capability. (Deferred from December)

Special Performance Standards

405 KAR 020:040. Prime farmland. (Deferred from December)

Operation of Two (2) Acres or Less

405 KAR 026:011. Repeal of 405 KAR 026:001. (Deferred from December)

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)

TRANSPORTATION CABINET

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

601 KAR 002:030E. Ignition interlock. ("E" expires 05-04-2020) (Not Amended After Comments)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

**Board of Education
Department of Education
Office of Instruction**

704 KAR 003:303. Required academic standards.

Academic Standards

704 KAR 008:080. Required academic standards in career studies and financial literacy.

**Department for Technical Education
Management of the Kentucky TECH System**

780 KAR 002:040. Live work projects.

780 KAR 002:060. Discipline of students.

PUBLIC PROTECTION CABINET

**Department of Insurance
Rates and Rating Organizations**

806 KAR 013:040. Automobile fleet insurance defined.

806 KAR 013:071. Repeal of 806 KAR 013:070.

806 KAR 013:101. Repeal of 806 KAR 013:101.

Life Insurance and Annuity Contracts

Investments

806 KAR 015:090. Notice of rights as an owner of a life insurance policy.

Department of Housing, Buildings, and Construction

Plumbing

815 KAR 020:010. Definitions for 815 KAR Chapter 020.

815 KAR 020:020. Parts or materials list.

815 KAR 020:030. Plumbing licenses.

815 KAR 020:050. Installation permits.

815 KAR 020:055. Water heating devices.

815 KAR 020:060. Quality, weight, installation, and storage of materials.

815 KAR 020:070. Plumbing fixtures.

815 KAR 020:080. Waste pipe size.

815 KAR 020:090. Soil, waste, and vent systems, traps, and clean-outs.

815 KAR 020:111. Repeal of 815 KAR 020:071, 815 KAR 020:072, 815 KAR 020:073, 815 KAR 020:074, 815 KAR 020:078, 815 KAR 020:084, 815 KAR 020:100, and 815 KAR 020:110.

815 KAR 020:120. Water supply and distribution.

815 KAR 020:130. House sewers and storm water piping; methods of installation.

815 KAR 020:150. Inspection and tests.

815 KAR 020:170. Manufactured home and mobile home community waste system distribution and connections.

815 KAR 020:180. Special connections.

815 KAR 020:195. Medical gas piping installations.

CABINET FOR HEALTH AND FAMILY SERVICES

**Office of Inspector General
Division of Healthcare
Long-Term Care**

900 KAR 002:050. Transfer and discharge rights.

**Department for Public Health
Division of Administration and Financial Management
Local Health Departments**

902 KAR 008:040. Definitions for 902 KAR Chapter 008.

902 KAR 008:060. Salary adjustments for local health departments.

902 KAR 008:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

902 KAR 008:100. Disciplinary procedures applicable for local health department employees.

902 KAR 008:110. Disciplinary appeal process applicable for local health department employees.

**Office of Inspector General
Division of Healthcare
Health Services and Facilities**

902 KAR 020:036. Operation and services; personal care homes. (Amended After Comments) (Deferred from August)

902 KAR 020:450. Ambulatory infusion agencies. (Not Amended After Comments)

VOLUME 46, NUMBER 7– JANUARY 1, 2020

Division of Audits and Investigations

Controlled Substances

902 KAR 055:130. Electronic prescribing of controlled substances.

Department for Medicaid Services

Division of Provider Integrity

907 KAR 005:005. Health Insurance Premium Payment (HIPP) Program.

Department for Community Based Services

Division of Protection and Permanency

Child Welfare

922 KAR 001:330 & E. Child protective services. ("E" expires 05-11-2020) (Amended After Comments)

3. REGULATIONS REMOVED FROM JANUARY'S AGENDA

BOARDS AND COMMISSIONS

Board of Pharmacy

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

GENERAL GOVERNMENT CABINET

Department of Agriculture

Office of the Commissioner

Livestock Sanitation

302 KAR 020:011. Repeal of 302 KAR 020:030, 302 KAR 020:050, 302 KAR 020:052, 302 KAR 020:090, 302 KAR 020:100, 302 KAR 020:150. (Withdrawn)

LABOR CABINET

Department of Workers' Claims

803 KAR 025:260. Treatment guidelines. (Comments Received; SOC ext., due 1-15-2020)

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.

VOLUME 46, NUMBER 7– JANUARY 1, 2020
EMERGENCY ADMINISTRATIVE REGULATIONS

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

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

103 KAR 25:050. Factors and agents.

RELATES TO: KRS 139.010, 139.200, 139.310, 139.340
STATUTORY AUTHORITY: KRS 131.130(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets the sales and use tax law as it applies to transactions involving factors and agents.

Section 1. Definitions. (1) "Factors" and "agents" means persons, excluding marketplace providers, to whom products are consigned, entrusted, or delivered by a principal owner for the purpose of selling.

(2) "Marketplace providers" is defined by KRS 139.010.

(3) "Principal owner" means a person who has the primary and ultimate ownership of the products for sale.

(4) "Products" means tangible personal property, digital property, and services subject to sales tax according to the provisions of KRS 139.200.

Section 2. Factors and Agents are Retailers. (1) Factors and agents shall:

(a) Be considered the retailers of products sold;

(b) ~~and shall~~ include the retail-selling price of the products in their gross receipts; and

(c) ~~shall~~ be liable for the sales and use tax thereon unless the principal owner:

1. ~~(a)~~ Holds a retail permit under KRS Chapter 139;

2. ~~(b)~~ Reports the retail-selling price of the products in its gross receipts; and

3. ~~(c)~~ Remits the sales and use tax thereon.

(2) The delivery in this state of products by a factor or agent of a principal owner that is a retailer not doing business in this state as provided in KRS 139.340 shall be considered a retail sale by the factor or agent. The factor or agent shall include the retail-selling price of the products in their gross receipts and shall be liable for the sales and use tax thereon except under the principal owner stipulations provided in subsection (1) of this section. [Section 1. A factor, or agent of an owner, or former owner or factor, to whom property is consigned, entrusted, or otherwise delivered for the purpose of selling shall be considered the retailer of such property when sold. Said factor, or agent, shall include the retail selling price of said property in his gross receipts and be liable for the sales tax thereon; provided, however, that said factor or agent need not include the retail selling price of the subject property in his gross receipts in those instances where the principal involved is a retail permit holder under the Kentucky Sales and Use Tax Act, and said principal includes the retail selling price of the subject property in his gross receipts.]

Section 2. The delivery in this state by a factor, or agent of an owner, or former owner or factor, to a consumer or person for redelivery to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state shall be considered a retail sale. Said factor, or agent, shall include the retail selling price of said property in his gross receipts and be liable for the sales tax thereon; provided, however, that said factor or agent need not include the retail selling price of the subject property in his gross receipts in those instances where the principal involved is a retail permit holder under the Kentucky Sales and Use Tax Act, and said principal includes the retail selling price of the subject property in

his gross receipts.]

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

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

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

103 KAR 25:060. Temporary vendors and transient~~vendors~~ merchants.

RELATES TO: KRS 139.010, 139.200, 139.550, 139.660, 365.650, 365.665, 365.680

STATUTORY AUTHORITY: KRS 131.130(4), 139.550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets ~~To interpret~~ the sales and use tax law as it applies to temporary vendors and transient ~~vendors~~ merchants.

Section 1. Definitions. (1) "Temporary vendor" means a person engaged in selling as described in KRS 139.550(4).

(2) "Transient merchant" is defined by KRS 365.650(1).

Section 2. Temporary vendors and transient merchants who are not registered with an active Sales and Use Tax Account shall report and remit the sales and use tax on a nonpermit basis on the Temporary Vendor Sales and Use Tax Return (Form 30A006) prescribed by the department [Persons not regularly engaged in selling at retail and not having a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at fairs, circuses, carnivals, and the like, shall report and remit the tax on a nonpermit basis, and shall obtain a retail sales tax registration from the Department of Revenue].

Section 3[2]. Transient merchants having no fixed place of business and not selling from a vehicle shall register for, and procure, a permit in the county in which they make sales of tangible personal property by completing the Application for Transient Merchant Permit (Form 51A250). The application shall be submitted to the county clerk or other applicable local representative as required by KRS 365.665 [Persons having no fixed place of business and not selling from a vehicle shall procure a registration in the county in which they make sales of tangible personal property. The application for such registration shall set forth an established residence or permanent mailing address to which all communications from the department shall be addressed].

Section 4[3]. Transient merchants having no fixed place of business and selling from vehicles shall submit an Application for Transient Merchant Permit (Form 51A250) for each vehicle. The application for registration shall be submitted to the county clerk or other applicable local representative as required by KRS 365.665. [Persons with no fixed place of business and selling from vehicles shall procure a registration for each vehicle.] The [Such] registration shall cover all sales made from the vehicle in any county in the state. [The application for such registration shall set

VOLUME 46, NUMBER 7– JANUARY 1, 2020

~~forth a residence or permanent mailing address in this state to which all communications from the department may be sent.]~~

~~Section 5[4]. Bonding Requirements. (1)[Persons coming within the provisions of this administrative regulation]. Temporary vendors may be required to post a bond pursuant to the provisions of KRS 139.660[if, in the judgment of the department, it is deemed necessary or advisable to secure the collection of the tax. A cash bond or a surety bond is acceptable]. The amount and type of the bond shall be determined by the department. The tax may be prepaid in lieu of filing the[said] bond. The bond shall be filed with the department prior to the issuance of the registration and engaging in business within this state.~~

~~(2) Transient merchants may be required to post a bond with the Office of the Attorney General pursuant to the provisions of KRS 365.680.~~

~~Section 6[5]. [The sales tax return shall be filed and the tax due shall be paid to either a Department of Revenue field office or representative.]The due date for[the] filing[ef] the sales tax return and remitting payment required by this administrative regulation is the [expiration]due date shown on [the taxpayer's retail sales tax registration]Form 30A006 as prescribed by the department, or the date when selling at the designated location is completed[, whichever is the earlier. In those cases where the sales of tangible personal property are of more than one (1) month's duration, the tax shall be reported and remitted to the department at the end of each month].~~

~~Section 7. (1) Form 30A006 may be inspected, copied, or obtained, subject to applicable copyright law, for inspection from 8:00 a.m. until 4:30 p.m.].~~

~~(a) At the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601[.].]~~

~~(b) On the department Web site at <http://revenue.ky.gov>; or~~

~~(c) At a Kentucky Department of Revenue Taxpayer Service Center[during their hours of operation].~~

~~(2) Form 51A250 may be obtained from the county clerk or other applicable local representative.~~

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: September 12, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

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

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

103 KAR 26:030. Optometrists, oculists, and opticians.

RELATES TO: KRS 139.010, 139.200, 139.310

STATUTORY AUTHORITY: KRS 131.130(1)[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets [defines and clarifies] the sales and use tax law as it applies to transactions involving optometrists, oculists, and opticians.

Section 1. Oculists and optometrists shall be [are] the consumers of the ophthalmic materials including eyeglasses, frames, and lenses [lens] used or furnished to their patients in the performance of their professional services. The tax accordingly shall apply [applies] to the sale of the tangible personal property to them.

Section 2. If[Where] optometrists fill prescriptions written by others, the optometrist is the retailer and the tax shall

apply[applies] to the entire charge made for the glasses furnished in filling the prescription.

Section 3. Opticians are engaged in the business of selling tangible personal property and the tax shall apply[applies] to the entire charge made by a dispensing optician for glasses and kindred products furnished in filling a prescription of an oculist, optometrist, or ophthalmologist.

Section 4. Repairers of eyeglass frames shall be the consumers of the parts and materials used in ~~their[his or her]~~ repair. Repairers of eyeglass frames shall pay sales and use tax on the purchase of all parts and materials used in ~~their[his or her]~~ repair. Sales and use tax shall not be due on the charge by the repairer to their customer for the eyeglass frame repair.

DANIEL P. BORK, Commissioner

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

103 KAR 26:050. Common carriers.

RELATES TO: KRS 139.470, 139.480

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets [To interpret] the sales and use tax law as it applies to transactions involving common carriers.

Section 1. Definition. "Rolling stock" means only that equipment designed to move on rails and used for the transportation of goods or passengers for hire.

Section 2. All tangible personal property, digital property, admissions, accommodations, and taxable services sold to or used by common carriers in this state shall be subject to application of the sales or use tax with the exceptions noted in Section 3[2] of this administrative regulation. Tax shall[will] be applicable to leasing arrangements, or use pursuant to leasing arrangements, whereby items of equipment (including things such as], for example, but not limited to, such things] as tires or batteries) are acquired by common carriers for utilization over extended periods of time in connection with operations. The[Such] purchases, uses, leases, and uses pursuant to leases shall be[are] subject to the exceptions and qualifications in Section 3 of this administrative regulation[hereinafter noted].

Section 3.[2.] The following shall be excepted from application of the sales or use tax[are the following]:

(1) Over the road equipment [or floating equipment] which enters this state in actual use in interstate commerce at the time of entering, and is used exclusively in interstate commerce thereafter. This exception shall not be void due to nominal use in intrastate commerce[(nominal use in intrastate commerce will not affect this exception from application of tax)].

(2) Ships, vessels, and related equipment which enter[enters] this state in actual use in interstate commerce at the time of entering and are used exclusively in interstate commerce thereafter. This exception shall not be void due to nominal use in intrastate commerce.

(3) Locomotives or rolling stock, including materials for the construction, repair, or modification thereof, or fuel or supplies for

the direct operation of locomotives or trains, used or to be used in interstate commerce. Supplies shall~~The term "supplies" does~~not include items used for construction, maintenance, or support of the railway system~~The term "rolling stock" shall mean only that equipment designed to move on rails and used for the transportation of goods or passengers for hire~~.

~~(4)(3)] Aircraft, repair and replacement parts therefor, and supplies, except fuel, for the direct operation of aircraft in interstate commerce and used exclusively for the conveyance of property or passengers for hire. This exception shall not be void due to nominal use in intrastate commerce~~~~(nominal use in intrastate commerce will not affect this exception from application of tax)]~~.

DANIEL P. BORK, Commissioner

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

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

103 KAR 27:220. Restaurant~~Miscellaneous—restaurant~~ **transactions.**

RELATES TO: KRS 91A.400, 139.010, ~~[91A.400]~~139.200, 139.210, 139.260, 139.270, 139.290, 139.310, 139.330, 139.480, 139.485

STATUTORY AUTHORITY: KRS 131.130~~(4)]~~, 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the assessment, collection, refunding, administration, and enforcement of [all tax laws in] Kentucky tax laws. This administrative regulation establishes the sales and use tax requirements for miscellaneous transactions relating to restaurants.

Section 1. Definitions. (1) "Food and food ingredients" is defined by ~~[in]~~KRS 139.485(2).

(2) "Mandatory gratuity" means a gratuity or tip charged by a restaurant. An example of a mandatory gratuity is a gratuity charge made by a restaurant for serving a large number of customers in a single group.

(3) "Prepared food" is defined by ~~[in]~~KRS 139.485(3)(g).

(4) "Voluntary gratuity" means a gratuity or tip not required by a restaurant, but willfully added by a customer.

Section 2. (1) Tax shall apply to any charge added to the price of prepared food by a restaurant, including a mandatory gratuity, service charge, surcharge, or fee itemized on the invoice or ticket to the customer by the restaurant. These charges shall be considered part of the selling price of prepared food.

(2) A voluntary gratuity left by the customer shall not be subject to tax. ~~[A gratuity not required by the restaurant but willfully added by the customer shall be considered voluntary.]~~

Section 3. A restaurant employee shall pay tax on the sales price of any prepared food or other taxable item purchased from the employer.

Section 4. (1) Taxable tangible personal property shall be subject to sales and use tax based upon the restaurant's purchase price if the property was:

(a) Purchased exempt from tax under a Resale Certificate (Form 51A105) or a Streamlined Sales and Use Tax Agreement - Certificate of Exemption (Form 51A260)~~], both incorporated by reference in 103 KAR 3:020~~; and

(b) Provided free of charge to employees or customers, or otherwise used or consumed by the restaurant.

(2) Food and food ingredients and prepared food donated by a restaurant to charity shall not be subject to the tax.

Section 5. The tax imposed by a city on a restaurant pursuant to KRS 91A.400 shall be classified as a license tax that when passed on to customers shall constitute gross receipts subject to sales tax according to the provisions of KRS 139.010.

Section 6. (1) This administrative regulation shall replace Revenue Circular 51C001-S2 and Revenue Policy 51P345.

(2) Revenue Circular 51C001-S2 and Revenue Policy 51P345 are ~~[hereby]~~rescinded and shall be ~~[null,]void~~~~],—and unenforceable~~.

Section 7. Forms. The forms listed within this administrative regulation~~herein~~ may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;

(2) A Kentucky Taxpayer Service Center~~],—Monday through Friday, 8:00 a.m. to 4:30 p.m.]~~; or

(3) The department Web site at <http://revenue.ky.gov>.

DANIEL P. BORK, Commissioner

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

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

103 KAR 30:270. Oil and gas extraction machinery.

RELATES TO: KRS 139.010, 139.200, 139.260, 139.270, 139.280, 139.290, 139.310, 139.330, 139.470, 139.480

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of ~~[all tax laws in] Kentucky tax laws~~. This administrative regulation establishes the sales and use tax requirements for transactions relating to the oil and gas extraction industry.

Section 1. (1) ~~Definitions~~~~[Definition]~~. "Contract driller" means a person performing a drilling service for the owner or operator of an oil or gas well under a contractual relationship for consideration.

(2) "Repair, replacement, or spare parts" is defined ~~by~~~~[in]~~ KRS 139.010(34).

Section 2. Eligible Property for Exemption. The storage, use, or other consumption of tangible personal property for use in the extraction or production process for oil or natural gas which will be for sale shall be exempt from the sales and use tax according to the provisions of KRS 139.010, 139.470(9)~~139.470(10)]~~, and 103 KAR 30:120. (1) The extraction or production process for oil shall be considered as beginning with the erection of the drilling rig at the drilling location and shall be considered as terminating at the settling tank immediately prior to transportation. Oil tanks used for storage alone shall be subject to tax.

(2) The extraction or production process for natural gas shall be considered as beginning with the erection of the drilling rig at the location of the well and shall be considered as continuing until the gas leaves the outlet on the discharge side of the final gathering compressor station. The pipeline from the outlet to the transmission line shall be subject to tax.

(3) The list in this subsection shall serve as examples of

machinery used in the extraction or production process:

- (a) Drilling rigs;
- (b) Casings;
- (c) Tubing;
- (d) Well head equipment;
- (e) Pumps;
- (f) Compressors;
- (g) Production and gathering pipe;
- (h) Cleaning equipment; and
- (i) Oil settling tanks.

(4) The list in this subsection shall serve as examples of other tangible personal property used in the extraction or production process:

- (a) Drilling bits;
- (b) Explosives;
- (c) Drilling muds; ~~and~~
- (d) Chemicals; ~~and~~
- (e) Fracking fluids, including water and sand.

(5) Tangible personal property shall not be exempt from sales and use tax if it is used as "repair, replacement, or spare parts" [as defined in KRS 139.040(26)].

Section 3. The extraction or production process shall include the following operations:

- (1) Drilling and equipping wells, to include:

(a) Drilling of the hole by the drilling rig to the producing formation;

- (b) Installing casing and tubing in the hole;
- (c) Stimulating production by explosives or other means; ~~and~~
- (d) Hydraulic fracturing or fracking; and

(e) Completion of the well by the installation of machinery and equipment; and

- (2) Pumping, gathering, and cleaning.

(a) Pumping shall include the use of separate pumps on individual wells, group well pumps, and auxiliary pumps at other points on the gathering system. The machinery and appurtenant equipment used in secondary methods of recovery including gas repressuring or waterflooding shall be considered part of the extraction or production process.

(b) The gathering system shall consist of a series of pipelines connecting several different wells with settling tanks grouped together for production purposes. Compressors used to stimulate production and to continue in effect the processing production operation shall be considered part of the gathering system.

(c) Cleaning operations shall occur in the final settling tank where impurities are removed from oil by chemical heating and settling processes. If a well produces both oil and gas, separator equipment shall be necessary at appropriate points in the gathering lines to separate the oil and gas. In addition, various types of machinery may be used at different points in the gathering system to clean oil or gas.

Section 4. Nonproduction Process. Preliminary work, transportation, and marketing shall not be considered part of the oil or gas extraction or production process.

- (1) Preliminary work shall include:

- (a) Geological and geophysical work;
- (b) Leasing or purchasing operations;
- (c) Determination of drilling sites; and
- (d) Surface work preparatory to drilling.

(2) The transportation of oil shall be considered as commencing when the oil is pumped from the settling tank into transportation facilities, which may be truck, rail, or pipeline, or a combination thereof.

(3) The transportation of natural gas shall be considered as commencing at the point where the production or gathering system ceases, and it is delivered into pipelines for transportation to the retail distribution system.

(4) The marketing of natural gas shall be considered as commencing when the pressure in the transportation line is reduced and the gas is delivered into a low-pressure system for distribution to the ultimate retail consumer.

Section 5. Contract Drillers. (1) The exemptions provided in KRS 139.470(9)[139.470(10)] and 139.480(10) shall not apply to purchases made by a contract driller ~~since~~[as] a contract driller is providing a service and is the consumer of the machinery and materials used to provide the service.

(2) A contract driller may jointly execute a "Certificate of Exemption Machinery for New and Expanded Industry," Form 51A111, with an oil or gas well owner or operator to purchase machinery used to provide drilling services to the oil or gas well owner or operator only if the oil or gas well owner or operator is the actual title owner of the machinery used to provide the drilling services after the contract between the contract driller and the oil or gas well owner or operator has been completed[A contractor may execute a "Certificate of Exemption Machinery for New and Expanded Industry," Form 51A111, which is incorporated by reference in 103 KAR 3:020, jointly with an oil or gas well owner or operator to purchase machinery only if the real or ultimate ownership of the machinery lies with the owner or operator].

Section 6. (1) This administrative regulation shall replace Revenue Circular 51C013.

(2) Revenue Circular 51C013 is ~~[hereby]~~rescinded and shall be ~~[null]~~void~~[and unenforceable]~~.

Section 7. Forms. The form listed within this administrative regulation~~herein~~ may be inspected, copied, or obtained, subject to applicable [to] copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;

(2) A Kentucky Taxpayer Service Center~~], Monday through Friday, 8:00 a.m. to 4:30 p.m.]; or~~

(3) The department Web site at <http://revenue.ky.gov>.

DANIEL P. BORK, Commissioner

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

103 KAR 41:031. Repeal of 103 KAR 41:030, 103 KAR 41:050, 103 KAR 41:060 and 103 KAR 41:200.

RELATES TO: KRS 138.135, 138.143, 138.146, and 138.195

STATUTORY AUTHORITY: KRS 131.130(1), (3), 131.250

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. 103 KAR 41:220, filed by the Department of Revenue on July 12, 2019, requires electronic filing for applications, reports, returns, and related statements for cigarettes and tobacco products in accordance with KRS 138.135, 138.143, 138.146, and 138.195. These administrative regulations are repealed, because the requirements are either covered in KRS 138.135 and 138.195, or are on the Department of Revenue's Web site, Kentucky One Stop Business Portal, or electronic e-filing platform.~~[Therefore, 103 KAR 41:220 has replaced the need for the regulations listed herein and they are no longer needed.]~~

Section 1. The following regulations are hereby repealed:

- (1) 103 KAR 41:030, Wholesalers, resident and nonresident;
- (2) 103 KAR 41:050, Transporters;
- (3) 103 KAR 41:060, Diversified operators; and
- (4) 103 KAR 41:200, Manufacturer's report.

DANIEL BORK, Commissioner

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**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(As Amended at ARRS, November 12, 2019)**

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

RELATES TO: KRS 324.010(3), 324.111, 324.112, 324.121, 324.160, 324.281(5), 324.310, 324.360, 381.9203(1), (3), 383.580, [324.281(5),] 24 C.F.R. 3500, 44 C.F.R. 64.3(b), 12 U.S.C. 2601-2617

STATUTORY AUTHORITY: KRS 324.121, 324.160(4)(e), 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 ~~with/whose~~ content ~~as/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 requirements for designated agency; the required Seller's Disclosure of Property Condition form; a specific process and form for disclosing prior relationships between parties in a residential transaction; and, 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; ~~and, 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.[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;~~f.]~~

(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 ~~the[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 ~~shall~~**[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 through electronic, text, or other media 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 **this section**~~[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;~~

~~(h) Address or a general description of the real estate sufficient to identify the parcel or parcels~~**[parcel(s)]**;

~~(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;

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

~~(j) Date, time, and~~**[i]** 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 or parcels**~~[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 **paragraph (a) of this**~~[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 unwritten 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 paragraph (a) of this subsection~~[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 this section[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 **Condominium Seller's** 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 or licensee's[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[or 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 **items such as[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 **paragraph (a) of this[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 **shall[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 201 KAR Chapter 11[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 **Disclosure of Property Condition** and

Condominium **Seller's 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) ~~If [in the event of]~~ the death or incapacity of the principal broker **occurs**, 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 ~~if [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) ~~A [No]~~ principal broker shall **not** be a party to an exclusive listing contract which contains an automatic continuation of the period of ~~the [such]~~ listing beyond the fixed termination date set forth therein.

(7) If a principal broker permits teams, a principal broker shall ~~notify [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) **1.** 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;

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

3. [(e)] 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**;

4. [(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.

(b) [(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 ~~10. [4.]~~ 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 ~~may~~**[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 ~~or she~~ 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; ~~and~~**[,]**

(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 11.~~[12.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Seller-Initiated Listing~~(Re-Listing)~~ Form", **KREC Form 403, 10/2019 [7/2019]**;

(b) "Seller's Disclosure of Property Condition", **KREC Form 402, 12/2019[10/2019][7/2019]**;

(c) "Condominium Seller's Certificate", **KREC Form 404, 10/2019[7/2019]**;

(d) "Guide to Agency Relationships", **KREC Form 400, 10/2019[7/2019]**; ~~and~~

(e) "Agency Consent Agreement - Buyer", **KREC Form 401B, 10/2019; [7/2019]**

(f) "Agency Consent Agreement - Seller", **KREC Form 401S, 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

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**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(As Amended at ARRS, November 12, 2019)**

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~~**[authorizes]** 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) ~~requires~~**[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 ~~324.310(2) authorizes~~**[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 ~~and a licensee satisfying the educational requirement in KRS 324.085(2), to successfully complete twelve (12)~~**[six (6)]** hours of mandatory continuing education ~~for the biennial license period~~**[each year]** as a condition of licensure renewal, ~~requires six (6) of the twelve (12) hours to be completed in the first year of the biennial license period,~~ and requires that ~~six (6)~~**[three (3)]** of the ~~twelve (12)~~**[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)~~ **(a)** complete six (6) academic credit hours, or its equivalent, of prelicensing education with either:

~~(a)(1)~~ **(a)(1)** An approved pre-license education provider; or

~~(b)(2)~~ **(b)(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.~~ **1.** high school graduation, or its equivalent~~;~~ **or**

~~2.~~ **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 **Occupations and Professions Identification Number, 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 **National Association of Realtors®**, 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).

~~(3)(4)~~ **(3)(4)** An applicant may submit a paper or electronic application.

(4) The provisions of the section shall not be implemented until April 1, 2020.

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.~~(3)~~;

~~(d)(c)~~ **(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)~~ **(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)~~ **(f)(e)** The nonrefundable sixty (60) dollar original license fee and sixty (60) dollar recovery fund fee required by KRS 324.287(2) and ~~(8)(7)~~ **(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.~~(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 addresses[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 ~~the~~ applicant's[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 **be** 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 ~~determination[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 ~~returned[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 or~~ addresses[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 **shall not engage/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 **paragraph (a) of this subsection(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 **Certificate 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 **(8)(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, **doing business as(D/B/A(s))**, branch office name, branch office address, designated **manager or managers[manager(s)]**, escrow **account or accounts[account(s)]**, or email **address or addresses[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 **201[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 **201[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 **complete core plus six hours of continuing education elective to be selected from a list of courses to be compiled by the commission [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 **paragraph[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 **than** 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, **if[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 13 of this administrative regulation[12]**.

Section 12. Exemptions from the Continuing Education Requirement.

(1) ~~A[No]~~ person licensed prior to June 19, 1976 shall **not** 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) **of this section**.

(b) A license 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 **the executive director's[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 **license[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 **or her** 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 **of a licensee** cancelled for post-license education deficiency **may not be reactivated[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, 11/2019/7/2019;

(c) "Company Information Update Form", KREC Form 202, 11/2019/7/2019;

(d) "Certification of Insurance Coverage", KREC Form 203, 11/2019/7/2019;

(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, 11/2019/7/2019;

(h) "Broker Education Review Form", KREC Form 207, 7/2019;

(i) "License Renewal Form", KREC Form 208, 11/2019/7/2019; 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.

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**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM**

**Kentucky Board of Emergency Medical Services
(As Amended at ARRS, December 16, 2019)**

202 KAR 7:020. Board organization.

RELATES TO: KRS Chapter 13A, 311A.015, 311A.020, 311A.145

STATUTORY AUTHORITY: KRS 311A.020, 311A.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 (1)(h) requires the board to establish procedures and processes for committees and subcommittees. KRS 311A.030 requires the board to promulgate administrative regulations in accordance with KRS Chapter 13A to carry out the functions of KRS Chapter 311A. This administrative regulation establishes the organization and committee structure of the board.

Section 1. Appointment of Committee Members and Committee Chairpersons. (1) The chairpersons and members of a standing committee of the board, subcommittee of the board, and any task force shall be appointed by the board chairperson.

(2) A standing committee shall be comprised of seven (7) members, excluding the EMS-C Advisory Committee, which shall be established consistent with the EMS for Children Performance Measures: Implementation Manual for State Partnership Grantees[federal EMS-C guidelines].

(3)[(2)] The executive director shall serve as an ex officio

member to each standing committee. The chairperson may also appoint other KBEMS office staff members to serve as ex officio members to a standing committee.

(4)[(3)] Standing committee members shall have a term that expires November 30[September 30] of each calendar year. Reappointments for subsequent terms may be made by the chairperson of the board any time after November[September] 1 and before November[September] 30. All appointments shall be made by November[September] 30.

(5)[(4)] Only a standing committee or task force chairperson or vice-chairperson in the absence of the chairperson may bring reports or recommendations before the board for action. All reports to the board shall be submitted in written format.

(a) The chairperson or vice-chairperson shall disclose to the board through written report any committee, subcommittee, or task force member who has resigned his or her[their] position by virtue of missing three (3) or more meetings consistent with Section 2(10) of this administrative regulation.

(6)[(5)] A task force shall be comprised of no more than five (5) members, excluding the chairperson.

(7)[(6)] A task force may be created:

(a) At the request of the chairperson of a standing committee;

(b) At the request of the executive director; or

(c) At the determination[discretion] of the board chairperson.

(8)[(7)] A task force shall cease to exist at the close of its work.

A member of a task force shall not serve for a period of more than one (1) year without reappointment. A task force shall serve at the pleasure of the board. The board chairperson may dissolve a task force at any time including prior to the completion of an assigned task, subject to a majority vote of board members.

(9)[(8)] When a task force is created, the board chairperson shall give a specific written charge to the task force with guidelines, as appropriate. The board chairperson may establish a reporting deadline for the completion of the specific written charge. [(9) Only a task force chairperson, or vice chairperson, in the absence of the chairperson, may bring reports or recommendations before the full board for official action.]

(10) Task Force members shall serve without compensation.

Section 2. Standing Committees of the Board. (1) Executive committee. The executive committee shall address legislative issues and proposals and review administrative regulations for submission to the board including:

(a) Recommending to the board promulgation of administrative regulations, amendment of administrative regulations, or repeal of administrative regulations relating to:

1. All levels of personnel licensed or certified by the board, and ambulance services licensed or certified by the board;

2. Rules and operating procedures for the board and each of its standing committees, subcommittees, and task forces;

3. EMS Grant Program; and

4. EMS for Children Program;

(b) Serving as a resource for board staff:

1. In reviewing applications regarding requests for funding under programs administered by or overseen by the board;

2. With the development of funding programs or applications, including state and federal grants pertaining to EMS and monitoring and reviewing the grants once received by the board;

3. With creating and recommending to the board a biennial budget for the board prior to submission to appropriate state agencies;

4. With identifying, developing, and recommending to the board sources of funding for its programs; and

5. In developing reimbursement programs and providing consult for emergency medical service providers.

(c) Making recommendations to the board regarding fees to be charged by the board.

(2) A majority of executive committee appointees shall be members of the board.

(3) The vice-chairperson of the board shall be the ex-officio chairperson of the executive committee with full voting rights.

(4)[(2)] Medical oversight committee. The medical oversight committee shall address issues pertaining to quality assurance,

medical control, scope of practice, medical standards of curricula, or other related issues as may be assigned by the board.

(5)[(3)] EMS for children committee. The EMS for children committee shall assist the coordinator and executive director of the board in achieving the mission of the program.

(6) Data management committee. The data management committee shall be responsible for the following:

(a) The development of a statewide plan for data collection and compliance;

(b) Identification of information initiatives for EMS in Kentucky;

(c) Identification and research of funding sources tied to EMS data collection;

(d) Assistance to ambulance providers/licensed services with questions or other needs associated with this administrative regulation, KRS Chapter 311A, and other issues associated with the board's statutory authority to require data collection and submission; and

(e) Matters identified by board members, the chairperson, or the executive director that involve data collection, data submission, or information use.

(7) Education committee. The purpose and charge of the education committee shall be to:

(a) Assist the board in developing a strategic plan for EMS education in the Commonwealth of Kentucky;

(b) Act as a resource for EMS educators and EMS-TEIs in the Commonwealth; and

(c) Assume the lead role in formulating, drafting, and sending to the board for approval and subsequent promulgation of all administrative regulations that set the standards and requirements for EMS education in Kentucky.

(8) The membership of each standing committee shall include one (1) member of the board or more, except as established/specifically noted in Section 1(2) of this administrative regulation.

(9) Standing committees shall schedule on an annual basis at least six (6) regular meetings.

(10) A member/members of a standing committee, subcommittee, or task force who is/are absent for three (3) or more regular meetings in a term of one (1) year shall be found/deemed to have resigned from his or her/their appointed position and his or her position shall be determined as/deemed vacant.

Section 3. Agendas. (1) A person desiring a matter to be placed on the agenda for a regular board meeting shall, not less than twenty (20) working days prior to the board meeting, submit a written request to the executive director.

(2) The request shall contain the following information:

(a) The matter requested to be placed before the board;

(b) The action desired on the matter;

(c) Documentation in support of the request;

(d) The name, address, telephone number, and other contact methods as may be necessary to contact the person or organization submitting the request; and

(e) The name, address, telephone number, and other contact methods as may be necessary to contact each person requesting to speak on behalf of the request at the board meeting.

(3) Not less than seven (7)/fourteen (14) working days prior to the board meeting, the chairperson of the board shall set the agenda and cause its publication on the KBEMS Web site at [https://kbems.kctcs.edu/\[website\]](https://kbems.kctcs.edu/[website]) and in writing. [Written copies of the agenda may be obtained from the executive director after it is public. The board may charge a reasonable fee for the provision of an agenda by mail, fax, or in hard copy. Following publication, the agenda shall be available for inspection at the office of the board.]

(4) The submission of a request for a matter to be placed on the agenda at a regular board meeting shall not guarantee that the matter will be placed on the agenda, or the sequential order of a matter approved for the agenda on the agenda.

(5) The board shall adhere to the published agenda at a regular board meeting, unless the board takes action to amend the agenda.

(6) Each/Every agenda for a regular or special meeting shall include an item to allow public comments. The chairperson may limit the time each person comments.

(7) Nothing in the section shall prohibit or constrain any board member from requesting that an item be added to the agenda of a regular meeting. [Such]A request may be made from the floor of the meeting. This provision shall not apply to special or emergency meetings.

Section 4. Quorum. (1) A simple majority/Ten (10) members of sitting[the] board members shall constitute a quorum.

(2) A vacant position on the board shall not be counted toward the number of sitting members of the board.

(3)[(2)] A quorum shall be present in order for the board to take action, other than adjourn, or adjourn to a time certain.

(4)[(3)] The board shall transact business so long as it has convened with a quorum present. A quorum shall be presumed present until a question of "no quorum" is raised, or the absence of a quorum is disclosed by vote of the members present.

(5)[(4)] A simple majority of appointed members shall constitute a quorum for standing committee, subcommittee, and task force [committee] meetings.

Section 5. Voting. (1) Voting shall be accomplished by one (1) of the following methods:

(a) Voice vote;

(b) A show of hands; or

(c) A roll call vote.

(2) A roll call vote shall be conducted at the call of any member of the board/by motion, second and a simple majority vote of the members present.

(3) In order for the board to take action on the following matters, [a routine matter, other than those set forth in subsection (4) of this section, of this administrative regulation] a majority of board members present shall have agreed to the action:

(a) Promulgate, amend, or repeal an administrative regulation;

(b) Appoint, directly, or by personal service contract, the executive director, general counsel, or medical advisor;

(c) Initiate a legal action on behalf of the board;

(d) Adopt a budget or proposed budget for the board;

(e) Authorize the expenditure of more than \$7,500, unless the amount is a routine budgeted expenditure;

(f) Take action on an item added to the agenda of the board at the same meeting at which the item is added to the agenda of the board; or

(g) Take an action at an emergency meeting of the board.

(4) In order for the board to take action on the following matters, two-thirds (2/3) of the[ten (10)] members of the board that are present shall have agreed to the action:

(a)[Promulgate, amend, or repeal an administrative regulation;

(b) Appoint, directly, or by personal service contract, the executive director, general counsel, or medical advisor;]

(c) Discipline or negative action regarding statutory employees; or[(d) Initiate a legal action on behalf of the board;]

(b)[(e)] Hire outside legal counsel to defend the board in a legal action against the board, a member of the board, or an employee of the board, or for other specified purpose.];[(f) Adopt a budget or proposed budget for the board;

(g) Authorize the expenditure of more than \$5,000, unless the amount is a routine budgeted expenditure;

(h) Take action on an item added to the agenda of the board at the same meeting at which the item is added to the agenda of the board; or

(i) Take an action at an emergency meeting of the board.];

Section 6. Attendance of Board Staff and Employees at a Board Meeting. (1) The following staff of the board shall attend each board meeting, unless excused in writing by the chairperson of the board or excused from the meeting by action of the board:

(a) Executive director;

(b) Deputy executive director;

(c) General counsel; and

(d) State medical advisor.

(2) An employee of the board, other than one (1) specified in subsection (1) of this section, shall attend a meeting of the board if requested to do so by a member[the chairperson] of the board or the executive director. Board member requests for an employee to attend shall be communicated through the executive director or the deputy executive director.

(3) An employee of the board, other than one specified in subsection (1) of this section, may attend a meeting of the board as part of their state duty time with the permission of the chairperson of the board, [or] the executive director, or deputy executive director.

Section 7. A person aggrieved by an action of a standing committee or task force may appeal to the board by serving written notice to the board within ten (10) working days prior to a regularly scheduled board meeting.

Section 8. Incorporation by Reference. (1) "EMS for Children Performance Measures: Implementation Manual for State Partnership Grantees", March 2017, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) These materials may also be obtained online on the Emergency Medical Services for Children, Innovation and Improvement Center's Web site at <https://emscimprovement.center/programs/partnerships/performance-measures/>.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: September 6, 2019

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

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**TOURISM, ARTS AND HERITAGE CABINET
Department of Travel Development
(As Amended at ARRS, December 16, 2019)**

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.525(2) requires [provides that] the Division of *Marketing and Advertising to [Tourism Services shall]* be responsible for the *state matching fund tourism advertising program [Tourism Marketing Incentive]*[state matching fund tourism advertising] [Program]. KRS 148.525(3) authorizes the Commissioner of the Department of Tourism to promulgate administrative regulations to promote, develop, and support the tourism industry in Kentucky. This administrative regulation establishes uniform and consistent administration of the application, participation, and reimbursement requirements of the *Regional Marketing and Matching Funds [Tourism][Regional] [Marketing Incentive]*[and Matching Funds] Program.

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

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

that:

(a) Is not affiliated with a:

1. State agency;

2. Federal agency;

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

4. Statewide project;

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

1. A specific local tourism event;

2. An [attraction, event, or]; or

3. A [geographic area].

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

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

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

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

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

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

(3)(4) "Program Year" means the *[Tourism Marketing Incentive]*;

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

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

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

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

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

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

1. February 1 for projects completed July through December;

and

2. August 1 for projects completed January through June.

(4)(5)(4) "[Regional] Promotional project" means a project that: (a) Promotes tourism opportunities throughout one (1) of the nine (9) tourism regions designated by the Department of Tourism as a tourism region.[Section 2. Regional Marketing and Matching Funds Program Reimbursement Distribution. (1) The regional Marketing and Matching Funds Program shall provide financial and marketing assistance to promotional projects completed by tourism regions and local nonprofit organizations.]

Section 2. Subject to the availability of funds, the Regional Marketing and Matching Funds Program shall provide financial and marketing assistance for projects that are in direct support of the promotion and marketing efforts of a tourism attraction, event, or geographic area.

Section 3. Tourism Region Committees. (1) To qualify for *regional marketing and matching [Tourism Marketing Incentive]* funds, a tourism region shall establish a tourism region committee.

VOLUME 46, NUMBER 7– JANUARY 1, 2020

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

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

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

(2) A member of the tourism region committee:

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

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

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

(4) A tourism region committee shall:

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

(b) Establish bylaws that shall include:

1. Purpose, mission, and limitations of committee;

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

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

4. When meetings shall be held;

5. Quorum and voting requirements;

6. Financial and contractual procedures;

7. Preparation of annual budget and financial report; and

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

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

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

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

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

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

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

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

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

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

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

- (a) Daviess;
- (b) Hancock;
- (c) Henderson;

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

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

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

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

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

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

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

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

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

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

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

- (j) Lincoln;
 - (k) Madison;
 - (l) Mercer;
 - (m) Nicholas;
 - (n) Scott; and
 - (o) Woodford.
- (8) Tourism Region 8, Eastern Highlands-North, shall consist of the following counties:
- (a) Bath;
 - (b) Boyd;
 - (c) Carter;
 - (d) Elliott;
 - (e) Floyd;
 - (f) Greenup;
 - (g) Johnson;
 - (h) Lawrence;
 - (i) Magoffin;
 - (j) Martin;
 - (k) Menifee;
 - (l) Montgomery;
 - (m) Morgan;
 - (n) Pike; and
 - (o) Rowan.
- (9) Tourism Region 9, Eastern Highlands-South, shall consist of the following counties:
- (a) Bell;
 - (b) Breathitt;
 - (c) Clay;
 - (d) Estill;
 - (e) Harlan;
 - (f) Jackson;
 - (g) Knott;
 - (h) Knox;
 - (i) Laurel;
 - (j) Lee;
 - (k) Leslie;
 - (l) Letcher;
 - (m) Owsley;
 - (n) Perry;
 - (o) Powell;
 - (p) Rockcastle;
 - (q) Whitley; and
 - (r) Wolfe.

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

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

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

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

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

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

- (a) Federal or State determination of tax exempt status; [or]
- (b) A copy of the organization's W9; or
- (c) A letter from the fiscal court, including the fiscal court's Federal ID number, stating the applying organization is part of city

or county government [and fiscal courts Federal ID number].

~~(4)(3)~~ **A newly established[New]** Tourist Commission **shall [established]**:

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

~~(5)(4)~~ **An applicant [Applicant]** shall not be affiliated with:

- (a) A state agency;
 - (b) A state agency nonprofit **affiliate [affiliates]**;
 - (c) A federal agency;
 - (d) An organization that receives funds from other state agencies for the purpose of sponsorship or advertising;
 - (e) An organization that receives line item funding through the Executive Budget;
 - (f) A statewide organization; or
 - (g) An organization that receives state or federal grants in order to match the **Regional Marketing and Matching Funds Program [Tourism Marketing Incentives funds]**.
- ~~(6)(5)~~ **An applicant shall [Applicant must]** be a Kentucky based organization.

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

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

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

~~(3)(e)~~ The state program manager shall base the allocation determination on:

- ~~(a)(1)~~ A formula derived from county economic impact figures and number of rooms within the county; and
- ~~(b)(2)~~ The availability of funds.

~~(4)(f)~~ The state program manager shall mail each applicant:

- ~~(a)(1)~~ A "Project Agreement" form stating the amount of the state funds allocation for the program year; or
 - ~~(b)(2)~~ A letter [Letter] stating why an applicant's projects have been denied funding; and
 - ~~(c)(3)~~ A copy [Copy] of the application submitted by each applicant, indicating approved and disapproved projects. [; and]
- ~~(5)(g)~~ An applicant shall sign and return the Project Agreement form to the state program manager by the dates mandated in Section 1 of this **administrative** regulation.

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

(2) Multiple tourism commissions within a county and distribution of funds.[;]

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

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

(3) Reimbursement Percentage of eligible cost for Kentucky Department of Tourism cooperative opportunities.[;]

- (a) Up to ninety (90) percent of the costs of an eligible co-op project may be available.[;]
- (b) Up to seventy-five (75) percent of the cost with participation with selected vendor outside of co-ops **may be available**.
- (4) Reimbursement percentage of eligible cost for promotional

projects other than cooperative opportunities.[.]

(a) Up to eighty (80) percent **of the** costs for promotional projects may be available to a tourism region.[.]

(b) Up to fifty (50) percent of the costs of an eligible promotional project may be available to all applicants not specified in paragraph (a) of this subsection.

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

(6) **A new [New]** event that has been brought to the state through a sponsorship **or** [.]bid fee may be reimbursed up to seventy (70) percent of the cost. **Recurring [Reoccurring]** events may be reimbursed up to fifty (50) percent of the cost.

(7) Applicants shall be eligible for reimbursement for expenditures that do not exceed the amount allocated by the **Regional[tourism] Marketing and Matching Funds [incentive] Program.**

(8) Requests for reimbursement shall not be made **unless [until]:**

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

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

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

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

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

(d) Projects have been completed.

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

(a) Be submitted to the state program manager by February 1 or August 1, **with applicants being permitted to submit multiple reimbursement requests for completed projects by these same final reimbursement deadlines[;]**

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

(b) Be signed; and

(c) **Include [State]** the federal identification number of the organization.

(10) Checks submitted as documentation shall be issued by the organization that applied for **regional marketing and matching [tourism marketing incentive] funds.**

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

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

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

(c) Proof of payment of all expenditures;

(d) For tourism region projects:

1. Proof of payment of twenty (20) percent of **expenditures [expenditure];**

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

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

(e) Four (4) completed brochures;

(f) Four **(4)** publications or videos, a copy of invoices, with a breakdown of layout and design costs, the number of copies printed, and other related expenses;

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

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

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

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

(k) A copy of a press kit;

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

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

rentals;

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

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

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

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

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

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

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

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

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

(5) A tourism region committee shall:

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

(b) Establish bylaws that shall include:

1. Purpose, mission, and limitations of committee;

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

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

4. When meetings shall be held;

5. Quorum and voting requirements;

6. Financial and contractual procedures;

7. Preparation of annual budget and financial report; and

8. Procedure for amendment of bylaws.]

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

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

(b) Media advertisements and press kits;

(c) Billboards and signage;

(d) Brochure distribution services;

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

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

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

(h) Sponsorship **or a bid [/ Bid]** fee of tourism trade shows, conventions, sporting events and other events;

(i) Web site design; and

(j) Research studies and analysis.

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

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

(i) Familiarize trips and site visits;

(j) Sponsorship of tourism trade show and events;

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

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

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

(b) Brochures, videos, CDs, DVDs, tourism region media, advertisements and press kits shall not be eligible for

reimbursement unless they have been reviewed and approved by the state matching funds program manager prior to submission of a Reimbursement Request form for expenditures relating to these items.]

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

(a) Types of travel related brochures, CDs, DVDs, and videos that highlight the attractions, facilities, meeting and convention, sports-marketing capabilities,[sporting venues,] and special events[of the tourism region or local area and] that encourage travelers to stop and visit, shall be eligible for reimbursement and include:

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

(b)[2.] General festival brochures;

(c)[3.] Group tour publications;

(d) Sports Publications;

(e) Meeting or [4] convention publications; and

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

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

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

(a) A four [Four] (4) color cover, [;] if applicable, and a distribution plan, in accordance with the distribution sources of Section 10 of this administrative regulation, [is required] to receive reimbursement for print items; [See Section 7 for distribution sources.] 1. A description of points of interest, recreational opportunities, and listing of services, including food, lodging, and camping facilities;

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

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

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

b. Admission fee, if applicable;

c. Attraction location;

d. Mailing address;

e. Telephone number; and

f. Web site address, if applicable;

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

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

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

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

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

(f) A brochure shall be professionally typeset.

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

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

2. Be manufactured from recycled paper; and

3. Be designed as self-mailers.]

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

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

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

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

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

a. Prominently placed in the brochure;

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

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

4. Emphasize the tourism region as a whole and shall not favor a particular area of the region.]

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

1-] ratio of advertising to editorial space does not exceed 2:3.[;]

(5)[(e)] Printing or publications **shall [require]**: 2- Advertiser provides a tourism-oriented service directly to travelers; or

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

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

1. Tourist commissions;

2. State and local welcome centers;

3. State Tourism Department;

4. Consumer travel shows; and

5- similar distribution sources.

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

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

(b)[2-] Not require bids [Bids shall not be required] for reprints made with only minor changes.

(c)[3-] [(o)] Require that a publication, video, CD, or DVD **[shall]** be submitted to the [the state matching funds] program manager for review and approval, prior to completion.

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

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

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

(a) Tourist Commissions;

(b) State and local welcome centers;

(c) State Travel Department;

(d) Consumer travel shows;

(e) Meeting planning expos;

(f) Marketplaces; and

(g) Brochure distribution rack services.

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

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

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

(a)[1-] In a newspaper, magazine, or other periodical;

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

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

(d) [or

4.] On electronic media such as the Internet;

(e) On sports media; or

(f) With meeting or [a] convention media outlets.

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

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

2. The official state advertising theme; and

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

(c) Media costs;]

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

(4) Major media markets and reimbursement percentages. [.]

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

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

4. Percentage of reimbursement for media costs shall be:

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

(b) Major media markets shall be:

1. Cincinnati, Ohio;

2. Evansville, Indiana;

3. Huntington, West Virginia;

4. Louisville, Kentucky;

5. Lexington, Kentucky;

6. Paducah, Kentucky; and

7. Bowling Green, Kentucky.

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

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

[(e)] [to organizations if the:

(i) Organization is located within a fifty (50) mile radius of a major media market listed in paragraph (d) of this subsection; and

(ii) Media cost is not a type listed as excluded in paragraph (e) of this subsection.

(d) [Major media markets shall be:

1. Cincinnati, Ohio;

2. Evansville, Indiana;

3. Huntington, West Virginia;

4. Louisville, Kentucky;

5. Lexington, Kentucky;

6. Paducah, Kentucky; and

7. Bowling Green, Kentucky.]

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

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

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

Section 12. Billboards and Signage. (1) [(3) Brochure distribution services. Rental of rack space for the distribution of

eligible promotional materials shall be eligible for reimbursement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 14. (1) Consumer travel show, [.] group tour marketplace, meeting or [a] convention trade show, sports marketing, or exposition expenses shall qualify if they [that]:

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

1.] Are promoting [Promote] an attraction, event, or geographic area;

(b) [2.] Are not a county fair or festival;

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

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

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

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

(f) [6.] Are [registration fees to interview prospective tour operators;

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

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

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

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

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

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

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

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

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

(3) An applicant's home page shall include the current state tourism branding with a link to the Department of Tourism Web site and regional website [are required on applicants home page].

(4) Except for regional committees, Web sites [a Web site] that contain paid advertisements shall not[(7) Familiarize trips and site visits.

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

(b) Event planners include the following:

1. Meeting planners;
2. Group travel planners;
3. Reunion planners;
4. Sports planners or rights holders; and
5. Media staff.

(c) Reimbursement shall be based on cash expenditures and not in-kind amenities.

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

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

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

(b) The sponsorship is for overall convention[opportunities include the following:

1. Meal functions;
2. Tangibles such as name badges, lanyards, and registration bags;
3. Education sessions and materials; and
4. Overall conference] partners [partner]or[sponsor of] a total event sponsor;

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

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

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

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

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

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

2.] Gratuities, service charges, and tips;

(d) Tourism industry events such as:

1. Kentucky Tourism Council; and
2. Kentucky Association of Convention & Visitor Bureaus;

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

(f) Kentucky Association meetings and conferences.

(3) Convention sponsorship or/bid bid fee reimbursement percentages[.];

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

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

(a) Fees involved in securing and attracting events in an effort to attract sports events or conventions and meetings to] the state

may be reimbursed up to eighty (80) percent of costs.

(4) Event sponsorship or/bid fee reimbursement percentages:

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

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

Section 17. Research. (1) [Tourism] Marketing and matching[Incentive] funds may be used for research and analysis. [Any such] Use of funds for these purposes shall [must] have a clear relationship to planning and executing tourism marketing and promotion.

(2) Economic impact research and research related to future capital projects shall [are] not be allowed[allowable]. [Research funded under the provision must be approved in advance]., and]

(3) To be engaged in research and analysis activity, outside firms, organizations, or individuals shall[and outside firms, organizations or individuals to be engaged in such activities must meet the following minimum criteria]:

(a) Be in operation at least two (2) years, if a firm or organization;

(b) Have [if an individual,] at least five (5) years of relevant experience, if an individual;

(c)[(b)] Provide at least three (3) references; and

(d)[(e)] Demonstrate expertise in the type of services to be rendered.

(4) Research funded pursuant to this Section shall be approved in advance.

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

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

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

(10) Internet and Web site.

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

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

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

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

- a. Food;
- b. Lodging; and
- c. Camping facilities;

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

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

- a. Time and date the attraction is open to the public;
- b. Admission fee;
- c. Attraction's address, telephone number, and Web site address;

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

- a. Fishing;
- b. Water Sports;
- c. Hiking; and
- d. Golfing;

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

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

(14)(1) Expenses for the following items shall not be eligible for reimbursement:

- (a) Industrial incentive brochures;
- (b) General community relocation and development brochures;
- (c) ~~City or County~~ [City or county, or city-county] maps or directories that list businesses and services;
- (d) [Items related to theatrical productions, such as] Programs;
- (e) [.] Playbills;
- (f) [.] or Posters;
- (g) [.] Table tents;
- (h) [.] Material related to Membership and subscription solicitation;
- (i) [.] Registration and entry forms;
- (j) [.] Event and contest category or regulation material;
- (k) Quick print materials such as flyers, handbills, and circulars;
- (l) Entertainment [expenses];
- (m) [.] Entertainment expenses;
- (n) Excluding group tour marketplaces, registration expenses for conferences and meetings;
- (o) Research projects such as marketing or feasibility studies;
- (p) [Unless requested in advance by a tourism region, expenses for] [.] Bumper stickers, [posters,] banners, flags, postcards, label pins, or bags, unless requested in advance by a tourism region; [.] or other types of specialty advertising;
- (q) [.] Prizes, trophies, plaques, decorations, paint supplies, and poster board;
- (r) [.] Items for resale;
- (s) [.] Amounts paid for Kentucky sales tax;
- (t) [.] [Except for tourism region organizations,] Stationery, letterhead, envelopes, general office supplies and materials, unless for a tourism region organization;
- (u) [.] Salaries or other compensation for the staff or personnel of a tourism region committee;
- (v) [.] General operating and administrative costs;
- (w) [.] Finance charges or late payment fees; [.] Quick-print material such as flyers, handbills, or circulars; and
- (x) Expenditures in violation of law.

Section 7. Matching Funds Application. (1) A Matching Funds Application may be submitted by a local organization that is not a convention and visitors' bureau, tourism commission, or designated marketing organization but is a nonprofit entity prior to May 1 for eligible:

- (a) Projects that have been or will be completed during the matching funds program cycle; and
- (b) Expenses totaling at least \$1,000 for a project, or several projects.
- (2) A Matching Funds Application shall include a detailed list of eligible tourism projects that will be completed during the current program cycle, and the following information for each project:
 - (a) Its direct relation to the promotion of tourism;
 - (b) Its ability to attract visitors from outside the immediate area;
 - (c) Its potential to enhance local, tourism region, or state economies; (d) The cost estimates; and
 - (e) The completion date.
- (3) An applicant shall submit proof of the applicant's nonprofit status with the Matching Funds Application as follows:
 - (a) A tourism region committee shall submit a copy of the committee's:
 - 1. Articles of incorporation as a nonprofit, nonstock corporation pursuant to KRS 273.161 through 273.405; and
 - 2. Bylaws.
 - (b) A local tourism commission shall submit a copy of the ordinance establishing the commission.
 - (c) Other local organizations shall submit a copy of the:
 - 1. Federal or state determination of tax exempt status; or
 - 2. Articles of incorporation as a nonprofit, nonstock corporation pursuant to KRS 273.161 through 273.405.
 - (4) Guidance regarding the application process is established in the Samples of Completed Forms.

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

- (a) Review each Matching Funds Application and determine the applicant's eligibility for reimbursement in accordance with Sections 2, 5, 6, 7, and 9 of this administrative regulation; and
- (b) Transmit copies of eligible Matching Funds Applications to the members of appropriate tourism region committees.
- (2) The state matching funds program manager or assistant state matching funds program manager shall hold allocation meetings in each of the nine (9) tourism regions with the tourism region committee for the region to:
 - (a) Discuss the regional marketing and matching funds program;
 - (b) Review and establish priorities for local organization Matching Funds Applications;
 - (c) Screen local Matching Funds Applications for eligibility;
 - (d) Discuss each project's:
 - 1. Direct relationship to tourism promotion;
 - 2. Ability to attract visitors into the tourism region;
 - 3. Impact on local, tourism region, and state economies; and
 - 4. Compatibility with the marketing goals of the tourism region;
 - (e) Recommend the distribution of local funds; and
 - (f) Review and discuss the tourism region Matching Funds Application.
- (c) A tourism region committee shall submit a recommendation for each applicant within the tourism region to the state matching funds program manager.
- (d) The state matching funds program manager shall base the allocation determination on:
 - (a) The items specified in subsection (2) of this section;
 - (b) If applicable, an applicant's successful completion of similar projects; and
 - (c) The availability of funds.
- (5) The state matching funds program manager shall mail to each applicant a:
 - (a) "Project Agreement" form to each approved applicant stating the amount of the state matching funds allocation for the matching funds program cycle; or
 - (b) Letter stating why an applicant's projects have been denied funding; and
 - (c) Copy of the Matching Funds Application submitted by each applicant, indicating approved and disapproved projects.
- (6) An applicant shall sign and return the Project Agreement form to the state matching funds program manager.

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

- (b) A tourism region project shall be eligible for reimbursement for 100 percent of the project's total expenditures that do not exceed the amount allocated by the state matching funds program.
- (2) Requests for reimbursement shall not be made until at least \$1,000 has been expended.
- (3) Reimbursement shall be limited to projects that:
 - (a) Were included on a Matching Funds Application;
 - (b) Were compliant with the eligibility and reimbursement requirements established in Sections 2, 5, 6, 7, and 9 of this administrative regulation; and
 - (c) Have been completed.
- (4)

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

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

- (a) Be submitted to the state matching funds program manager on or before February 1 or August 1;
- (b) Be signed; and
- (c) State the federal identification number of the organization.
- (6) Checks submitted as documentation shall be issued by the organization that applied for matching funds.
- (7) The following information shall be attached to the Reimbursement Request form:

- (a) A copy of each vendor's invoice;
- (b) A copy of the front and back of each canceled check;
- (c) For local projects, proof of payment of all expenditures;
- (d) For tourism region projects, proof of payment of twenty (20) percent of expenditures;
- (e) Four (4) completed brochures;
- (f) For publications or videos, a copy of invoices, with a breakdown of layout and design costs, the number of copies printed, and other related expenses;
- (g) If printing costs exceed \$1,000, a copy of three (3) written bids;
- (h) One (1) duplicate of a completed video, CD, or DVD;
- (i) One (1) original tear sheet of advertisements as they appeared in the print media including date of issue and, for regional projects, a cover of the publication;
- (j) One (1) typed transcript or a tape of a radio, television, or videotape, CD, or DVD travelogue advertisement;
- (k) A copy of a press kit;
- (l) Documentation of the distance of media from the event, attraction, or area promoted;
- (m) One (1) photograph of a completed billboard and signage advertisement;
- (n) Documentation of the location and dates of service for billboard and signage rentals;
- (o) Documentation of the location, distribution routes, and dates for distribution services;
- (p) Documentation of postage expenses, including postage invoices or paid receipts, list of names, addresses, and material mailed;
- (q) Verification of attendance at consumer travel shows or group tour marketplaces, including signed agreements or contracts;
- (r) Verification of regional travel show or group tour marketplace per diem, including a completed and signed Tourism Region Per Diem Reimbursement Form; and
- (8) For tourism region projects, proof of payment of the remaining eighty (80) percent of expenditures shall be submitted after receipt of state matching funds; and
- (9) Guidance regarding the reimbursement process is established in the:
 - (a) List of Documentation and Requirements for Reimbursement Per Project; and
 - (b) Samples of Completed Forms.

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

- (a) Documentation required by the provisions of this administrative regulation is not submitted timely; [before February 4 and August 1;]
- (b) An approved project does not materialize; or
- (c) A completed project did not remain in compliance with program requirement[s];

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

(e) Funds were spent on the project.

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

Section 20[44]. Audits. [(4)] The department may request the State Auditor to audit a tourism project governed by this administrative regulation.

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

- (a) "Regional Marketing and Matching Funds[Tourism Marketing Incentive] Program Application", December[August] 2019;
- (b) "Application Project Description Form", August 2019;
- (c) "Regional Marketing and Matching Funds[Tourism

Marketing—Incentive] Program Reimbursement Request", December[August] 2019;

- (d) "[Matching Funds Application", September 2007;
- (b) "Reimbursement Request", September 2007;
- (c) "Project Agreement", September 2007;
- (d) "List of Documentation & Requirements for]Reimbursement [Per]Project Description Form", August 2019;
- (e) "Regional Ad Sale Form", one (1) page, August 2019;
- (f) "-", September 2007;
- (e) "Tourism Region Per Diem Reimbursement Form", August 2019; and
- (g) "-", 1996;
- (f) "Tourism Regions Map", 1996; and
- (h) "-", 1996;
- (g) "Samples of Completed Forms", September 2007; and
- (h) "Designated Marketing Organization", August 2019. [2007;]

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

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

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, December 16, 2019)**

301 KAR 3:100. Special commission permits.

RELATES TO: KRS 150.170, 150.175, 26 U.S.C. 501(c)(3)
STATUTORY AUTHORITY: KRS 150.025, 150.177, 150.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.177 authorizes the department to issue a special permit to an incorporated nonprofit wildlife conservation organization. KRS 150.195(1) requires the department to promulgate administrative regulations pertaining to the issuance of licenses and permits. This administrative regulation establishes the requirements for the issuance and use of Special Commission Permits.

Section 1. Definitions. (1) "Incorporated nonprofit wildlife conservation organization" means an entity that:

(a) Has a stated[primary] purpose, as expressed in its articles of incorporation or bylaws, to conserve and enhance fish and wildlife resources to provide opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities such as shooting sports, hunter and angler education and training, boating, etc.;

(b)1. Holds status as a nonprofit organization pursuant to 26 U.S.C. Section 501(c)(3); and

2. Is incorporated under the laws of this state or any other state; or

(c) Is an affiliated regional, state, or local chapter of a parent organization that meets the requirements of subsection (1)(b) of this section[Holds a charter status under an incorporated parent organization].

(2) "Proceeds" means the amount of money received by an incorporated nonprofit wildlife conservation organization from the sale or transfer of a special commission permit minus all expenses directly attributable to the sale of the permit.

(3) "Project" means an enterprise designed to achieve stated purposes, which shall conserve and enhance fish and wildlife

resources within Kentucky by enhancing habitat or providing opportunities for hunting, fishing, trapping, wildlife education, habitat enhancement, or related activities such as shooting sports, hunter and angler education and training, boating, etc.

(4) "Special commission permit" means a species-specific permit issued by the Kentucky Fish and Wildlife Commission to an incorporated nonprofit wildlife conservation organization that allows the permit recipient, depending on the species listed on the permit, to harvest:

- (a) One (1) additional deer of either sex~~[antlered or antlerless deer]~~ per license year;
- (b) One (1) additional turkey of either sex per license year;
- (c) One (1) elk of either sex per license year; or
- (d) Up to a daily bag limit of waterfowl per day.

Section 2. Issuance and Sale of Special Commission Permit.

(1) There shall be no more than ten (10) special commission permits issued per species per license year.

(2) An incorporated nonprofit wildlife conservation organization may apply for one (1) special commission permit per species. The incorporated nonprofit wildlife conservation organization shall accurately complete a Special Commission Permits Application Form.

(3) A national organization and its affiliated regional, state, and local chapters shall all be eligible to apply for a special commission permit in the same year if each organization meets the definition in Section 1(1)(2) of this administrative regulation.

(4) ~~No [A national organization and its affiliated regional, state, and local chapters shall not be eligible to be awarded]~~ more than one (1) special commission permit per species shall be awarded ~~per [unless each applicant has a separate and distinct nonprofit organization status under 26 U.S.C. 501(c)(3) and a separate and distinct Internal Revenue Service Employer Identification Number (EIN)] tax identification number].~~

(5) In addition to the completed application, the organization shall also submit:

(a) ~~A [1. One (1)]~~ copy of the organization's articles of incorporation;

(b) A copy of the Internal Revenue Service determination letter establishing the organization's current tax-exempt status, including the applicant's Employer Identification Number (EIN);

(c) A copy of the organization's [or bylaws that state the purpose of the organization; or

2. A separate charter status from a parent organization and the parent organization's articles of incorporation or] bylaws that state the purposes [purpose] of the [parent] organization, if the purposes;

(b) Written proof] of the organization are not stated in the articles of incorporation [organization's tax-exempt status including the applicant's tax identification number]; and

(d) [(e)] A letter, dated within ninety (90) days of the application, from the organization's parent organization, if applicable, stating [that states] that the chapter organization is in good-standing and is recognized by the parent organization.

(6) The completed application and accompanying documents listed in subsection (5) of this section shall be postmarked or delivered to the department by May 1 of each year.

(7) Applications shall be disqualified from the awards process for the criteria [The items] listed in paragraphs (a) through (d) [(e)] of this subsection;

(a) Failure to submit the required application and accompanying documents to the department by the deadline established in subsection (6) of this section [shall be grounds for disqualification from the award process:

(a) An incomplete application];

(b) An incomplete [Incomplete] or missing Special Commission Permits Application Form or accompanying documents required [.] pursuant to subsection (5) of this section;

(c) Failure to qualify as an incorporated nonprofit wildlife conservation organization; or

(d) Beginning in 2022, the [submit the required application and accompanying documents to the department by the May 1 deadline;

(d) The] wildlife conservation organization applicant failed to:

1. Sell [did not use or transfer] a special commission permit awarded in the [a] previous two (2) years;

2. Comply with the requirements of subsections (11)(b) and 11(c) of this section during the previous two (2) years [year]; or

3. Timely submit all of the information required by subsections (11)(d) and 11(f) of this section during the previous two (2) years

(e) Failure to qualify as an incorporated nonprofit wildlife conservation organization].

(8) Prior to selecting special commission permit recipients, the Fish and Wildlife Commission shall review and consider all applications and documents submitted by each wildlife conservation organization that has not been disqualified pursuant to subsection (7) [(5)] of this section.

(9) The department shall provide the Fish and Wildlife Commission with information concerning each applicant's relative standing with regard to:

(a) [Content and quality of submitted application materials;

(b) Past compliance; [(e) Ability to generate funds;] and

(b) History of funds generated [(d) The proposed conservation project's potential for enhancing fish and wildlife, habitats, fish and wildlife education, or fish and wildlife-related recreation in Kentucky].

(10) The Fish and Wildlife Commission shall select permit recipients based on the information listed in subsection (9) of this section and the information contained within the organization's application.

(11) An incorporated nonprofit wildlife conservation organization that is awarded a special commission permit shall:

(a) Generate proceeds through the sale of each permit awarded;

(b) Use the [all] proceeds from the sale of the permits only for the project listed in the application;

(c) Remit to the department any proceeds from the sale of the permit that are not expended by the May 1 [first (1)] reporting deadline three (3) years after the submission deadline of the application for which the special commission permits were awarded;

(d) Submit [permit for conservation projects in Kentucky as approved by the Fish and Wildlife Commission;

(b) Underwrite all promotional and administrative costs for the selling of the permit;

(c) Sell each permit as stated in the application;

(d) Submit, by June first (1) of the year the permit is valid,] to the department the information listed in subparagraphs 1. through 5. [4.] of this paragraph for [on] the hunter to whom [who receives] the permit shall be issued. Failure to submit the required information by the applicable deadline will result in no permit being issued [from the nonprofit wildlife conservation organization].

1. Name;

2. Address;

3. Date of birth; [and]

4. A copy of the hunter's valid Kentucky Hunting license; and

5. For waterfowl, the requested location and date of the hunt.

(e) The information to be submitted, as established in paragraph (d) of this section, shall be submitted to the department no later than the following dates during the license year for which the permit is valid:

1. March 1 for turkey;

2. August 1 for elk;

3. August 1 for deer; and

4. September 1 for waterfowl.

(f) Submit to the Department of Fish and Wildlife Resources, by May 1 of the following year, and each subsequent year until all funds generated by the sale of the permit are expended or remitted to the department [(e) Submit, by May 1 of the following year], a report, subject to audit, that includes:

1. A financial statement containing:

a. Total funds raised;

b. A detailed list of expenditures directly attributable [Overhead costs or expenses related] to the sale of the permit; [and]

c. Net profit;

d. A detailed list of expenditures attributable to the conservation project with receipts attached; and

VOLUME 46, NUMBER 7— JANUARY 1, 2020

e. Balance of funds remaining:

2. A summary of the:

a. The conservation project; and b. Expenditures related to the conservation project; and]

3. A synopsis of the project's impact in regards to the goals stated in the application~~[impact the conservation project had on enhancing fish and wildlife, habitats, fish and wildlife education, or fish and wildlife-related recreation].~~

(12) Once a special commission permit has been issued to a hunter, it shall not be transferred to another hunter.

Section 3. Special Permit Use. (1) A special permit shall only be valid for the:

(a) Individual named on the permit;

(b) Species of wildlife listed on the permit; and

(c) The first season for that species in the license~~[calendar]~~ year following the quarterly commission meeting that the special permit was awarded, except that during 2020, it permits~~[for the special commission permit] for deer and [for] waterfowl, which shall also be awarded [be valid] for the current license year [first season following the quarterly commission meeting that the special permit was awarded].~~

(2) A special commission permit holder shall comply with all other department statutes and KAR Title 301 [KAR].

(3) A holder of a special commission permit to hunt deer may hunt on any Wildlife Management Area during an open deer season or nonmobility impaired quota hunt pursuant to 301 KAR 2:178, except:

(a) Hunting shall not be allowed on closed waterfowl refuges, pursuant to 301 KAR 2:222;

(b) A permit holder shall contact the wildlife area manager at least forty-eight (48) hours before hunting; and

(c) A permit holder shall notify the area manager upon leaving a Wildlife Management Area.

(4) A holder of a special commission permit to hunt wild turkey shall not hunt on a Wildlife Management Area that is closed to turkey hunting.

(5) A holder of a special commission permit to hunt waterfowl may, subject to the timely submission of all applicable information by the wildlife conservation organization, hunt on Ballard, Boatwright, or Sloughs Wildlife Management Areas from one (1) of the areas' hunting units during [permanent waterfowl blinds by:

~~(a) Contacting the department no later than September 30; and~~

~~(b) Reserving a blind for] one (1) of the available hunt periods established by the department, pursuant to 301 KAR 2:222.~~

(6) Each special commission permit to hunt elk shall be randomly assigned a hunting unit at the time of the selection of the wildlife conservation organizations to be awarded special commission permits. Each unit will be assigned once prior to assigning a second permit to the unit. No unit will be assigned more than two (2) permits. The permit holder shall be restricted to hunting in the assigned unit only.

~~(7) A holder of any special commission permit may hunt on private land with the permission of the landowner. [(7) Unless specific equipment is prohibited on a Wildlife Management Area, a special permit holder shall only harvest game with hunting equipment that is allowed for the season during which the permit holder is hunting.]~~

Section 4. Incorporation by Reference. (1) "Special Commission Permits Application Form", 2019~~[2015]~~ edition, is incorporated by reference.

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

RICH STORM, Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: September 12, 2019

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

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.

GENERAL GOVERNMENT
Department of Agriculture
Office of Agricultural Marketing
(As Amended at ARRS, December 16, 2019)

302 KAR 50:050. THC sampling and testing; post-testing actions.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 5940

STATUTORY AUTHORITY: KRS 260.862, 250.355

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for any industrial hemp research pilot program in the Commonwealth of Kentucky. KRS 260.862(1)(e) authorizes the department to prescribe sampling and testing procedures to ensure that industrial hemp and industrial hemp products cultivated, handled, processed, or marketed pursuant to KRS 260.862 do not exceed the concentration levels defined in 7 U.S.C. 5940. KRS 250.355 requires the director of the Agricultural Experiment Station or his or her designee to receive samples and test industrial hemp plants, plant parts, and materials grown or located within the Commonwealth in order to determine if the industrial hemp plants, plant parts, and materials are in compliance with the provisions of KRS 260.850 through 260.869 and 302 KAR Chapter 50. This administrative regulation establishes the procedures and requirements for sampling, testing, and post-testing.

Section 1. Definitions. (1) "Department" is defined by KRS 260.850(3).

(2) "UK DRS" means the University of Kentucky Division of Regulatory Services.

Section 2. Department Procedures. (1) The department shall collect and handle hemp samples in accordance with the department SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), Sections II through VII.

(2) UK DRS shall receive, prepare, and release hemp samples in accordance with the UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples)

(3) UK DRS shall measure delta-9-THC content in accordance with the UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection).

(4) Following the delivery of THC testing results from UK DRS, the department shall undertake post-testing actions in accordance with the Department SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), Section IX.

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

(a) SOP# KDA-HEMP-20171214-1 (Procedures for Sampling, THC Testing, and Post-Testing Actions), December 14, 2017 edition;

(b) UK DRS SOP# HMP-LB-002 (Procedure~~[Procedures]~~ for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection), July 2019~~[April 4, 2018]~~ edition; and

(c) SOP# HM-LB-001 (Procedures for Receiving, Preparing, and Releasing Hemp [Samples]), August 2019~~[April 3, 2018]~~ edition.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at www.kyagr.com.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: August 30, 2019

FILED WITH LRC: August 30, 2019 at 3 p.m.

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.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(As Amended at ARRS, December 16, 2019)**

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 establishes definitions for[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 as established[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" means[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, for example,[but not limited to] those engaged in transporting and delivering [such]gas in public service).

(25) "Gas storage reservoirs" means[are] special geologic and geometric elements of underground strata that[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 (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.

(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 could[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 an earthen excavation or steel tank used:

(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" **means/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" **means/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, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Oil and Gas

(As Amended at ARRS, December 16, 2019)

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 promulgate/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 353.510 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 **established in paragraphs (a) through (c) of this subsection** shall be used to protect fresh water zones. f.]

(a) Method A. Casing shall be set on a casing shoulder and the/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 **shall/must** be removed or cemented to the surface.

(b) Method B. Casing shall be set on a shoulder and cemented sufficiently to cover **at least** 100 feet including the shoe. Upon completion of the drilling, all of the recoverable casing **shall/must** be removed or cemented to the surface.

(c) Method C. **Method C shall be** 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

~~as established 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 **as established in this section** prior to production or injection.

(1) A protective string of casing, be it surface, intermediate, or long string, shall extend **at least** thirty (30) feet below the deepest known fresh water zone.

(a) 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.

(b) If the[In the event] cement does not return to the surface, every reasonable attempt ~~shall~~**will** be made to fill the annular spaces by introducing cement from the surface.

(c) If the intermediate casing or long casing string is ~~is~~: **(a)** cemented to the surface ~~or~~; **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:

(a) The surface ~~and~~**and/or** intermediate casing string shall be anchored in sufficient cement ~~and~~; **and** at a sufficient depth to contain ~~the said~~ pressures; **and**

(b), ~~and~~ Blowout prevention valves and related equipment shall be installed.

(3) If a well is drilled through a void:

(a) The hole shall be drilled at least thirty (30) feet below the void; **and**

(b) 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.

(b) If an operator is unable to perform the casing and cementing requirement **established in paragraph (a) of this subsection**~~[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 **material**~~[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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(As Amended at ARRS, December 16, 2019)

805 KAR 1:030. Well location and as-drilled location plat, preparation, form and contents.

RELATES TO: KRS 349.015, 349.115, 353.550, 353.590, 353.737

STATUTORY AUTHORITY: KRS 349.015, 353.540, 353.550, 353.590(6)~~[353.590(4)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.590(6) authorizes~~[KRS 353.540 authorizes the department to promulgate administrative regulations to administer KRS 353.500 to 353.720. KRS 353.550 and 353.590(4) authorize]~~ the department to promulgate administrative regulations concerning the preparation and filing of reports and plats. KRS 349.015 requires a plat to be filed with the department before a permit can be issued for a coal bed methane well. This administrative regulation establishes requirements for uniformity and clarity in well locations and identity.

Section 1. Applicability. This administrative regulation shall apply only to the oil- and gas-producing industry and shall not apply to transmission and distribution systems or to product storage facilities.

Section 2. General Information. ~~(1)[(a)]~~ Location plats for wells proposed to be drilled pursuant to the provisions of KRS Chapter 353 or KRS Chapter 349 and the as-drilled location plat to be submitted after a well is drilled shall be prepared and certified in accordance with KRS 353.590(6)~~[KRS 353.737]~~.

~~(2)[(b)]~~ If the location of the well is known to be underlain by coal bearing stratum, the location plat for the well proposed to be drilled [pursuant to the provisions of KRS 353.590(4)] shall be:

~~(a)[1.]~~~~[Be]~~ Prepared in accordance with KRS 353.737; and

~~(b)[2.]~~ Certified by an engineer, as defined ~~by~~~~[in]~~ KRS 322.010(2), registered in Kentucky.

~~(3)[(c)]~~ If any plat submitted by an applicant is determined ~~[by the department]~~ to be materially inaccurate or incomplete, the department shall require that a new plat be prepared and submitted.

Section 3. Waiver. (1) A person shall not drill a well for oil, ~~gas, or coal bed methane~~ within 150 feet, measured horizontally, from the surface location of the well bore to any occupied~~[of any]~~ building, unless:

(a) A waiver of objection to the drilling is obtained in accordance with this section~~[secured in the manner established below]~~; or

(b) The department, after notice and a hearing, determines that the drilling and production of the well is not violative of the public policy set out in KRS 353.500 or ~~[KRS]~~349.005.

(2) The surveyor preparing the plat for a permit shall indicate the location of a proposed well site relative to all buildings within 150 feet of the well site.

(3) If an owner of a building located within 150 feet of a proposed well site waives objection to locating a well closer than 150 feet to the building, then a copy of the executed agreement of waiver shall accompany the application for permit.

(4) A waiver shall not be transferable unless it contains an express provision that it is transferable.

Section 4. (1) A separate location plat shall be submitted with each application to drill, deepen, or reopen a well.

(2) To ensure the division has accurate information regarding the location of a well drilled through a workable coal bed, a plat with the as-drilled location and elevation of the well shall be submitted~~[provided]~~ to the division pursuant to KRS 353.737 in addition to the well location plat submitted to drill a proposed well.

(3) For coal bed methane wells, a copy of the plat shall be attached to the ~~[“]Application for Permit, [“]~~ OG-1, incorporated by

reference in 805 KAR 1:010, and submitted to the relevant parties pursuant to KRS 349.015(2), (3), (4), or (7).

Section 5. Plat Preparation. Location plats for wells proposed to be drilled pursuant to the provisions of KRS Chapter 353 or KRS Chapter 349 shall be prepared as established in subsections (1) through (6) of this section~~[in the following manner:]~~

(1) All plats shall be clearly legible and submitted on a sheet eight and one-half (8 1/2) by fourteen (14) inches. This sheet may be:

- (a) Bond paper;
- (b) Tracing cloth; or
- (c) Tracing paper.

(2) The well location plat shall:

(a) Show the location of the proposed well relative to the two (2) nearest boundaries of oil and gas ownership, including any subdivision of the lease;

(b) Indicate all producing wells and permitted well sites within 1,000 feet of the proposed well site or sites within 1,500 feet for a coal bed methane well; and

(c) Clearly display all distances in feet.

(3) The location of the proposed well shall be shown on the plat, by bearing and distance, relative to two (2) permanent points or monuments~~[points/monuments]~~ that appear on the applicable USGS ~~[.]~~ seven and one half (7 1/2) minute; topographic quadrangle map, which permanent points or monuments~~[points/monuments]~~ include, for example, [though are not limited to] road intersections, bench marks, and buildings. A photocopy of a portion of the topographic quadrangle map showing the proposed well site shall be acceptable in lieu of identifying the points or monuments~~[points/monuments]~~ on the plat.

(4) The location of the well site shall be prepared with reference to either the Carter coordinate system, latitude and longitude, or the Kentucky coordinate system.

(5) The elevation of the well site shall be determined by instrument and calculation. Estimated topographic elevations shall not be acceptable.

(6) The plat shall be prepared to a scale of one (1) inch equals 100, 200, 300, 400, 500, 600, or 800 feet.

Section 6. As-Drilled Plat Location. Location plats for as-drilled wells shall be prepared as established in subsections (1) through (7) of this section~~[in the following manner:]~~

(1) All plats shall be clearly legible and submitted on a sheet eight and one-half (8 1/2) by fourteen (14) inches. This sheet may be:

- (a) Bond paper;
- (b) Tracing cloth; or
- (c) Tracing paper.

(2) The well location plat shall:

(a) Show the location of the as-drilled well relative to the two (2) nearest boundaries of oil and gas ownership, including any subdivision of the lease;

(b) Identify~~[Indicate]~~ all producing wells and permitted well sites within 1,000 feet of the as-drilled well site or sites within 1,500 feet for a coal bed methane well; and

(c) Clearly display all distances in feet.

(3) The as-drilled well location plat shall provide coordinates in feet, using the “NAD 83,” with “Single Zone Projection,” as the terms are defined ~~by~~~~[in]~~ KRS 353.010.

(4) The location of the as-drilled well shall be shown on the as-drilled well location plat, by bearing and distance, relative to two (2) permanent points or monuments that appear on the applicable USGS seven and one-half (7 1/2) minute; topographic quadrangle map, which permanent points or monuments include, for example, [though are not limited to] road intersections, bench marks, and buildings. A photocopy of a portion of the topographic quadrangle map showing the proposed well site shall be acceptable in lieu of identifying the points or monuments on the plat.

(5) In addition to the requirements of subsection (3) of this section, the location of the well site shall be prepared with

reference to either the Carter coordinate system, latitude and longitude, or the Kentucky coordinate system.

(6) The elevation of the well site shall be determined by instrument and calculation. Estimated topographic elevations shall not be acceptable.

(7) The plat shall be prepared to a scale of one (1) inch equals 100, 200, 300, 400, 500, 600, or 800 feet.

Section 7. Additional Requirements. In addition to the data required in Section 5 of this administrative regulation, well location plats shall include the following information:

- (1) Operator;
- (2) Farm or lease name;
- (3) Well number;
- (4) County;
- (5) Scale at which the plat is drawn;
- (6) North direction;
- (7) Legend:
 - - Proposed well site;
 - - Oil well;
 - ☀ - Gas well;
 - ⊕ - Coal bed methane well;
 - ⊙ - Injection well;
 - ⊠ - Plugged well; and
 - ∅ - Abandoned well, not plugged;
- (8) Date of preparation of plat;
- (9) Name of the topographic quadrangle map on which the well site may be located;
- (10) Owners, lessors and lessees of oil and gas on tracts that are offset by the proposed well;
- (11) Certification in the following form: "I hereby certify that the above plat is accurate and correct and satisfies the requirements of 805 KAR 1:030 to the best of my knowledge and belief"; and
- (12) Certification, which shall be followed by the written signature of the person preparing the plat, the preparer's mailing address, registration number, and telephone number.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Oil and Gas

(As Amended at ARRS, December 16, 2019)

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[of] 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.

(a) Cancellation shall be by a communication in writing to the division.

(b)[division.] Cancellation shall be effective only to relieve the surety from liability under the bond for wells with permits that[which permits] have not been issued at the time of the receipt of the notice by the division.

(c) Liability under the bond for wells with permits that[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:

- (1)[(a)] Irrevocable Letter of Credit, Form OG-16;
- (2)[(b)] Verification of Certificate of Deposit, Form OG-20; or
- (3)[(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. If an operator fails[Should the operator fail] to comply within the timeframe established[provided for] in KRS 350.590(24), the bond shall be ordered forfeited as established[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,
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**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(As Amended at ARRS, December 16, 2019)**

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-12].~~

~~(3)(a)1. Nothing in this section[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.~~

~~**2. Nothing in this section**[**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.~~

~~**3.a.** The temporary abandonment permit may be renewed on or before the expiration of the two (2) year period.~~

~~**b.** To renew, the permittee shall reapply on the Temporary~~

Abandonment Permit form OG-12 [ED-12].

~~(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 [tø] 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 established in[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 appropriate[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 not less than 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 shall[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.~~

~~(5)[(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 comply with the plugging requirements established in this administrative regulation to accommodate unforeseen well conditions.

[6]([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 not less than 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 not less than 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 not less than 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 as established in subsection (2) of this section[referenced in subsection (2)] and a point not less than 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 (1) of the following ways:

- (a) Dump bailer;
- (b) Pumping through tubing; or
- (c) A method approved by the director to comply with the plugging requirements established in this administrative regulation 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 not less than 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 not less than 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 microroentgen 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 established 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.

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**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(As Amended at ARRS, December 16, 2019)**

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 authorize[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 while[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 a[no] person, firm, or corporation shall not 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.

(1) 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 that shall[as will] both:

(a)[(1)] Exclude the encroachment of oil, gas, or water into a[such] reservoir; and

(b)[(2)] Protect the[such] reservoir from a blowout or waste of gas during the drilling of and after completion or[and/or] plugging of the[such] well.

(2) 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 the Division 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) Bona fide 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 include~~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 ~~be~~ 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 division~~department~~ based on the characteristics of the reservoir and the maximum anticipated storage pressure.

(3)(2) The required map shall be refiled 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)~~[(4)]~~ 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 3. Application for Permit to Drill, Deepen or Reopen a Well on Property for Which~~Where~~ Gas Storage Rights are Acquired. (1) Before drilling, deepening, or reopening a well on ~~a~~[any] property for which~~where~~ gas storage rights have been acquired, the well operator shall, at the time of filing with the division~~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 for which~~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 provided~~furnished~~ to the gas storage operator.

Section 4. Application for Permit to Drill, Deepen, or Reopen a Well on Property for Which~~Where~~ Gas Storage Rights are Not Acquired but That~~Which~~ Lies Within the Storage Reservoir Protection Zone. Upon~~When~~ ~~an~~[any] application for permit to drill, deepen, or reopen a well being~~is~~ received by the division ~~in which~~~~department where~~ the location of the proposed well will fall within the storage reservoir protection zone, the division~~department~~ shall notify the well operator and the gas storage operator of the receipt of the application by first class mail, postage prepaid.

Section 5. 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 consistent with 805 KAR Chapter 1. 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 division~~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 the ability to object established in subsection (2)(a) of this section~~objections~~ by letter, telegram, or telephone, if~~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 ~~if the division~~[department]~~[having determined that]~~ the public interest is being served, ~~then~~ the division[department] shall issue the permit[without delay].

Section 6. 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 established~~[provided for]~~ in Section ~~3~~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 ~~5~~6 of this administrative regulation.

Section 7. 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 drilled through or penetrates:

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 allow the operator 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 established 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) ~~Once~~When the plugging and filling have been completed by either the gas well operator or the gas storage operator, an affidavit establishing~~[setting forth]~~ the time and manner in which the well was plugged shall be made by the operator as established in paragraphs (a) and (b) of this subsection~~[two (2) experienced men who participated in the work]~~.

(a) 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]~~.

(b) 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 division~~[department]~~.

Section 8. Drilling Against High Reservoir Pressures. ~~If~~Whenever possible, the drilling into or through storage reservoirs shall~~[will]~~ be conducted when the reservoir pressure is equal to or less than the original formation pressure and ~~the~~[such] original formation pressure shall be provided by the gas storage operator.

Section 9. Nothing in this administrative regulation shall be construed to prohibit a well operator or a gas storage operator from drilling a well that ~~they~~[he] 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.

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ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Oil and Gas

(As Amended at ARRS, December 16, 2019)

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 through~~[to]~~ 353.720. KRS 353.520 prohibits the waste of oil and gas; 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 ~~this section~~ 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 ~~that~~ 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 ~~could~~ 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 upon injection 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 ~~that~~ which are liquid at standard temperature and pressure.

(7) "Commercially producible" means a well ~~that could~~ 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, Section 1425.

(11) "Division" means the Kentucky Division of Oil and Gas ~~Conservation~~.

(12) "Endangerment" means that an injection operation ~~could~~ may result in the presence of a contaminant in ground water, which supplies or ~~could~~ may reasonably be expected to supply any public water system, and ~~that~~ the presence of that contaminant, or any contaminant, ~~could~~ may result in violation of any national primary drinking water regulation or ~~could~~ 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 ~~that~~ which emerges from an orifice, pump, or turbine or passes along a conduit or channel.

(15) "Fluid" means any material or substance ~~that~~ 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 ~~that~~ 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.

(18) ~~"Freshwater zone"~~ means an underground source of drinking water.

(19) ~~"Ground water"~~ means water below the land surface in an aquifer's zone of saturation.

(20) ~~"Injection well"~~ means a well into which fluids are being injected.

(21) ~~"Injection zone"~~ means a geological formation, group of formations, or part of formation receiving fluids through a well.

(22) ~~"Mechanical integrity"~~ means a condition of injection wells ~~that~~ 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.

(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 ~~by~~ in subsection (10) of this section.

(24) ~~"Packer"~~ means a device lowered into a well to produce a fluid-tight seal.

(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.

(26) ~~"Project"~~ means a group of wells in a single operation.

(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.

(28) ~~"Underground source of drinking water or "USDW"~~ means an aquifer or its portion, which is not an exempted aquifer and ~~that~~ which:

(a) 1. Supplies any public water system; or

(b) 2. Contains a sufficient quantity of groundwater to supply a public system; and

(c) 3. Currently supplies drinking water for human consumption; or

2. Contains less than 10,000 mg/l total dissolved solids.

(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 ~~shall~~~~[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 ~~shall~~~~[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 ~~that complies with 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 ~~shall~~~~[will]~~ not in the future serve as a source of drinking water because:

(a) It is mineral, hydrocarbon, or geothermal energy producing, or ~~could~~~~[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 ~~that~~~~[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 ~~established in subsections (1) through (5) of this section~~:

(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) ~~A~~~~[The]~~ well or wells ~~that~~~~[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 ~~based on the requirements of this administrative regulation~~.

(2) The owner or operator shall ~~give the division~~~~[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 ~~shall~~~~[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 ~~in accordance with the requirements established in this administrative regulation~~ shall be approved by the ~~division~~~~[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 ~~of the~~~~[these]~~ records on file for a period of ~~at least~~ 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 ~~if~~~~[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 ~~shall be~~~~[are]~~ exempt from this requirement unless the division determines ~~in accordance with the requirements of this administrative regulation~~ that corrective action is necessary to prevent injected fluids from escaping ~~into~~~~[to]~~ a USDW.

(c)1. A freshwater string of casing shall extend ~~at least~~ 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 OG-25[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 a[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 shall[may] be obtained from geophysical logs, physical examinations of samples and cores, and chemical analysis, and shall be prepared by a professional geologist registered by[is] 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 shall be/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 as established in[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 in accordance with subsection (5)(c) of this section, 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) [(c)] 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 if[provided that]

a pressure test has been performed and the data is available and if more[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, if[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 establish[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 as established in[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, which comply with the requirements of this administrative regulation[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 shall be/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 by[and approved by a] division field inspector, who shall determine if the mechanical integrity test was successful.

(e) The division may require higher test pressures to be used if[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. If[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 established[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 if:]

(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 that[which] penetrates the injection zone, and any other wells within the area of review wells that[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 that[which] are improperly sealed, completed, or abandoned, a corrective action plan that[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)4-] 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 that[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 established[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, if[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 complies with[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 shall[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 a notarized Class II Plugging and Abandonment Plan, 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, including 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 in accordance with the proposed Class II permit, with the following parameters, as established ~~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; ~~and~~
 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; and
 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 shall/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 OG-25 ~~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; ~~and~~

(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 established ~~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 as established in ~~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 pursuant to ~~under~~ this subsection shall state/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 pursuant to ~~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 state/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 at least five (5) days before all mechanical integrity tests are performed.

(b) A written notice shall be given to the division at least fifteen (15) days before the tests are performed as established ~~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.

VOLUME 46, NUMBER 7– JANUARY 1, 2020

(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 OG-23[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 at least 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. If[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 could[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 as established in[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 if[when] permissive intervention is authorized pursuant to KRS 353.180(3); and[.]

(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 directed[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 805 KAR 1:020, 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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(As Amended at ARRS, December 16, 2019)

805 KAR 1:120. Operating or deepening existing wells and drilling deeper than the permitted depth.

RELATES TO: KRS 353.520

STATUTORY AUTHORITY: KRS 349.015, [Chapter—13A,] 353.540, 353.550, 353.560, 353.570, 353.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.550 and [KRS]349.015 requires the Department for Natural Resources to regulate the drilling and operation of all wells, while KRS 353.590 and [KRS]349.015 require[requires] the department[it] to regulate the drilling of a well past the permitted depth. This administrative regulation establishes the requirements to operate a well and drill a well deeper than the permitted depth.

Section 1. New Permit Required. The applicant shall obtain a permit, in accordance with 805 KAR 1:010, to operate any well previously in violation of KRS Chapter 349 or[, KRS Chapter] 353, 805 KAR Chapter 1 or[, or 805 KAR Chapter] 9, and whose bond the division has forfeited for noncompliance. Before a new permit is granted the applicant shall comply with:

(1) 805 KAR Chapter 1 for all wells; and

(2) KRS Chapter 353 for oil and gas wells; or

(3) KRS Chapter 349 for coalbed methane wells.[Definitions.

VOLUME 46, NUMBER 7– JANUARY 1, 2020

The definitions contained in KRS 353.510 and the following additional definitions shall apply to this administrative regulation:

(1) "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.

(2) "Operating a well" means to reenter, reopen, deepen, drill, inject into, produce, attempt to produce, or work over, any well.

Section 2. ~~Permit Required.~~ The operator shall obtain a permit to operate any well if the well is in violation of applicable standards and the department has forfeited the bond for noncompliance.]

Section 2. ~~[(1)]~~ New Permit Not Required. An operator may operate an existing well if ~~the operator[he]~~ submits a ~~completed and notarized Well Transfer Form~~[an acceptable well transfer on form] ~~OG[ED]-13, incorporated by reference in 805 KAR 1:170 [Section 10,]~~ and bonding as required in ~~KRS 353.590(7) and [KRS]349.120[KRS 353.590(5)]~~ if either of the conditions in paragraphs (a) and (b) of this subsection[~~subsections (1) and (2) of this section~~] apply.~~[The well transfer form, ED-13, revised April 4, 1990, is filed and incorporated herein by reference. Copies may be obtained from the Department for Natural Resources, P.O. Box 14090, Lexington, Kentucky 40512-4090, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

~~[(1)(a)]~~ (1) The well is producing or capable of producing, not abandoned, and not in violation of ~~[applicable standards]~~ ~~KRS Chapter 353 or [Chapter]~~ 349 or 805 KAR Chapter 1; or

~~[(2)(b)]~~ (2) The well has been abandoned by the previous operator, but the current operator's sole intent is to reenter the well for the purpose of properly plugging and abandoning it.

Section 3. ~~New~~ Permit Required for Deepening. The operator:

(1) Shall obtain a new permit, in accordance with 805 KAR 1:010, prior to deepening any well if:

(a) The original permit is more than one (1) year old; or

(b) The original well was drilled prior to the permitting requirements of the department;[,] and

(2) Shall not drill until the permit is issued.

Section 4. (1) ~~New~~ Permit Not Required for Deepening. The permitted operator may deepen an existing well if the permit is not more than one (1) year old and if the well has not been drilled past the permitted and bonded depth.

(2) For coalbed methane wells, an operator shall not drill deeper than the permitted depth if the drilling causes the well to be in noncompliance with the well spacing standards ~~established[set out]~~ in KRS 349.075 or the notice requirements ~~established[contained]~~ in KRS 349.015.

Section 5. Drilling Deeper Than the Permitted Depth. An operator may drill deeper than the permitted depth of the well ~~if[provided that]~~ the operator[he] brings ~~the[his]~~ permit into compliance within the time and conditions ~~established in subsections (1) through (4) of this section.[set forth below:]~~

(1) The operator shall notify division personnel that ~~the operator[he]~~ has drilled deeper than the permitted depth the next ~~department[official]~~ work day ~~[of the department]~~.

(2) The operator shall, within ten (10) days of drilling deeper than the permitted depth, amend ~~the[his]~~ permit to the depth to which ~~it was drilled[he has]~~ drilled.

(3) The operator shall, within ten (10) days of drilling deeper than the permitted depth, submit additional bonding required to ~~comply with[satisfy]~~ ~~KRS 353.590(7) and [KRS]349.120[KRS 353.590(5)].~~

(4) The operator shall not drill deeper than the permitted depth if ~~the[such]~~ drilling causes the well to be in noncompliance with the well spacing standards ~~established[set out]~~ in KRS 353.610 or ~~[KRS]349.075.~~

Section 6. A directional or horizontal well or a deep well shall not be deepened without ~~submitting to the director a revised plat and permit application~~ prior approval of the director or a permit therefor being issued.

Section 7. ~~Operator Noncompliance.~~ An operator ~~noncompliant[in noncompliance]~~ with the requirements of this administrative regulation ~~shall be[is]~~ subject to penalties pursuant to KRS 353.991 for oil and gas wells and KRS 349.155 for coalbed methane wells.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: July 10, 2019

FILED WITH LRC: July 11, 2019 at 10 a.m.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(As Amended at ARRS, December 16, 2019)

805 KAR 1:140. Directional and horizontal wells.

RELATES TO: KRS 349.015, 349.035, 349.040(3), 349.075, 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 ~~through[te]~~ 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, ~~[or]~~ 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 ~~in compliance with[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 location shall be designated[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 as established[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 as established[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 ~~formations~~[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 comply with[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 as established[required] in subsection (4) of this section.

(7) The requirements for a deep directional or horizontal well shall comply with[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 as established[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 upon[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 noncompliant[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.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(As Amended at ARRS, December 16, 2019)

805 KAR 1:160. Posting of an identification sign and a danger sign on a crude oil tank battery site[facility used for the storage of oil].

RELATES TO: KRS 353.500, 353.656

STATUTORY AUTHORITY: KRS 353.540(1), 353.656

NECESSITY, FUNCTION, AND CONFORMITY: KRS 353.540(1) authorizes the Department for Natural Resources to promulgate administrative regulations necessary to enforce KRS 353.500 through 353.720. KRS 353.656 requires a well operator to display a sign printed with the word "Danger" and other information specified by the department near or on a facility used for storage of oil, whether it is in active production or has been abandoned. This administrative regulation specifies the size, wording, coloration, and placement of a danger sign and identification[the] sign.

Section 1. Tank Battery Identification Signs. (1) An operator shall display a printed identification sign on tank battery facilities. The sign shall include the information in paragraphs (a) through (e) of this subsection.

(a) Tank battery operator (Company name).

(b) Lease name as identified by the tank battery operator.

(c) Global position system of the tank location using North American Datum of 1983 and expressed in decimal degrees (°).

(d) Emergency twenty-four (24) hour phone number for the tank battery operator.

(e) Department for Environmental Protection Environmental Response Team Hotline twenty-four (24) hour phone number.

(2) The identification sign shall meet the size requirements in paragraphs (a) through (c) of this subsection.

(a) The sign shall not be less than seventeen (17) inches in height.

(b) The sign shall not be less than twenty-eight (28) inches in width.

(c) The letters on the identification sign shall not be less than two (2) inches in height.

(3) If [in the case of transfer of] ownership of a tank battery is transferred, the new operator shall revise or replace the sign to reflect the change of tank battery ownership within sixty (60) days from the date of associated well transfer with the Division [Definitions. (1) "NFPA" means the National Fire Protection Association.

(2) "Tank battery" means a single storage tank or group of storage tanks that are interconnected or are less than three (3) feet apart, where oil is collected from a wellhead].

Section 2. (1) An operator shall display a printed sign on each tank battery, whether it is in active production or has been abandoned.

(2) Each sign shall contain the following words and phrases:

(a) "Danger";

(b) "No smoking or open flame";

(c) "Extremely flammable liquid and vapor";

(d) "May cause flash fire";

(e) "No trespassing"; and

(f) "Petroleum crude oil".

(3) Symbol. A no smoking symbol with a cigarette crossed through shall be displayed on each side of the words "no smoking or open flame".

Section 3. (1) The tank battery sign shall use the numbering system described in NFPA 704 "Standard System for the Identification of the [Fire] Hazards of Materials for Emergency Response," which provides a classification and marking system for identification of a fire hazard.

(2) A facility used for the storage of oil shall have a "health hazards" ranking of "1" identified by:

(a) A black "1" at the nine (9) o'clock position in a blue square located in a square-on-point field; or

(b) A blue "1" at the nine (9) o'clock position without the colored square.

(3) A facility used for the storage of oil shall have a "flammability hazards" ranking of "3" identified by:

(a) A black "3" at the twelve (12) o'clock position in a red square located in a square-on-point field; or

(b) A red "3" at the twelve (12) o'clock position without the colored square.

(4) A facility used for the storage of oil shall have a "reactivity

hazards" ranking of "0" identified by:

(a) A black "0" at the three (3) o'clock position in a yellow square located in a square-on-point field; or

(b) A yellow "0" at the three (3) o'clock position without the colored square.

Section 4. Dimensions and Coloration of the Tank Battery Sign. (1) A sign shall not be smaller than:

(a) Seventeen (17) inches in height; and

(b) Twenty-eight (28) inches in width.

(2) The letter size for the required wording shall be as follows:

(a) The word "danger" shall:

1. Be in uniformly sized letters; and

2. Not be less than three (3) inches in height;

(b) The words "no smoking or open flame" shall:

1. Be in uniformly sized letters; and

2. Not be less than one (1) inch in height; and

(c) The words set out in Section 2(2)(c) through (f) of this administrative regulation shall:

1. Be in uniformly sized letters; and

2. Not be less than one-half (1/2) inch in height.

(3) The "no smoking" symbol with a cigarette crossed through shall not be less than one and one-half (1 1/2) inches in height.

(4) The NFPA numbers shall not be less than one-half (1/2) inch in height.

(5) The background color of the sign shall contrast with the foreground color of the letters and the NFPA numbers to make them clearly visible (e.g., white background with black letters).

Section 5. (1) There shall be one (1) identification sign and one (1) danger sign per:

(a) Tank battery; or

(b) Tank, if the individual tanks in a battery are controlled by more than one (1) operator.

(2) These tank battery signs [A sign] shall be:

(a) Displayed at:

1. Least five (5) feet from the ground; and

2. The most visible location from the approach;

(b) Properly maintained; and

(c) Replaced if it is:

1. Illegible;

2. Damaged;

3. Vandalized; or

4. Stolen.

Section 6. Signs in Existence Prior to this Administrative Regulation. (1) A danger sign or identification sign posted on a [tank or] tank battery prior to promulgation of this administrative regulation may be retained by an operator if:

(a) The operator [He] files a written petition for a waiver seeking permission to retain the noncomplying sign; and

(b) The prior sign is clearly displayed:

1. On the tank or tank battery; and

2. At the most visible location from approach; and

3. Meets the requirements of this administrative regulation.

(2) A prior noncomplying [danger] sign shall be replaced with a sign that complies with this administrative regulation if it is:

(a) Illegible;

(b) Damaged;

(c) Vandalized; or

(d) Stolen.

Section 7. Violations for Failure to Post a Sign. (1) Upon locating a [tank or] tank battery without a danger sign or the required identification sign, the inspector shall issue a notice of noncompliance to the last known operator.

(2) The notice of noncompliance shall be mailed to the operator by certified mail, return-receipt requested. If the violation is not corrected by the posting of a proper sign within forty-five (45) days of his receipt of the notice of noncompliance, the operator shall be subject to the penalties set out in KRS 353.991.

Section 8. Material Incorporated by Reference. (1) [The

VOLUME 46, NUMBER 7– JANUARY 1, 2020

following material is incorporated by reference:] NFPA Edition 704, "Standard System for the Identification of the[Fire] Hazards of Materials for Emergency Response", 2017[+999] edition, is incorporated by reference[Chapters 1-4 and Figure 6.1].

(2) This material may be inspected,~~for~~ copied, or obtained, subject to applicable copyright law, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

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

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

ENERGY AND ENVIRONMENT CABINET Department for Natural Resources Division of Oil and Gas (As Amended at ARRS, December 16, 2019)

805 KAR 1:170. Content of the operations and reclamation plan.

RELATES TO: KRS 349.015, 349.105, 349.120, 349.130, 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) "Wellsite 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
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.

d. 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. Except as established in clause b. of this subparagraph, pits shall be constructed on the cut or highwall side of well sites in non-fill areas.

b. If site conditions prevent compliance with clause a. of this subparagraph, then pits may be constructed in fill areas if a division representative has determined that the location is stable and will prevent failure of the pit.

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. a. Pits shall be lined with an impermeable synthetic material having a minimum thickness of ten (10)/twelve (12) mils to prevent movement of pit fluids into the subsurface.

b. (i) The liner requirement may be waived by a division representative if the drilling mud circulation system utilizes bentonite clay and the division representative observes soil conditions confirming the presence of clay, which shall create an impermeable barrier preventing infiltration of pit fluids into the underlying soil and rock strata.

(ii) The division representative shall not approve waivers to clause a. of this subparagraph in areas as identified by Kentucky Geologic Survey mapping as being underlain by bedrock with high or moderate potential for karst development.

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 5./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 with 805 KAR 1:110; [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; and;

4. The pit shall be back-filled with earthen material to establish natural grade with the surrounding wellsite;

~~(c)[]~~ The well has been plugged under direction of the department;

~~(d)[]~~ 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

~~(e)[]~~ 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)[]~~ 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 5[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(10)]~~, 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.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Oil and Gas
(As Amended at ARRS, December 16, 2019)**

805 KAR 1:180. Production reporting.

RELATES TO: KRS 353.550(1), 349.040, 349.155, 349.570, 353.991

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 for Natural Resources to promulgate administrative regulations requiring an operator of oil and gas properties in the Commonwealth to identify producing leases. KRS 349.115 authorizes the department to promulgate administrative regulations to implement KRS Chapter 349. 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.~~

VOLUME 46, NUMBER 7– JANUARY 1, 2020

(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-17], "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-17] 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-17] 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 3[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 material may be inspected, copied, or obtained, subject to applicable copyright law,[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.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Oil and Gas

(As Amended at ARRS, December 16, 2019)

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 349.115, 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,~~[i]~~ 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, ~~such as 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, ~~such as~~[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 ~~as established in this administrative regulation 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[17]. Penalties. An operator in noncompliance with the requirements of this administrative regulation is subject to the penalties established in KRS 353.991.

Section 17[18]. 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.

ENERGY AND ENVIRONMENT CABINET

Department for Natural Resources

Division of Oil and Gas

(As Amended at ARRS, December 16, 2019)

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 ~~applicant~~operator shall submit a completed and notarized "Report of Investigation for Testing Permit" Form OG-43 to the division.

(a) If the ~~applicant~~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.

**ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(Amendment)**

805 KAR 4:050. Records.

RELATES TO: KRS 351.330, 331.335, 331.360

STATUTORY AUTHORITY: KRS [Chapter 13A,] 351.335, 351.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.330 requires the Department for Natural Resources to require blasters to keep records. This administrative regulation specifies what records are to be kept and requires blasters that do not have a permit issued pursuant to KRS Chapter 350 or an agreement with the department, to provide notice of its blasting operations to the Department for Natural Resources.

Section 1. Blasting Records. A record of each blast shall be kept. All records including seismograph reports shall be retained at least five (5) years and shall be available for inspection by the Department for Natural Resources and shall contain the[following minimum] data in subsections (1) through (19) of this section:

(1) Name of company or contractor.

- (2) Exact location of the blast, date and time of detonation.
- (3) Name, signature and license number of blaster in charge.
- (4) Type of material blasted.
- (5) Number of holes, burden and spacing.
- (6) Diameter and depth of holes.
- (7) Types of explosives used.
- (8) Total amount of explosives used.
- (9) Maximum amount of explosives per delay period of eight (8) milliseconds or greater.
- (10) Method of firing and type of circuit.
- (11) Direction, distance in feet, and identification of the nearest dwelling house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blasting.
- (12) Weather conditions.
- (13) Type and height or length of stemming.
- (14) A statement as to whether mats or other protections against flyrock were used.
- (15) Type of[~~delay electric~~] blasting caps used and delay periods used.
- (16) The[~~person taking the seismograph reading~~] shall accurately indicate exact location of the seismograph if used and[~~shall also show~~] the distance of the seismograph from the blast.
- (17) Seismograph records, if[~~where~~] required, shall include:
 - (a) Name of person and firm analyzing the seismograph record; and[-]
 - (b) Seismograph reading.
- (18) Maximum number of holes[~~holes~~] per delay period of eight (8) milliseconds or greater.
- (19) Sketch of blast pattern including number of holes, burden and spacing distance delay pattern, and if decking is used, a hole profile.

Section 2. Notification of Blasting Operations on Construction, Demolition, and Industrial Sites. (1) Any person conducting blasting operations at a site that does not have a permit issued pursuant to KRS Chapter 350 or an agreement with the Department for Natural Resources, shall provide notice of its blasting operations to the Department for Natural Resources at least twenty four (24) hours prior to the commencement of blasting activities.

(2) The notice shall include:

(a) The identification of the person or company performing the blasting, including current contact information;

(b) The specific location of the site where blasting will occur, that may include physical address, latitudinal and longitudinal, or Global Positioning System coordinates;

(c) The date and time blasting operations are expected to commence; and

(d) The projected duration of the blasting operations.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: September 13, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2019 at 5:00 p.m. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator,

300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Mullins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies which records are to be kept by individuals conducting blasting operations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide blasters with information related to records retention.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 351.335 requires blasters to keep records. This administrative regulation details the records to be kept and the amount of time the records are to be kept.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 351.335 requires blasters to keep records. This administrative regulation establishes records that are to be kept by blasters, which includes seismographs.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires blasters to provide the department notification prior to blasting on construction, demolition, and industrial sites.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to require blasters on construction, demolition, and industrial sites to provide the department with notice prior to conducting blasting operations as is required in coal and non-coal mine blasting operations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by requiring blasters conducting blasting operations on construction, demolition, and industrial sites to provide the department with notice prior to blasting on these sites.

(d) How the amendment will assist in the effective administration of the statutes: These amendments assist in the effective administration of the statutes by requiring blasters to give the department notice prior to blasting on construction, demolition, and industrial sites.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This provision would apply to blasters that conduct blasting operations on construction, demolition, and industrial sites.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities listed in question (3) above will be required to provide notice to the department at least 24 hours prior to the commencement of blasting activities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be minimal cost associated with complying with these requirements. The department will simply setup a web-based portal where blasters can enter the required information.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will benefit by allowing the department to have information that could prevent individuals from falsely accusing a blaster of blasting related violations when the blaster may not have been blasting in the area when a complaint is filed.

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

(a) Initially: There will be no costs to the department associated with implementation of this amendment.

(b) On a continuing basis: There will be no costs to the department associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The funding for implementation of the amendments to this administrative regulation will be a combination of general funds and restricted funds.

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

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

(9) TIERING: Is tiering applied? No. All entities that blast on construction, demolition, and industrial sites are required to provide prior notice as in other blasting areas regulated by the Department.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 351.335 and KRS 351.360.

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

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

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

(c) How much will it cost to administer this program for the first year? There will not be a cost increase associated with the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? Future costs would remain essentially unchanged related to this amendment.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

PUBLIC PROTECTION CABINET

Department of Insurance

(Amendment)

806 KAR 3:230. Standards for safeguarding customer information.

RELATES TO: KRS 304.99-020, 15 U.S.C. 6801, 6805(b), 6807

STATUTORY AUTHORITY: KRS 304.2-110(1), 15 U.S.C. 6801(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner~~[executive—director]~~ to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky

Insurance Code[as defined in KRS 304.010]. The Gramm-Leach-Bliley Act [as] codified in 15 U.S.C. 6801(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical and physical safeguards: (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of these records; and (3) to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer. This administrative regulation establishes the appropriate standards for licensees of the Department[Office] of Insurance to safeguard customer information. [The Gramm-Leach-Bliley Act extends particularly to financial institutions, however, this administrative regulation applies to all licensees of the office regardless of whether or not the licensee is considered a financial institution for purposes of the Gramm-Leach-Bliley Act.]

Section 1. Definitions. (1) "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information; or that individual's legal representative.

(2) "Customer" means a consumer who has a customer relationship with a licensee.

(3) "Customer information" means nonpublic personal information about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee.

(4) "Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

(5) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(6) "Licensee" means all insurers holding a certificate of authority, licensed producers, companies, or business entities licensed or required to be licensed, or authorized or required to be authorized, or registered, excluding service contract makers, or required to be registered pursuant to the Kentucky Insurance Code[as defined in KRS 304.1-010].

(7) "Service provider" means a person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to the licensee.

Section 2. Information Security Program. Each licensee shall implement a comprehensive written information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

Section 3. Objectives of Information Security Program. A licensee's information security program shall be designed to:

(1) Ensure the security and confidentiality of customer information;

(2) Protect against any anticipated threats or hazards to the security or integrity of the information; and

(3) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

Section 4. Determined Violation. A violation of this administrative regulation may constitute an unfair trade practice in the business of insurance and shall subject the licensee to a civil penalty authorized by KRS 304.99-020.[Section 5. Effective Date. Each licensee shall establish and implement an information security program, including appropriate policies and systems pursuant to Sections 1 to 3 of this administrative regulation, within 180 days of the effective date of this administrative regulation.]

Section 6. Incorporated by Reference. (1) SAFE-1, "Examples of Methods of Development and Implementation (August 2003 Ed)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at <http://doi.ppr.ky.gov/kentucky/>.]

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2019 at 10:00 a.m. at 215 W. Main St., Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main St., Frankfort, Kentucky 40601, phone 1-502-564-6026, fax 1-502-564-1453, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for Department of Insurance licensees regarding the safeguarding of consumer information.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure appropriate safeguarding of consumer information by Department of Insurance licensees in satisfaction of requirements established by the federal Gramm-Leach Bliley Act at 15 U.S.C. 6801(b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. 15 U.S.C. 6801(b) requires state insurance commissioners and other financial regulators to establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 304.2-110 and the requirements of 15 U.S.C. 6801(b) by specifying requirements for Department of Insurance licensees.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the necessity, function, and conformity paragraph for accuracy with the title of the Commissioner of Insurance and the Department of Insurance. The

amendment also eliminates Sections 5 and 6 of the regulation, which are no longer necessary.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update titles for accuracy and remove outdated incorporated material.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 304.2-110 and the requirements of 15 U.S.C. 6801(b) by specifying requirements for Department of Insurance licensees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the necessity, function, and conformity paragraph for accuracy with the title of the Commissioner of Insurance and the Department of Insurance. The amendment also eliminates Sections 5 and 6 of the regulation, which are no longer necessary.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Department of Insurance licensees will be affected by this administrative regulation.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Department licensees must continue to comply with existing requirements governing customer information; this amendment does not change substantive requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There will be no additional cost to regulated entities to comply with this amendment; they should already have systems in place to protect consumer information.

(c) As a result of compliance, what benefits will accrue to the entities: Regulated entities complying with this administrative regulation will avoid regulatory action for failure to satisfy consumer information safeguarding requirements.

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

(a) Initially: There will be no additional costs to the Department to enforce and implement this amendment.

(b) On a continuing basis: There will be no additional costs to the Department to enforce and implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new funding is necessary for the implementation and enforcement of this amendment.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied; this administrative regulation applies similarly to similarly situated licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is necessary to ensure appropriate safeguarding of consumer information by Department of Insurance licensees in satisfaction of requirements established by the federal Gramm-Leach Bliley Act at 15 U.S.C. 6801(b).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to the Department of Insurance to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to the Department of Insurance to administer this program for subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 15 U.S.C. 6801(b)

(2) State compliance standards. This administrative regulation requires Department of Insurance licensees (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(3) Minimum or uniform standards contained in the federal mandate. 15 U.S.C. 6801(b) requires state insurance commissioners and other financial regulators to establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

PUBLIC PROTECTION CABINET Department Of Insurance (Amendment)

806 KAR 5:060. Registration of service contracts for consumer products.

RELATES TO: KRS 304.5-070

STATUTORY AUTHORITY: KRS 304.5-070(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.5-070 requires that makers of service contracts who repair, replace, or maintain consumer products register with the Commissioner ~~and maintain registration with the office~~ to be exempt from the definition of casualty insurance. This administrative regulation

~~establishes[sets forth]~~ the filing requirements for that registration.

Section 1. Definitions. "Maker of service contract" or "maker" is the entity contractually obligated under the terms of the service contract.

Section 2. Registration Required. A maker of a service contract seeking exemption from the definition of casualty insurance shall register with the commissioner by submitting:

(1) ~~[office by providing]~~ The name and address of its principal office; and ~~either~~

(2) ~~Evidence~~ ~~[the other required information or documentation pursuant to Section 3 of this administrative regulation.~~

~~Section 3. Service contracts to repair, replace, or maintain consumer products shall not be considered casualty insurance if the maker of the service contract meets one (1) of the following requirements:~~

~~(1)(a) Maintains a net worth of at least \$100,000,000[100 million dollars in net worth; or~~

~~(3) Evidence off[and registers with the executive director by providing the following:~~

~~1. Its current annual report;~~

~~2. A copy of its 10K or 20F form as filed with Securities Exchange Commission; or~~

~~3. A financial statement audited by an independent certified public accountant in conformity with generally accepted accounting practices;~~

~~(b) Immediately notifies the office in writing of any change that would decrease the net worth of the maker below 100 million dollars;~~

~~(2)(a) Maintains an insurance policy or performance bond that:~~

~~1. Assures performance of the duties of the maker for all service contracts issued in Kentucky;~~

~~2.](a) Shall not be terminated unless at least thirty (30) days prior written notice is given to the commissioner;~~

~~(b) States[executive director; and~~

~~3. Shall state] that the holder of a[the] service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker; and either~~

~~(c) Assures performance of the duties of the maker for all service contracts issued in Kentucky; or~~

~~(d)(b) Provide a copy of the insurance policy or performance bond; or~~

~~(3)(a) Maintain an insurance policy or performance bond that:~~

~~4. Is written for an amount of \$50,000 or twenty-five (25) percent of the maker's annual revenues from the service contracts issued in Kentucky, whichever is greater.];]~~

Section 3. Establishing Evidence for Registration. A maker of a service contract providing evidence required by Section 2 may submit:

(1) A current annual report;

(2) A copy of its 10K or 20F form as filed with the Securities Exchange Commission;

(3) A financial statement audited by an independent certified public accountant in conformity with generally accepted accounting practices; or

(4) A copy of the insurance policy or performance bond, accompanied by the following information, signed and certified under oath by an officer of the company:

(a) 2. Shall not be terminated unless at least thirty (30) days prior written notice is given to the executive director; and

3. Shall state that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker; and

(b) Register with the executive director by providing the following:

1. A copy of the insurance policy or performance bond;

2. The amount of annual revenues from the sales of service contracts in Kentucky for the previous year ending December 31; and

(b) 3. A projection of the revenue from service contracts to be sold in Kentucky for the current year.

Section 4. Changes to Registration. A registered maker of a service contract shall immediately notify the commissioner in writing of any change that would:

(1) Decrease the net worth of the maker below \$100,000,000 dollars; or

(2) Result in the termination of the insurance policy or performance bond; (c) The document giving the required information shall be signed and certified under oath by an officer of the company].

Section 5[4]. Registration Approval, Renewal, Cessation, and Revocation. (1) If the initial registration has not been affirmatively accepted or rejected by the commissioner[executive director] within thirty (30) days of filing, [then the] registration requirements shall be deemed met.

(2) [(a)] After the initial registration, each maker of a service contract shall file an updated report annually, on or before March 1,

(3)], file a report that sets forth or is accompanied by the information required in Section 3 of this administrative regulation;

(b) If a maker ceases issuing service contracts, the maker[annual reports] shall continue to file annual reports[be filed] through the duration of all outstanding service contracts.];]

(4) [(3)] If at any time, the maker fails to demonstrate compliance with [Section 3 of] this administrative regulation, the commissioner[executive director] may revoke the maker's registration. Upon revocation of registration, the maker shall immediately cease issuing service contracts to consumers in Kentucky].

Section 5. (1) Each service contract shall conspicuously state the name and address of the maker of the service contract; and

(2) If the maker of the service contract has an insurance policy or performance bond to assure contractual duties, the following must be stated in the service contract:

(a) Name and address of authorized underwriting insurer issuing insurance policy or performance bond; and

(b) A statement that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker].

NANCY G. ATKINS, Commissioner

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2019, at 10:00 a.m. at 215 W. Main St., Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main St., Frankfort, Kentucky 40601, phone 1-502-564-6026, fax 1-502-564-1453, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the filing requirements for the registration of makers of service contracts who repair, replace, or maintain consumer products as required by KRS 304.5-070.

(b) The necessity of this administrative regulation: KRS 304.5-070(1)(q) requires service contract providers to register with the Commissioner of Insurance and provide evidence of financial security.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.5-070(1)(q) requires service contract providers to register with the Commissioner of Insurance and provide evidence of financial security.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation establishes details regarding requirements to satisfy statutory requirements of service contract providers doing business in the Commonwealth.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates requirements to accurately reflect titles, corrects grammatical errors, and simplifies the requirements for ease of compliance.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify and simplify registration and documentation requirements for service contract providers doing business in the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment clarifies the registration and documentation process required by KRS 304.5-070(1)(q).

(d) How the amendment will assist in the effective administration of the statutes: This amendment simplifies and clarifies for ease of use the process for service contract providers to register with the Commissioner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All service contract providers in Kentucky will be affected by this administrative regulation.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: A maker of a service contract seeking exemption from the definition of casualty insurance will have to submit information and documentation to the commissioner showing that financial stability requirements are met.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There should be no additional cost to regulated entities to comply with this amendment; the simplified language should facilitate compliance and reduce the amount of time and effort expended by service contract providers to comply.

(c) As a result of compliance, what benefits will accrue to the entities: Properly registered service contract providers will be exempt from the definition of casualty insurance.

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

(a) Initially: There will be no cost to the department to implement this amendment.

(b) On a continuing basis: There will be no cost to the department to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of this amendment.

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

increases in fees or funding are necessary for the implementation and enforcement of this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated regulated entities are treated similarly.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.5-070(1)(q)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated to administer this program for subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

**PUBLIC PROTECTION CABINET
Department Of Insurance
(Amendment)**

806 KAR 9:265. Rental vehicle agent license[and managing employee].

RELATES TO: KRS 304.4-010, 304.9-505[~~304.9-295, 304.9-501, 304.9-505, 304.9-513~~]

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-505[~~304.9-513~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner[~~executive director~~] to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.9-505[~~as defined in KRS 304.1-010. KRS 304.9-513~~] authorizes the commissioner to issue licenses to act as a rental vehicle agent and requires the commissioner to prescribe an application form for a business entity seeking to act as a rental vehicle agent[~~executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513~~]. This administrative regulation establishes the information to be included in the application for rental vehicle agent business entity and managing employee licenses; the requirements for

prelicensing education, course examinations[, continuing education for rental vehicle managing employees]; and recordkeeping for rental vehicle agents and their employees who sell rental vehicle insurance.

Section 1. License Application. To apply for a rental vehicle agent license, an applicant shall submit:

(1) The appropriate completed form:

(a) Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.

(2) "Office" means the Office of Insurance.

Section 2. The license application shall be submitted as a package, and shall include:

(1) Form 8301-BE, incorporated by reference in 806 KAR 9:340, for the business entity rental vehicle agent applicant or Form 8301, incorporated by reference in 806 KAR 9:340, for [the] individual managing employees, Form 8301[rental vehicle agent applicant signed by the applicant and Form 8302-AP], incorporated by reference in 806 KAR 9:025;

(b) For Business Entities, Form 8301-BE[340, completed by the appointing insurer;

(2) Form 8301, incorporated by reference in 806 KAR 9:340, for each managing employee applicant signed by the applicant and Form 8302-AP], incorporated by reference in 806 KAR 9:025; and

(c) Listings, signed by the[340, completed by the appointing insurer;

(3) Form 8301-BGC, incorporated by reference in 806 KAR 9:340, for resident] rental vehicle agent applicant, of:

1. All business locations proposed to be licensed; and

2. The name and assigned licensed[or managing employee applicants;

(4) Form 8301-RV, incorporated by reference in 806 KAR 9:340, signed by the rental vehicle agent applicant and each managing employee for each business location.

(2) The corresponding fees established by[applicant; and

(5) The fees specified in KRS 304.4-010 and] 806 KAR 9:010.

Section 2[3]. Register. (1) A[(1) A licensed rental vehicle agent shall keep current the information required to be disclosed in its application for license by reporting within thirty (30) days all material changes and additions on applicable forms required in Section 1 of this administrative regulation on Form 8303, incorporated by reference in 806 KAR 9:340.

(2) A business entity] licensed[as a] rental vehicle agent shall maintain a register that includes:

(a) A[not sell, solicit, or negotiate insurance at any business location that does not have a licensed managing employee assigned to that location.

Section 4. A licensed rental vehicle agent shall maintain a] current list of every unlicensed employee authorized to act under the license;

(b) Records[and the name] of all prelicensing study and course examinations completed by[the assigned licensed managing employee for each business location.

Section 5. (1) The licensed rental vehicle agent shall:

(a) Adopt and utilize the office's preapproved prelicensing course of study for its] managing employees; and

(c) Records of all disclosure training completed by unlicensed[or

(b) Submit to the executive director for approval in accordance with subsection (2) of this section, a prelicensing course of study for its managing] employees.

(2) The register[(a) A prelicensing course of study] shall be made available to the Department upon request.

Section 3. Licensed Rental Vehicle Agent Responsibilities. The licensed rental vehicle agent shall:

(1) Provide[approved by the executive director or its designee prior to authorized use and shall be renewed biennially.

(b) Submission of the prelicensing course of study shall be filed

with Form CE/PL-100, incorporated by reference in 806 KAR 9:340 or electronically through the office's Web site, <http://doi.ppr.ky.gov>.

(e) In approving] a prelicensing course of study[;] for its managing employees, approved by the commissioner;

(2) Administer an[the executive director or its designees shall consider whether the course of study covers, at a minimum, the materials designated in a course outline provided by the office.

(3) The licensed rental vehicle agent shall be responsible for the insurance activities of its licensed managing employees and its unlicensed employees and representatives.

Section 6. (1) The licensed rental vehicle agent shall submit its proposed licensing] examination to [be given to its] managing employees that is approved by the commissioner and includes[to the executive director, or his designee, for approval.

(2) The examination for the managing employees shall include] at least twenty-five (25) questions on the topics in the Department[office]'s course outline. The managing employee applicant shall attain a score of seventy (70) percent or better to pass the examination and be eligible for the license[;]

(3) Be responsible for the[Section 7. (1) The licensed rental vehicle agent shall submit its proposed continuing education courses for its licensed managing employees and its unlicensed employees or representatives to the executive director for approval.

(2) The licensed managing employee shall successfully complete at least six (6) hours of continuing education during each continuing education biennium. At least four (4) hours shall be related to property and casualty] insurance activities of its licensed[and at least two (2) hours shall be related to ethics.

(3) The licensed rental vehicle agent's unlicensed employees or representatives shall receive one (1) hour of continuing education relating to consumer disclosures each year.

(4) Only continuing education courses approved in accordance with subsection (1) of this section or 806 KAR 9:220 may be used to satisfy the continuing education requirements of this section. These continuing education courses shall be taught by approved providers and instructors, which may include the licensed rental vehicle agent.

(5) The] managing employees and[employee license of any individual failing to comply with the continuing education requirements of this section shall be terminated and promptly surrendered to the executive director without demand.

Section 8. (1) The rental vehicle agent licensee shall certify to the executive director on Form CE/RV-302, as prescribed in 806 KAR 9:340, that each licensed managing employee has successfully completed the continuing education required by Section 6 of this administrative regulation for each continuing education biennium in accordance with KRS 304.9-295.

(2) The rental vehicle agent licensee shall certify to the executive director on Form CE/RV-303, as prescribed in 806 KAR 9:340, that] its unlicensed employees and representatives; and

(4) Report all material changes and additions to the Department within thirty (30) days[have successfully completed the continuing education required by Section 6 of this administrative regulation for each continuing education biennium in accordance with KRS 304.9-295.

(3) The rental vehicle agent licensee shall maintain complete records of the prelicensing study and course examination for the managing employees and continuing education for the managing employees and unlicensed employees or representatives for at least three (3) years.

Section 9. The licensed managing employee shall certify to the executive director on Form CE/RV-302, as prescribed in 806 KAR 9:340, that he or she has successfully completed the continuing education required by Section 6 of this administrative regulation for each continuing education biennium in accordance with KRS 304.9-295].

NANCY G. ATKINS, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: September 13, 2019

FILED WITH LRC: September 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2019, at 10:00 a.m. at 215 W. Main Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main Street, Frankfort, Kentucky 40602, phone 1-502-564-6026, fax 1-502-564-1453, email patrick.oconnor@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patrick O'Connor II

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application process and responsibilities of a licensed rental vehicle agent selling insurance.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish an application process and clarify the responsibilities of a rental vehicle agent licensed by the Department of Insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-505 authorizes the commissioner to issue licenses to act as a rental vehicle agent and requires the commissioner to prescribe an application form for a business entity seeking to act as a rental vehicle agent.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish an application process and clarify the responsibilities of a rental vehicle agent licensed by the Department of Insurance.

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

(a) How the amendment will change this existing administrative regulation: This amendment eliminates numerous duplicative requirements and forms to focus on items the Department needs to fulfill its statutory obligations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to make compliance easier.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-505 authorizes the commissioner to issue licenses to act as a rental vehicle agent and requires the commissioner to prescribe an application form for a business entity seeking to act as a rental vehicle agent.

(d) How the amendment will assist in the effective administration of the statutes: This amendment eliminates numerous duplicative requirements and forms to focus on items the Department needs to fulfill its statutory obligations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All vehicle rental locations in the Commonwealth will be affected by this administrative regulation.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Rental vehicle agent licensees will have to apply, maintain a registry to be made available to the department upon request, and pay applicable fees.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Costs will vary depending on the size and activities of a particular rental vehicle agent licensee. This amendment does not change any fees, which are established in a different administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Rental vehicle licensees will have significantly increased ease of compliance as a result of this amendment.

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

(a) Initially: No cost is anticipated as a result of this amendment.

(b) On a continuing basis: No cost is anticipated as a result of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No funding is needed for the implementation and enforcement of this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated applicants are treated similarly.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the Department of Insurance.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.9-505

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated to administer this program for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amended After Comments)

703 KAR 5:280. School improvement procedures.

RELATES TO: KRS 158.6453, 158.6455, 158.782, 160.346, 20 U.S.C. 6301

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) requires the Kentucky Board of Education (KBE) to adopt policies and administrative regulations that shall govern the Kentucky Department of Education (department) in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education, to establish policy or act on all programs, services, and other matters that are within the administrative responsibility of the department. KRS 158.6453(3)(a) requires the KBE to create an assessment system that measures achievement of the state learning goals, ensures compliance with Title I of the federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. sec. 6301, et seq., as amended by the Every Student Succeeds Act (2015) or its successor, and ensures school accountability. KRS 158.6455 requires the KBE to create an accountability system to classify schools and LEAs, and to establish appropriate consequences for schools failing to meet accountability measures. KRS 158.782 requires the KBE to promulgate administrative regulations establishing the process for monitoring and periodic review of schools' turnaround efforts for schools identified for comprehensive support and improvement pursuant to KRS 160.346. KRS 160.346 establishes the process for the required audit and turnaround efforts for schools identified for comprehensive support and improvement. Additionally, KRS 160.346 requires the KBE to create state-wide exit criteria for identified schools, additional action to support schools continuously failing to meet improvement goals, and additional support for LEAs with a significant number of schools identified for comprehensive and targeted support and improvement. Section 1111(c) of Title I of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, 20 U.S.C. 6311(c) and (d), requires the KBE to identify the state's lowest achieving schools as schools identified for comprehensive support and improvement and for those schools to follow the requirements of 20 U.S.C. 6311(c) and (d) regarding school improvement. This administrative regulation establishes the process and procedures for school improvement efforts.

Section 1. Definitions. (1) "Additional Targeted Support and Improvement" means the process for schools identified pursuant to KRS 160.346(2)(b) ["Adequate performance progress" means meeting the exit criteria pursuant to KRS 160.346].

(2) "Advisory leadership team" means the team established pursuant to KRS 160.346(7)(g) and Section 8 of this administration regulation.

(3) "Annual improvement" means a school reaching annual goals, established by the department, in the areas identified for comprehensive support and improvement.

(4) "Audit" means the process established in KRS 160.346(5) and (6).

(5) "Audit team" means the team selected by the LEA, pursuant to KRS 160.346(5), to complete a school or district audit.

(6) "Charter school" means a "public charter school" as defined in KRS 160.1590(12).

(7) "Charter school board of directors" or "governing board" means charter school board of directors as defined in KRS 160.1590(6).

(8) "Comprehensive Support and Improvement" means the process for schools identified pursuant to KRS 160.346(3).

(9) "District" or "school district" means the local school district governed by a local board of education.

(10) "District audit" means an audit that:

(a) Reviews the functioning of the district and the district's ability to manage an intervention in a school identified for comprehensive support and improvement; and

(b) Meets the requirements of Section 5 of this administrative regulation[KRS 160.346(6)].

(11) "Evidence based interventions" is defined in the Elementary and Secondary Education Act, as reauthorized by the Every Student Succeeds Act (2015), 20 U.S.C.A. Section 7801.

(12) "Local education agency" or "LEA" means a local school district as established in KRS 160.010 and KRS 160.020 or a charter school board of directors as established in KRS 160.1590.

(13) "Minority" is defined in KRS 160.345(1)(a).

(14) "School audit" means an audit that:

(a) Reviews the functioning of a school;

(b) Assesses principal capacity for leadership of school turnaround; and

(c) Meets the requirements of KRS 160.346(6).

(15) "School improvement assistance" means a program designed by the department to support improved teaching and learning.

(16) "School improvement plan" means the plan created by schools identified for targeted support and improvement or additional targeted support and improvement pursuant to KRS 160.346(4) and embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(17) "Targeted Support and Improvement" means the process for schools identified pursuant to KRS 160.346(2)(a).

(18) "Turnaround plan" means the plan created pursuant to KRS 160.346~~(7)(h)~~~~(4)(e)~~ and embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(19) "Turnaround team" means the team selected pursuant to KRS 160.346(7)(a).

Section 2. Notification of Status for Comprehensive Support and Improvement. (1) Following notification of a school's identification for comprehensive support and improvement, an LEA shall, within thirty (30) days, ~~and~~

~~(a) declare its intent to either utilize the department for the audit team or another option pursuant to KRS 160.346(5); and~~

~~(b) Declare its intent to either utilize the department for the turnaround team or another option pursuant to KRS 160.346(7)].~~

(2) If the LEA declares its intent to use any option other than the department for the audit team, the LEA shall provide, to the Kentucky Department of Education, the following information:

(a) The name and address of each person included on the audit team;

(b) The role and responsibilities of each person included on the audit team;

(c) The occupation and any vendor affiliations of each person included on the audit team; and

(d) Each person or entity's documented expertise in diagnosing the causes of an organization's low performance and providing advice and strategies resulting in effective turnaround leadership.

(3) If the LEA declares its intent to use any other option other than the department for the audit team, the LEA shall ensure that all audit team members report potential conflicts of interest. The LEA shall report these conflicts of interest to the department and provide information regarding the LEA's work to remedy the conflicts of interest.

(4) Audit team members shall not be employed by or otherwise affiliated with the LEA or school under review.

~~(5) [If the LEA declares its intent to use any option other than the department for the turnaround team, the LEA shall provide the following information:~~

~~(a) The name and address of each person or entity fulfilling the status of turnaround team;~~

~~(b) The role and responsibilities of each person or entity~~

fulfilling the status of turnaround team; and

(c) The evidence-based interventions that shall be utilized by the person or entity fulfilling the status of turnaround team.

(6) If the LEA utilize a private entity as the turnaround team for a school, the LEA shall submit to the department evidence of the private entity's documented success at turnaround diagnosis, training, and improved performance of organizations.

(7) Upon receipt of the notification and appropriate information from the LEA, the department, within fifteen (15) days, shall review the proposals for non-department audit teams and turnaround teams and either accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.

(8) The LEA shall provide the information required in this Section utilizing the "[LEA] Notification of Non-Department Audit [or Turnaround] Team Form incorporated by reference in this administrative regulation.

(9) Non-department audit teams shall complete a Kentucky-specific induction training prior to conducting an audit.

Section 3. Audit Team Membership. For audit teams directed by the department: (1) Members shall be selected from qualified applicants by the department, and approved by the Commissioner of Education, or his designee;

(2) Members shall complete department-provided or department-approved training in any areas needed to effectively perform their duties;

(3) Members shall hold appropriate certification or qualifications for the position being represented;

(4) The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;

(5) The team shall include the following representation:

(a) The chairperson, who shall be designated by the department or its designee, and shall be:

1. A certified administrator approved by the department to provide school improvement assistance;

2. A certified administrator member of the review team; or

3. A similarly qualified professional approved by the department;

(b) An individual approved by the department to provide school improvement assistance;

(c) A teacher who is actively teaching or has taught within the last three (3) years;

(d) A principal who is currently serving or has served as a principal within the last three (3) years;

(e) An LEA administrator who is currently serving or has served in an LEA administrative position within the last three (3) years;

(f) A parent or legal guardian who has or has had a school-aged child; and

(g) A university representative who is currently serving or has served in that capacity within the last three (3) years;

(6) The chair may serve in addition to the six (6) members outlined in subsection (5) of this section, or may be selected from those six (6) members who also meet the qualifications of this section.

Section 4. School Audit. (1) A school audit shall be scheduled within forty-five (45) days of a school's identification for comprehensive support and improvement.

(2) The KBE recommends a school audit, in addition to the requirements established in KRS 160.346(6), consist of and incorporate into the audit process and report the following criteria:

(a) Analysis of state and local education data;

(b) An analysis and recommendation regarding the principal's capacity to lead turnaround in a school identified for comprehensive support and improvement and whether the principal should be replaced;

(c) Review of comprehensive school improvement plans and other planning documents;

(d) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community

members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school council minutes and agendas, if applicable; and

(h) Other information deemed necessary by the Commissioner of Education, or his designee.

(3) Where the audit team is directed by the department, the recommendation of the principal's ability to lead the intervention in the school, as required by KRS 160.346(6)(a)2, shall be based upon an assessment of whether:

(a) The principal demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The principal leads and operates the school under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The principal establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The principal ensures that systems are in place for accurate collection and use of data;

(e) The principal ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The principal ensures that the school implements a comprehensive assessment system that generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement.

(4) An audit team not directed by the department may utilize the criteria established in subsection (3) of this section for the recommendation of principal capacity, as required by KRS 160.346(6)(a)2. An audit team not directed by the department shall include a recommendation as to the principal's capacity to serve as a leader in school intervention and turnaround at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria established in subsection (3) of this Section, it shall provide notification to the department as well as the framework to be used in the analysis of principal capacity and submit the criteria that shall be utilized to the department for approval.

(5) Upon identification as a school in need of comprehensive support and improvement, the authority of the school council shall be suspended.

(6) Pursuant to KRS 160.346, the authority of the school council may be restored if the school is not classified under comprehensive support and improvement status for two (2) consecutive years.

(7) Charter schools shall be subject to a school audit that shall include an addendum providing a determination regarding the governing board's capacity to provide support for turnaround. Each addendum shall include:

(a) Analysis of state and local education data;

(b) A review of the governing board's level of functioning and recommendation to the Commissioner of Education as to whether the governing board has the capacity to manage the intervention in the charter school;

(c) Interviews with governing board members, students, parents, school personnel, authorizer, and community members.

(d) Direct observations;

(e) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(f) Review of charter school governing board minutes and agendas; and

(g) Other information deemed necessary by the Commissioner of Education, or his designee, to assess the functionality of the governing board to support school improvement.

(8) If the audit team chooses not to use the criteria established in subsection (7) of this Section, it shall provide notification to the department as well as the framework to be used in the analysis of the governing board's capacity and submit the criteria that shall be

utilized to the department for approval.

Section 5. District Audit. (1) A district shall be subject to a district audit upon identification of a school within the district for comprehensive support and improvement.

(2) Within forty-five (45) days of identification by the department of a district containing a school identified for comprehensive support and improvement, an audit shall be scheduled to review the functioning of the district's administration and its specific leadership capacity related to each school identified for comprehensive support and improvement.

(3) Each district audit shall include:

(a) Analysis of state and local education data;

(b) A review of the district's level of functioning and recommendation to the Commissioner of Education as to whether the district has the capacity to manage the intervention in each identified school;

(c) Review of comprehensive district improvement plan and other planning documents;

(d) Interviews with local board members, students, parents, school and district personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school board minutes and agendas; and

(h) Other information deemed necessary by the Commissioner of Education, or his designee, to assess the functionality of the district to support school improvement.

(4) If the audit team is directed by the department, the determination of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement shall be based upon an assessment of capacity in the following areas:

(a) The district demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The district leads and operates under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The district establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The district ensures that systems are in place for accurate collection and use of data;

(e) The district ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The district ensures that a comprehensive assessment system, which generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement, is implemented.

(5) ~~Pursuant to KRS 160.346,~~ An audit team not directed by the department may utilize the criteria established in subsection ~~(4)(3)~~ of this Section for recommendation to the Commissioner of Education of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement. An audit team not directed by the department shall include a recommendation as to district functioning and capacity to manage the interventions at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria established in subsection ~~(4)(3)~~ of this Section, it shall provide notification to the department as well as the framework to be used in the analysis of district functioning and capacity to manage the intervention in each identified school to the department for approval.

(6) There shall be only one (1) district audit per district, per year, regardless of the number of schools identified for comprehensive support and improvement located in the district.

Section 6. Notification to Schools and LEAs of Audit Findings.

(1) Following any school audit, the audit team shall submit all findings and the principal capacity recommendation to the

Commissioner of Education.

(2) Following any charter school or district audit, the district or governing board audit findings and capacity recommendations shall be submitted to the Commissioner of Education who shall then make a determination regarding the district or governing board's level of functioning and whether the district or governing board has the capacity to manage the intervention in each identified school.

(3) After completion of the initial school or district audits and within thirty (30) days of receiving the audit findings, the Commissioner of Education shall notify in writing the school, district or charter governing board, and the charter authorizer of the audit findings and recommendation regarding principal or school leader's leadership capacity and authority and a determination regarding district or governing board's leadership capacity and authority. The superintendent shall then make any necessary determination regarding the principal or other certified staff pursuant to KRS 160.346(7)(c)-(e).

Section 7. Turnaround Team and Development of Turnaround Plan for School Identified for Comprehensive Support and Improvement. (1) ~~(a)~~ Within fifteen (15) ~~thirty (30)~~ days after the Commissioner notifies the school, district or charter governing board, and the charter authorizer of the audit findings, as described in Section 6(3) of this administrative regulation ~~are released~~, an LEA shall declare its intent to either utilize the department for the turnaround team or another option pursuant to KRS 160.346(7) and, if the LEA declares its intent to use any option other than the department for the turnaround team, the LEA shall use the "Notification of Non-Department Turnaround Team Form" to provide the following information to the department:

(a) The name and address of each person or entity fulfilling the status of turnaround team;

(b) The role and responsibilities of each person or entity fulfilling the status of turnaround team; and

(c) The evidence-based interventions that shall be utilized by the person or entity fulfilling the status of turnaround team. [the turnaround team shall develop a turnaround plan pursuant to KRS 160.346(7)(h). The turnaround team shall be selected pursuant to the requirements of KRS 160.346(7)(a).]

(2)(b) If the LEA utilizes a private entity to serve as the turnaround team, pursuant to KRS 160.356(7)(a)(1), the LEA shall submit to the department evidence of the private entity's documented success at turnaround diagnosis, training, and improved performance of organizations ~~ensure compliance with Section 2 of this administrative regulation~~ and provide ongoing oversight of the private entity's work, functioning, and accomplishments as the turnaround team.

(3)(e) If the LEA utilizes the local staff and community partners to serve as the turnaround team, pursuant to KRS 160.346(7)(a)(2), the LEA shall ensure the following:

1. Schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the turnaround team; and

2. At least one (1) parent of a student in the identified school is selected as a member of the turnaround team.

(4) Upon receipt of the notification and appropriate information from the LEA, the department shall review within fifteen (15) days the proposals for non-department turnaround teams and either accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.

(5)(d) If the LEA utilizes the department to serve as the turnaround team, the turnaround team shall be comprised of team members selected and approved by the Commissioner of Education, or his designee, to provide school improvement assistance.

(6) Within forty-five (45) ~~thirty (30)~~ days after the Commissioner notifies the school, district or charter governing board, and the charter authorizer of the audit findings, as described in Section 6(3) of this administrative regulation, the turnaround team shall develop a turnaround plan pursuant to KRS

160.346(7)(h).

(7)(2) In addition to the requirements established in KRS 160.346(7)(h), the turnaround plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225 and shall include:

(a) Evidence-based interventions to be utilized to increase student performance and address the critical needs identified in the school audit;

(b) A comprehensive list of persons and entities involved in the turnaround efforts and the specific roles each shall play in the school's turnaround; and

(c) A review of resource inequities that shall include an analysis of school level budgeting to ensure resources are adequately channeled towards school improvement.

(8)(3) ~~The turnaround team shall, no later than thirty (30) days after the turnaround team is on site, present the~~ turnaround plan shall be approved by the superintendent and local board of education, as required by KRS 160.346(7)(h), who shall ~~to the LEA, which shall give final approval,~~ provide the necessary support and resources for the turnaround plan~~;~~ and submit the turnaround plan to the Commissioner of Education for final approval.

(9)(4)(a) Following receipt of the turnaround plan specified in subsection (8)(3) of this section and before the beginning of the school year following the audit, the Commissioner of Education, in consultation with the advisory leadership team, superintendent, and local board of education, shall determine the sufficiency of the school's turnaround plan to meet the needs of the school's turnaround effort.

(b) If the Commissioner of Education finds that the plan is not sufficient to meet the needs of the school turnaround effort for a school identified for comprehensive support and improvement, the department shall provide feedback detailing the deficiencies and advise the LEA and school to make changes to the plan.

Section 8. Advisory Leadership Team. (1) The principal or charter school leader of a school identified for comprehensive support and improvement shall provide, in a format acceptable to the department, the names and addresses of advisory leadership team members appointed pursuant to KRS 160.346(7)(g) to the department.

(2) The department shall maintain a database of all advisory leadership team members appointed pursuant to KRS 160.346(7)(g).

(3) In establishing the advisory leadership team, the principal or charter school leader shall ensure that schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the advisory leadership team.

(4)(2) Meetings of the advisory leadership team shall be open to ~~the~~be public.

(5)(3) Duties of the advisory leadership team shall include:

(a) Providing support for systems that seek to build capacity in school leadership;

(b) Promoting positive school climate and culture; and

(c) Supporting the continual use of data-driven decision-making to support school improvement.

Section 9. Monitoring and Periodic Review of Plan Implementation. (1) Pursuant to the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, 20 U.S.C.A. Section 6301, all schools identified for comprehensive support and improvement shall be subject to monitoring and periodic review by the department.

(2) Monitoring shall include:

(a) Onsite support by department staff if the department is chosen by the LEA to serve as the turnaround team pursuant to KRS 160.346 or if more rigorous intervention by the department is warranted as established in Section 10 of this administrative regulation;

(b) Annual review of school and LEA state accountability data;

(c) Review of indicators of school quality; and

(d) Other measures deemed necessary by the department to

ensure compliance with the Every Student Succeeds Act, or its successor.

(3) Periodic review of the turnaround plan shall include:

(a) Periodic site visits;

(b) Direct observation; and

(c) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members.

Section 10. More Rigorous Intervention. (1) Schools identified for comprehensive support and improvement that do not exit that status after three (3) years shall be subject to intervention by the department including but not limited to:

(a) A school audit conducted by the department;

(b) Onsite assistance by department staff; and

(c) Evaluation and modification of the school turnaround plan.

(2) Schools identified for comprehensive support and improvement that do not exit after three (3) years shall be subject to an audit by the department every two (2) years, or as deemed necessary by the Commissioner of Education.

(3) Schools identified for comprehensive support and improvement that do not make annual improvement for two (2) consecutive years shall be subject to intervention by the department, as established in subsections (1) and (2) of this Section, after the second year;

(4) Districts serving any number of schools identified for comprehensive support and improvement that do not exit after three (3) years, or two (2) years as established in subsection (2) of this Section, shall be subject to a district audit. Additional district audits for districts serving schools identified for comprehensive support and improvement that do not exit that status shall occur every two (2) years, or as deemed necessary by the Commissioner of Education. No district, regardless of the number of schools identified for comprehensive support and improvement that fail to exit that status, shall have more than one (1) district audit every two (2) years.

Section 11. Targeted Support and Improvement and Additional Targeted Support and Improvement. (1) Upon identification as a school for targeted support and improvement or additional targeted support and improvement, the identified school shall comply with the requirements of KRS 160.346(4). The school improvement plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(2) LEAs with a school[schools] identified for targeted support and improvement or additional targeted support and improvement shall monitor and provide support to the school to ensure the successful implementation of the school improvement plan.

Section 12. Significant Number of Schools. (1) In addition to providing notification to LEAs as to the identification of schools for comprehensive support and improvement, additional targeted support and improvement, or targeted support and improvement, the department shall notify LEAs as to whether they shall be considered an LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and improvement, including additional targeted support and improvement.

(2) To determine whether an LEA meets this designation, the department shall calculate, based on the total number of A1 schools, as defined in 703 KAR 5:240, in the LEA, the LEA's percentage of schools identified for comprehensive support and improvement and the LEA's percentage of schools identified for targeted support and improvement, including additional targeted support and improvement. Any LEA containing two (2) or more schools identified for comprehensive support and improvement or targeted support and improvement, including additional targeted support and improvement, and whose percentage of identified schools exceeds ten (10) percent of all schools within the district~~for either comprehensive support and improvement or targeted support and improvement schools~~ shall be designated an LEA supporting a significant number of schools identified for either comprehensive support and improvement or targeted support and

improvement.

Section 13. Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Comprehensive Support and Improvement. (1) LEAs supporting a significant number of schools identified for comprehensive support and improvement shall receive the following technical assistance:

- (a) A district audit, or school audit if a charter school, conducted by the department; and
- (b) Onsite support from department staff.
- (2) The district audit, or school audit if a charter school, completed by the department pursuant to subsection (1)(a) of this Section shall take the place of any district or school audit conducted under Sections 4 and 5 of this administrative regulation.
- (3) Department staff shall:
 - (a) Coordinate with the LEA to ensure direct support of schools identified for comprehensive support and improvement;
 - (b) Review, via the district or school audit, if a charter school, resources and allocations to determine if they are being used effectively for school improvement;
 - (c) Work with the LEA to address any identified resource inequities that negatively impact schools and students; and
 - (d) Work with the LEA to develop sustainable systems to support school improvement.

Section 14. Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Targeted Support and Improvement. (1) LEAs supporting a significant number of schools identified for targeted support and improvement, including additional targeted support and improvement, shall receive the following technical assistance:

- (a) Periodic site visits; and
- (b) Onsite support by department staff.
- (2) Department staff shall:
 - (a) Review LEA resources and allocations to determine if they are being used effectively for school improvement;
 - (b) Provide technical assistance to the LEA regarding resource allocation to support school improvement; and
 - (c) Connect LEAs with professional development opportunities to build capacity for school improvement efforts.

Section 15. Exit Criteria. (1) A school identified for comprehensive support and improvement pursuant to KRS 160.346(3)(a) or (c) shall exit that status if:

- (a) It no longer meets the criteria for identification; and
- (b) It demonstrates~~continued~~ progress on the overall score, which encompasses all indicators included in Kentucky's accountability system as established in 703 KAR 5:270, for the group or groups that served as the basis for identification~~the data that were the basis for identification~~.

(2) Schools identified for comprehensive support and improvement pursuant to KRS 160.346(3)(b) shall exit that status if they no longer meet the criteria for identification.

(3) Schools identified for comprehensive support and improvement as a result of more than one (1) criteria shall exit if all relevant exit criteria are met.

~~(4) [(3)] Schools identified for targeted support and improvement pursuant to KRS 160.346(2)(a) shall exit that status if they no longer meet the criteria for identification~~~~the identified subgroup is no longer below the performance of all students in the bottom five (5) percent of Title I schools or non-Title I schools within that range of Title I schools and demonstrates continued progress on the data that served as the basis for identification~~.

~~(5) [(4)] A school~~~~[Schools]~~ identified for additional targeted support and improvement pursuant to KRS 160.346(2)(b) shall exit that status if the identified subgroup:

- ~~(a) Is no longer at or below the performance of all students in the bottom five (5) [ten (10)] percent of Title I schools or non-Title I schools within that range; and~~
- ~~(b) Demonstrates progress on the overall score, which encompasses all indicators included in Kentucky's accountability system as established in 703 KAR 5:270.~~~~[LEAs may include additional exit criteria at their discretion.]~~

(6) Schools identified for additional targeted support and improvement pursuant to KRS 160.346(2)(b) that do not exit that status within three (3) years shall be identified for comprehensive support and improvement pursuant to KRS 160.346(3)(c).

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

~~(a) "[LEA] Notification of Non-Department Audit~~~~[or Turnaround] Team Form", August 2019; [February 2018, is incorporated by reference.]~~

(b) "Notification of Non-Department Turnaround Team Form", August 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, JR., Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: August 11, 2019

FILED WITH LRC: August 14, 2019 at 9 a.m.

CONTACT PERSON: Deanna Durrett, General Counsel,
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (ESSA) requires the Kentucky Department of Education (KDE) to adopt a system of accountability and support for low-achieving schools and districts. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for comprehensive support and improvement (CSI), and Section 1111(d)(2) requires KDE identify schools for targeted support and improvement (TSI). Additionally, KRS 160.346 requires the Kentucky Board of Education (KBE) to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools. This regulation establishes a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346.

(b) The necessity of this administrative regulation: This amended regulation is necessary because it establishes a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346. Amendments to 703 KAR 5:280, including incorporating new terminology and expectations for schools identified for Additional Targeted Support and Improvement (ATSI) as well as establishing the exit criteria for schools identified for TSI and ATSI, are necessary to align the regulation with proposed revisions to Kentucky's Consolidated State Plan and with KRS 160.346 as amended by Senate Bill (SB) 175 (2019).

(c) How this administrative regulation conforms to the content of the authorizing statute: This amended regulation conforms to federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and

provide technical assistance to school districts with a significant number of TSI schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation assists in the effective administration of federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools.

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

(a) How the amendment will change this existing administrative regulation: Substantive amendments to 703 KAR 5:280 include distinguishing between schools identified for TSI and those identified for ATSI as well as establishing the exit criteria for schools identified for TSI and ATSI.

(b) The necessity of the amendment to this administrative regulation: Substantive amendments to 703 KAR 5:280 are necessary to align the regulation with proposed revisions to Kentucky's Consolidated State Plan and with KRS 160.346 as amended by SB 175 (2019).

(c) How the amendment conforms to the content of the authorizing statute: Substantive amendments to 703 KAR 5:280 conform to federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools.

(d) How the amendment will assist in the effective administration of the statutes: Substantive amendments to 703 KAR 5:280 assist in the effective administration of federal and state statute by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local education agencies (LEAs), the KBE, and KDE will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: LEAs with schools identified for CSI to comply with the new turnaround team requirements in Section 7 of the amended regulation, including utilization of the "Notification of Non-Department Turnaround Team Form" that is incorporated by reference in Section 16 of the amended regulation. Also, LEAs with schools identified for TSI, including ATSI, will have to comply with Section 11 of the amended regulation, which relates to school improvement plans, and LEAs with schools identified for CSI and/or TSI, including ATSI, will have to meet the revised criteria established in Section 15 of the amended regulation in order for the identified school(s) to exit that status. The KBE and KDE will

implement the amended regulation, which clarifies the technical assistance that will be provided to districts serving a significant number of TSI and/or ATSI schools pursuant to KRS 160.346(11) as well as revises exit criteria for schools identified for CSI, TSI, and ATSI.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated budget impact related to the amendment of this administrative regulation for local education agencies, the KBE, or KDE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation conforms to federal and state statutes, including ESSA and KRS 160.346, and conformance with authorizing statutes ensures clarity and legal compliance for the entities identified in question (3). Further, the system of accountability and support for low-achieving schools and districts provided in this regulation is aimed at creating sustainable turnaround and, ultimately, spurring school and district improvement across Kentucky.

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

(a) Initially: ESSA, which became effective in 2015, requires KDE to adopt a system of accountability and support for low-achieving schools and districts. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools. Because the KBE and KDE have been complying with these federal and state statutes since their effective dates, there is no initial cost for monitoring and support.

(b) On a continuing basis: KDE incurs continuing costs as a result of the obligations in ESSA and KRS 160.346 to provide support, monitoring, and technical assistance to low-achieving schools and districts. Since the state legislature's decision not to fund the Commonwealth School Improvement Fund in the 2018-2020 biennial budget, federal funding has supported this work. Kentucky is expected to receive \$600,000 under Title I, Part A of ESSA to support school improvement in identified schools.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional anticipated costs for the implementation and enforcement of the amendment of this administrative regulation; however, KDE incurs continuing costs as a result of the obligations in ESSA and KRS 160.346 to provide support, monitoring, and technical assistance to low-achieving schools and districts. These costs are covered using federal funding, and Kentucky is expected to receive \$600,000 under Title I, Part A of ESSA to support school improvement in identified schools.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment to this administrative regulation applies equally to all local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies, the Kentucky Board of Education (KBE), and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no anticipated budget impact related to the amendment of this administrative regulation for any state or local government agency; however, KDE incurs continuing costs as a result of the obligations in ESSA and KRS 160.346 to provide support, monitoring, and technical assistance to low-achieving schools and districts. These costs are covered using federal funding, and Kentucky is expected to receive \$600,000 under Title I, Part of ESSA to support school improvement in identified schools.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

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

(c) How much will it cost to administer this program for the first year? The Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (ESSA), which became effective in 2015, requires KDE to adopt a system of accountability and support for low-achieving schools and districts. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of ESSA require KDE to identify schools for CSI, and Section 1111(d)(2) requires KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to recommend principal capacity criteria to turnaround audit teams, establish statewide exit criteria for schools identified for CSI and TSI, and provide technical assistance to school districts with a significant number of TSI schools. Because the KBE and KDE have been complying with these federal and state statutes since their effective dates, there is no initial cost for monitoring and support.

(d) How much will it cost to administer this program for subsequent years? KDE incurs continuing costs as a result of the obligations in ESSA and KRS 160.346 to provide support, monitoring, and technical assistance to low-achieving schools and districts. Since the state legislature's decision not to fund the Commonwealth School Improvement Fund in the 2018-2020 biennial budget, federal funding has supported this work. Kentucky is expected to receive \$600,000 under Title I, Part A of ESSA to support school improvement in identified schools.

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

Revenues (+/-): N/A
Expenditures (+/-): NA
Other Explanation: N/A

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:330. Child protective services.

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of [for] the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to implement programs

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

Section 1. Definitions.

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

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

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

(c) Child or family strengths and protective capacities.

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

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

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

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

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

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

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

(d) Strengthening family life; and

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

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

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

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

(a) Investigation; or

(b) Assessment.

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

(a) Has been abused or neglected;

(b) Is dependent; or

(c) Is a victim of human trafficking.

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

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

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

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

(14)[(43)] "Services needed" means a low risk finding with no

perpetrator that indicates a family needs to be linked to community services.

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

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

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

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

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

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

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

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

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

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

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

Section 2. A Report of Child Abuse, Neglect, or Dependency.

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

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

1. Child abuse, neglect, or dependency; or

2. Human trafficking of a child.

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

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

a. Abuse, neglect, or dependency; or

b. Human trafficking;

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

3. The location of the child and family;

4. Knowledge or suspicion of a previous incident;

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

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

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

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

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

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

1. Who is alleged to be dependent; or

2. And alleged:

a. Abuse or neglect perpetrated by a caretaker; or

b. Human trafficking of the child.

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

(2) The cabinet shall not undertake an investigation or assessment for a report of abuse or neglect allegedly perpetrated by a non-caretaker, with the exception of a report of human trafficking or a joint investigation with law enforcement pursuant to KRS 620.040(3), but shall refer the matter in compliance with KRS 620.030(1).

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

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

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

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

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

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

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

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

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

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

a. Age of the child;

b. Precipitating factors;

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

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

5. A situation in which a child is likely to be physically abused;

or

6. Physical injury to a child involved in an incident of domestic violence;

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

1. Hygiene neglect if:

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

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

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

3. Food neglect if a child shows symptoms of:

a. Malnutrition;

b. Dehydration; or

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

4. Clothing neglect if a child suffers from:

a. Illness;

b. Exposure; or

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

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

6. Educational neglect if the:

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

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

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

a. Be life-threatening;

b. Result in permanent impairment;

c. Interfere with normal functioning and worsen; or

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

8. Neglect due to a caretaker's use of drugs or alcohol that results in [At risk of harm due to an act described at KRS 600.020(1), if a child is]:

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

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

(ii) KRS 620.030(2);

b. A child's facilitated access to and [Involved in an incident of domestic violence];

~~c. Permitted to use of drugs or alcohol that may result in a life-threatening situation for the child under circumstances that create a risk to the emotional or physical health of the child;~~

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

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

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

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

9. Exploitation neglect if the:

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

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

c. Child is a victim of human trafficking;

(c) Investigate or conduct an assessment upon the receipt of a report of sexual abuse if the report:

1. [Receive and investigate a report that] Alleges sexual abuse of a child committed or allowed to be committed by a caretaker. An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease; or

2. Alleges a situation in which the factors provided in the report indicate that:

a. An act of sexual abuse, sexual exploitation, or prostitution involving a child may have occurred; or

b. The child exhibits physical or behavioral indicators of sexual abuse;

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

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

(e) Investigate or conduct an assessment upon the receipt of a report that alleges dependency if the report alleges that a child is dependent pursuant to KRS 600.020(20)[600.020(25)].

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

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

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

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

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

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

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

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

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

(6) An abandoned newborn infant pursuant to KRS 620.350 shall be determined to be dependent unless indicators of child physical abuse or child neglect are present[A report of corporal punishment described in subsection (5)(f) of this section shall be reported to and assessed by the cabinet, if alleged to be committed by a caretaker parent who:

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

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

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

the immediate safety and risk of harm to a child.

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

(a) Includes a child who is:

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

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

(b)1. Involves a child who is:

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

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

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

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

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

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

(i) Perpetrator has access to the child; or

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

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

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

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

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

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

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

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

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

(8) Cabinet staff shall:

(a) Advise the individual under investigation of the complaints or allegations in accordance with 42 U.S.C. 5106a(b)(2)(B)(xviii); and

(b) Notify the parent or legal guardian of the child alleged to be abused, neglected, or dependent pursuant to KRS 620.050(5).

(9) A written assessment shall:

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

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

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

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

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

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

(b) Necessary to:

1. Reduce risk to a child; and

2. Provide family support.

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

(12)(a) The cabinet may develop a plan for services [Prevention Plan] at any point during an investigation or assessment to protect the health and safety of a child.

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

1. ~~[Completed in hardcopy;~~

2.] Developed in conjunction with a family and the family's

identified support system;

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

3. [and

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

4. Provided to all participants.

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

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

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

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

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

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

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

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

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

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

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

(a) From law enforcement; or

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

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

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

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

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

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

Section 4. Alleged Perpetrators of Abuse or[;] Neglect[;—or Dependency] Age Twelve (12) to Eighteen (18).

(1) A report of child abuse or[;] neglect[;—or dependency] involving alleged perpetrators in a care-taking role age twelve (12) to eighteen (18) shall be subject to investigation or assessment.

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

Section 5. Child Fatality or Near Fatality Investigations.

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

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

(3) If a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the service

region administrator or designee[Office of the Director of the Division of Protection and Permanency].

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

(a) The biological or legal parents; and

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

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

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

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

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

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

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

or

2. Physical management[Therapeutic hold] applied pursuant to 922 KAR 1:300.

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

(a) Judge of the committing court; and

(b) Guardian ad litem for the deceased child.

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

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

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

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

(10) The cabinet shall:

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

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

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

Section 6. Reports of Child Abuse, Neglect, or Dependency in Cabinet-approved Homes or Licensed Facilities.

(1) Pursuant to KRS 620.030(5), the cabinet shall have the authority to obtain necessary information to complete an investigation in a report of child abuse, neglect, or dependency in a:

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

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

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

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

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

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

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

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

(b) Assign staff to conduct the investigation.

(3) If a report of alleged child abuse or neglect in a licensed child-care center, a certified family child-care home, or a registered child care provider is accepted, cabinet staff shall:

(a) Notify the cabinet's Division of Child Care to share

information and request assistance in locating alternate care if needed; and

(b) Conduct an investigation.

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

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

(b) Conduct an investigation.

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

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

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

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

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

(a) Licensed child-care center;

(b) Certified family child-care home; or

(c) Registered child care provider.

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

(a) Licensed child-care center;

(b) Certified family child-care home;

(c) Registered child care provider;

(d) Licensed child-caring facility; or

(e) Licensed child-placing agency.

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

Section 7. Interviewing a Child in a School Setting.

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

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

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

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

Section 8. Investigation of an Employee of the School System.

If a report of child abuse or neglect involving school personnel is accepted, the following shall apply:

(1) An investigation shall be conducted;

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

(a) The child;

(b) The parent or legal guardian;

(c) The alleged perpetrator; and

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

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

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

(a) That an investigation has been conducted;

(b) The results of the investigation; and

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

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

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

Section 10. Substantiation Criteria and Submission of Findings.

(1) The cabinet shall use the definitions of "abused or neglected child" in KRS 600.020(1) in determining if an allegation is substantiated.

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

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

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

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

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

1. Unsubstantiated child abuse or neglect;

2. Substantiated child abuse or neglect;

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

4. Unable to locate the child;

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

6. No finding; or

7. Closed, which may include completed service provision.

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

1. Confirmed human trafficking;

2. Not confirmed human trafficking; or

3. Unable to locate the child.

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

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

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

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

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

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

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

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

(b) The results of the investigation;

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

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

Section 11. Appeals.

(1) The perpetrator of a substantiated finding of child abuse or neglect may request a hearing in accordance with 922 KAR 1:480.

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

Section 12. Closure ~~and Aftercare Planning~~. (1)(a) A decision

to close a child protective services case shall be based on evidence that the factors resulting in the child abuse, neglect, or dependency have been resolved to the extent that the family is able to:

1. Protect the child; and
2. Meet the needs of the child.

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

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

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

(4) A family shall be:

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

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

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

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

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

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

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

(9) The cabinet may request the assistance of a court of competent jurisdiction to protect the child in accordance with KRS 620.070.[~~Section 13. Incorporation by Reference.~~]

(1) ~~The following material is incorporated by reference:~~

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

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

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

Eric T. Clark, Commissioner
Adam M. Meier, Secretary

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

(1) Provide a brief summary of:

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

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605 -

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

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

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

This administrative regulation is being amended in response to comments received to include that the cabinet may participate in an investigation involving a noncustodial caretaker if requested by law enforcement, notification of an investigation shall be given to the parent or legal guardian of a child, and investigation findings shall be shared with a guardian as an alternative to the custodial parent, as appropriate.

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

This administrative regulation is being amended in response to comments received for compliance with statutory requirements.

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

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

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

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

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

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): Regulated entities will experience no new or additional costs as a result of this amendment.

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

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

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

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

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

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

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

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 5106a, KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate any revenue for state or local government.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Amendment)

16 KAR 9:060. The district[alternative] training program for preparation of candidates for initial teacher certification.

RELATES TO: KRS 161.028, 161.030, 161.048, 161.049

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048, 161.049

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 and KRS 161.049 directs the Education Professional Standards Board (EPSB) to adopt administrative regulations establishing standards and procedures for local district training programs and the approval [and evaluation process] for these programs. This administrative regulation establishes the required elements of a local district training program, outlines the training and responsibilities required of the professional support team, and establishes the training which a candidate for alternative certification shall be provided. In addition, the administrative regulation establishes the process for evaluation of the candidate and evaluation of the district training program.

Section 1. The district[alternative] training program as defined in KRS 161.048 and 161.049 is an alternative certification program to prepare a candidate for initial teacher certification at any grade level. A local district or a group of districts may seek approval to offer the district training program in all instructional fields [for middle-grade teachers as identified in 704 KAR 20:080 and TEC 35.0 of the Kentucky Standards for the Preparation-Certification of Professional School Personnel incorporated by reference in 16 KAR 5:013 and for secondary classroom teachers as identified in 704 KAR 20:070 and TEC 40.2] including interdisciplinary early childhood education, except for the preparation of teachers of exceptional children.

Section 2. District Plan. (1) The local school district or group of districts[consortium] shall submit a plan for the alternative training program for approval by the (EPSB)[Education-Professional Standards Board], to include the following:

(a) Written evidence that the district has sought joint sponsorship of the program with an accredited college or university.

(b) The names of a four (4) member professional support team for each candidate, as described in Section 4 of this administrative regulation.

(c) The names and qualifications of personnel in addition to[other than] the four (4) member professional support team, if any, who will provide formal instruction as described in Section 5 of this administrative regulation.

(d) The training program for the support team, as described in Section 6 of this administrative regulation.

(e) The professional development plan[training program] for each candidate, as described in Section 5 of this administrative regulation.

[(f) A tentative budget to include expected personnel costs, for the period of time for which the district is requesting approval of the proposal, which may not exceed five (5) years.]

[(g)] Name, title, address and telephone number of program director.

[(g)][(h)] Appeal process.

1. The sponsoring district or consortium shall establish an appeals process for candidates in the alternative training program and shall notify the Education Professional Standards Board of this process at the time of application for approval of the program.

2. Complaints relative to failure of the sponsoring district or consortium or the professional support team to comply with and follow all prescribed statutory and regulatory requirements and procedures of an approved alternative training program shall be directed to and assessed by the superintendent or designee of the sponsoring district or consortium.

3. The district shall notify the Education Professional Standards Board of all appeals and actions taken as a result of appeals.

[(i)] Roles and expectations for the professional support team during the eight (8) week training and the two (2) subsequent eighteen (18) week training sessions.

(2) The proposed district training program plan [for an alternative training program] shall be [reviewed by staff of] the EPSB[Kentucky Department of Education] for review by staff. Staff shall review the district training program plan in terms of the following criteria:

(a) Compliance of the proposed program with requirements and standards set forth in KRS 161.08, KRS 161.049, [16 KAR 9:050] and this administrative regulation.

[(b) [Evidence that sufficient financial and staff resources are available to the program for its effective implementation.]]

[(c)] Qualifications of program staff in the areas of instruction and supervision for which they have responsibility, including qualifications described in Section 6 of this administrative regulation. The district training program plan [for the proposed alternative certification program] shall provide evidence to the satisfaction of the EPSB[Education-Professional Standards Board] in support of the [three (3)] criteria listed above. Staff shall recommend acceptance or denial of the plan to the EPSB which shall include supporting[the] rationale for the recommendation. The EPSB shall review the staff recommendations, shall approve or deny each plan and shall transmit the decision and rationale for the decision to the district. The district may revise and resubmit a plan that has been denied. Any approval granted by the EPSB[Education-Professional Standards Board] shall specify the period of approval of the district training program, which shall not exceed seven (7)[five (5) years]. Districts may apply for an extension of approval as outlined in Section 11 of this administrative regulation.

(3) The district shall offer employment pursuant to KRS 161.048(3)(d) to a candidate seeking certification only after the district plan for an alternative training program has been approved by the EPSB[Education-Professional Standards Board].

(4) For each candidate seeking certification through an approved district[alternative] training program, the district shall maintain a file, either in hardcopy format or electronic format, which contains[submit] the following and shall be made available to EPSB upon request:

(a) Evidence of a criminal background[records] check and clear C/AN check in compliance with KRS 160.380(4).

[(b) [Transcripts of all college work undertaken by the candidate.]

[(c) Three (3) recent letters of reference from persons not related to the candidate who are familiar with the candidate's professional work.]

[(d)] Identification of the school, or an accurate description of another location, in which the candidate shall be trained during the first eight (8) weeks of training. Reasons for selecting a nonschool site shall be provided.

[(e)] Identification of the school, or an accurate description of another location, in which the candidate shall teach and be trained during the two (2) subsequent eighteen (18) week periods of training.

[(f)] A proposed list of grade levels and classes the candidate will teach.

[(g)] The proposed daily workload and schedule of the candidate for each phase of the training.

[(h) A copy of the official letter offering employment to the candidate.]

[(i) Evidence that the candidate has accepted the offered employment.]

[(j)] The names and titles[positions] of the members of the four (4) person professional support team to include evidence that each member has successfully completed training and testing for participation in the Kentucky teacher internship program [or the required update as established in 704 KAR 20:320].

Section 3. Candidates. An eligible candidate who meets the requirements of KRS 161.048 (3)(a)-(d) and 16 KAR 2:010, Section 3 (1), shall be issued a one-year provisional teaching certificate to participate in the district training program. (2) The candidate shall apply to the EPSB and provide:

(a) Official transcripts of all college work undertaken by the candidate establishing proof of a bachelor's degree or graduate

degree and grade point average;

(b) Proof of a passing score on the academic content assessment, as established in 16 KAR 6:010, in the area in which certification is being sought;

(c) Documentation of the candidate's employment history, including a position description that shows a direct connection to the academic content area for which certification is being sought; and

(d) Written evidence of an offer of employment by a school district with an approved district training program.

(3) A candidate must be issued a one-year provisional teaching certificate prior to participation in the district training program.

Section 4[3]. ~~[Orientation and]~~Professional Development Plan for a Candidate. ~~A[An orientation and a] professional development plan to assist[for assisting] each candidate in achieving a recommendation for approval[toward proficiency] shall be created and maintained[provided] by the local school district as follows:~~

~~(1) The four (4) member professional support team and the candidate, or a small cohort of candidates, shall meet before the candidate begins Phase I training to[and shall] be oriented to the district[approved] training program[proposal] and to the responsibilities and expectations for each team member and the candidate.~~

~~(2) The professional support team shall adopt[draft] an individual professional development plan for the candidate which addresses[te cover] all phases of the training. [The candidates' professional development plan shall be consistent with the district plan for assisting a teacher toward proficiency as described in KRS 156.101(6)(c)6 and with the district's approved alternative certification proposal, and shall be fully discussed with the candidate.]~~

~~(3) The candidate's professional development plan shall be maintained by the district and shall be made available to the EPSB on request[submitted to the Education Professional Standards Board for review and approval, along with documentation of each team member's knowledge and skills as described in Section 6 of this administrative regulation and the candidate's application for candidacy as described in Section 3 of 16 KAR 9:050. If the board's judgment is that the professional development plan is not consistent with the approved district plan, the board may refuse to approve the individual plan and may deny the candidacy until a professional development plan is approved].~~

Section 5[4]. Professional Support Team. Each member of the professional support team shall provide to the district documented evidence of that he or she possess knowledge and skills in field and clinical supervision, mentoring, conferencing, student assessment, evaluation of curricula and teaching skills, and dealing with a variety of students. Documentation of these competencies shall be maintained by the district and made available to EPSB upon request. A four (4) member professional support team ~~[who have successfully completed the training identified in Section 6 of this administrative regulation]~~ shall be identified by the local school district for each candidate seeking certification through the district training program[an approved alternative training program] as follows:

~~(1) School principal. The principal of a[the] school in the district where the candidate will be employed[initially assigned to teach] shall chair the professional support team. He or she shall keep records of the following:~~

~~(a) All informal visits and critiques;~~

~~(b) All formal visits and evaluations; and~~

~~(c) Documented changes made in the candidate's professional development plan. At regular intervals, the chair shall convene the professional support team in order to discuss with the candidate his or her professional progress and appropriate modifications in the professional development plan.~~

~~(2) Experienced teacher. The teacher shall hold current certification valid for the grade range and subject area or a [closely] related subject area for which the candidate is seeking certification. The teacher shall hold Rank I or II, and shall have at least four (4) years of full-time teaching experience. At least one (1) year of the prior teaching experience shall be in the district that has employed the candidate.~~

~~(3) Instructional supervisor. The instructional supervisor shall hold a valid Kentucky certificate for supervision of instruction and shall have at least one (1) year of prior experience in the district that has employed the candidate. If an instructional supervisor is not available, the district shall assign a person who has held the full-time position of supervisor of instruction for at least one (1) year within the prior three (3) years and who holds a valid Kentucky certificate for supervision of instruction.~~

~~(4) College or university faculty member. The faculty member shall be a [full-time] faculty member of an EPSB accredited [senior] college or university [who is associated with the teacher preparation program and] whose academic field is the same as or closely related to the field in which the candidate is seeking certification. If a faculty member is not available, the district shall assign a person approved by an EPSB accredited[a senior] college or university who has held the [full-time position] of college faculty member within the prior three (3) years [and whose academic field is the same as or closely related to the area in which the candidate is seeking certification].~~

Section 6. District Training Plan Framework~~[Section 5. Training for the Candidate]~~. A three (3) phase training program for each candidate, as established in KRS 161.049 shall occur to ensure implementation of the candidate's professional development plan and a minimum of 250 hours of formal instruction. Formal instruction shall be for the purpose of ensuring that the candidate acquires the competencies established in 16 KAR 1:010[704 KAR 20:070, Sections 2, 3, 4, 5, 6 and 8] and shall relate directly to the candidate's professional development plan ~~[and to the knowledge base of the Kentucky teacher internship program]~~. Formal instruction shall include:

~~(1) Phase I training. Phase I shall include a full-time seminar and practicum of no less than eight (8) weeks' duration prior to the time the candidate assumes responsibility for a classroom and shall comply with the following:~~

~~(a) The district training program shall include an introduction to basic teaching skills through supervised teaching experiences with students.~~

~~(b)[The training program shall integrate the candidate's supervised teaching experience with formal instruction in human growth and development, basic teaching skills, classroom management, dealing with diverse learning styles of diverse student populations, student assessment, and the knowledge base for the Kentucky teacher internship program.]~~

~~(e)[The district shall provide a formal orientation to the policies, organization, and curriculum, [and student characteristics] of the employing district. [The orientation shall be supervised by, or provided by, one (1) or more members of the professional support team.]~~

~~(c)[(d)] During the last week of Phase I training, evaluations shall be performed by or supervised by one (1) or more members of the professional support team, which[and] shall include written tests [and observations of the candidate's classroom performance]. The candidate's understanding in the areas of formal instruction [outlined in Section (5)(1)(b)] and the candidate's performance in the competency areas established in the designated sections of 16 KAR 6:010[704 KAR 20:070] shall be evaluated, along with the candidate's understanding of policies, organization and curriculum of the employing school district. Evaluation results in written form shall be shared with all members of the professional support team and shall be used to modify and improve the candidate's professional development plan. The revised professional development plan shall be discussed with the candidate and maintained by the district[forwarded to the Kentucky Department of Education].~~

~~(2) Phase 2 training. Phase 2 shall include eighteen (18) weeks of formal instruction, informal observations and critiques of the candidate during which time the candidate shall have responsibility for one-half (1/2) time classroom assignment. Formal instruction, informal observations, critiques and evaluations shall relate directly to the candidates' professional development plan and to the competencies established in 16 KAR 1:010[704 KAR 20:070]. Phase 2 training shall comply with the following:~~

~~(a) Prior to or during the first week of Phase 2 training the team shall discuss with the candidate the purpose and expectations of~~

VOLUME 46, NUMBER 7– JANUARY 1, 2020

informal observations, critiques, formal observations and evaluations, as defined in Sections 7 and 8 of this administrative regulation.

(b) Informal observation and critique. The candidate shall be visited, informally observed, and critiqued at least one (1) time per week by one (1) or more members of the professional support team. ~~[Over the eighteen (18) week period, each member of the team shall visit, informally observe and critique no less than five (5) times].~~

(c) Formal observation. Each team member shall schedule a formal observation of the candidate at least one (1) time during the first five (5) weeks, one (1) time during the second five (5) weeks, and one (1) time during the last eight (8) weeks.

(d) Formal evaluation. The team shall meet to formally evaluate the candidate at the end of five (5) weeks, at the end of ten (10) weeks, and at the end of eighteen (18) weeks. After each ~~[set of]~~ formal evaluation[evaluations], the team shall meet with the candidate to discuss evaluation results which may lead to modifications of the candidate's professional development plan.

(3) Phase 3 training. Phase 3 training shall include eighteen (18) weeks of formal instruction, informal visits and critiques ~~[of classroom assignment]~~, and at least two (2) formal observations and evaluations during which time the candidate may[shall] have full-time classroom assignment. Phase 3 training shall comply with the following:

(a) Each member of the professional support team shall informally visit and critique the candidate at least one (1) time per month. Each informal observation shall last no less than one (1)[a] full class period.

(b) ~~The [district plan shall show time and personnel allocations to permit the] candidate shall[te]~~ spend at least one (1) class period per week observing an experienced teacher. Teachers selected for observation shall represent a variety of classroom subjects and levels, and shall be chosen for their ability to demonstrate a variety of exemplary teaching techniques and strategies.

(c) Each member of the professional support team shall formally observe and evaluate the candidate at least two (2) times during Phase 3. No more than two (2) months shall pass[eight (8) weeks shall occur] without a formal observation.

(d) ~~[Formal instruction shall continue during this period.]~~

(e) ~~The candidate shall take the pedagogy assessment[professional knowledge portion of the core battery of the NTE] no earlier than the Phase 3 training period. The score required of the candidate is established in 16 KAR 6:010. The professional support team shall not recommend approval for a candidate until a passing score is achieved.~~

~~[Section 6. Training for the Professional Support Team. (1) Each member of the professional support team shall successfully complete the training to prepare classroom observers for the Kentucky teacher internship program. Each member of the team shall successfully complete the written and coding tests for the Kentucky teacher internship program before undertaking service on a professional support team. In no case shall training for a team member occur after the start of Phase I training.]~~

~~(2) In addition, each member of the professional support team shall provide documented evidence of possessing knowledge and skills in field and clinical supervision, mentoring, conferencing, student assessment, evaluation of curricula and teaching skills, and dealing with a variety of students including children of diverse cultural backgrounds and exceptional children. Documentation of these competencies shall accompany the district proposal.~~

~~(3) Prospective team members who have successfully completed the training and testing for the Kentucky teacher internship program, but who lack documented evidence of knowledge and skills in one (1) or more of the areas specified in subsection (2) of this section, shall successfully complete training in these areas. The training shall be completed prior to Phase I of the district's approved program, and shall be provided through, or approved by, the Kentucky Department of Education.]~~

Section 7. Informal Observation and Critique. (1) During an informal observation visit, each team member shall record observations regarding the candidate's performance in relation to the standards identified in 16 KAR 1:010[Kentucky teacher internship knowledge base] and the performance of students in the classroom.

~~[Team members may use the classroom observation instrument of the Kentucky teacher internship program.]~~ Each informal observation leading to a critique shall be no less than twenty (20) minutes. Visits for informal observations shall be scheduled and unscheduled, and over the period of eighteen (18) weeks shall cover the range of times and activities for which the candidate is responsible for the classroom.

(2) At a critiquing session following an informal observation, results and feedback shall be shared with the candidate. The critique shall occur as soon as possible after the observation in order to assist the candidate to improve his classroom performance and the performance of his or her students.

Section 8. Formal Observation and Evaluation. (1) Formal observations shall be scheduled in advance with the candidate and shall last no less than one (1) class period. ~~[Team members shall use the classroom observation instrument of the Kentucky teacher internship program during each formal observation and shall share observation results with the candidate as soon as possible after the end of the formal observation.]~~

(2) As a part of the formal evaluation, team members shall review the candidate's progress as recorded on observation instruments, notes and other documents relating to the candidate's classroom performance.

(3) Each formal evaluation shall consist of the team's written assessment of the candidate's performance as measured through formal and informal observations.

(4) Following each set of formal evaluations, the team shall meet with the candidate to discuss evaluation results, which may lead to modification of the candidate's professional development plan. The team and the candidate shall plan together for the candidate's professional growth over the following training periods.

Section 9. Evaluation Report of the Candidate. (1) At the conclusion of the district[alternative] training program for each candidate, the chair of the professional support team shall prepare a comprehensive evaluation report on the candidate's performance. The professional support team shall by majority vote recommend one (1) of the following actions to the EPSB[Education Professional Standards Board]:

(a) Approved. The professional support team recommends issuance of the teaching certificate[statement of eligibility] for the candidate~~[, who may seek a teaching position and undertake the Kentucky teacher internship program established under 704 KAR 20:320].~~

(b) Insufficient. The professional support team recommends that the candidate be allowed to seek reentry into a district training[alternative teacher preparation] program. The team shall identify areas of insufficiency and shall attach to the recommendation a suggestion for remediation in each area. The team shall also recommend a point of reentry to a district training[alternative preparation] program. A provisional certificate shall be reissued for a second year if the candidate is employed by a district for participation in its approved training programs for a subsequent year.

(c) Disapproved. The professional support team recommends that the candidate not be permitted to enter a district training[alternative teacher preparation] program. The team shall identify specific reasons for this recommendation and shall document the evidence used by the team to reach its decision. Reasons for the recommendation ~~[of disapproved]~~ shall be submitted with[attached to] the recommendation form, and shall be directly related to one (1) or more of the areas of formal instruction, testing, and classroom performance specified in Sections 5, 7 and 8 of this administrative regulation.

(2) If team members cannot reach a majority agreement concerning a recommendation under this section, the recommendation shall be submitted as insufficient. The team shall provide a statement in the evaluation report addressing the dispute among team members about the recommendation.[All team members shall vote on the final recommendation. If the professional support team fails to achieve a majority vote (3-1 or 4-0) for any recommendation, the decision shall be interpreted as falling under the insufficient category. The team chair shall prepare a narrative

describing the vote. Team members may attach an individual position statement to any recommendation. All documents shall be forwarded for review by the Education Professional Standards Board.]

(3) The chair shall forward the recommendation form and all observation and evaluation documents to the EPSPB[Education Professional Standards Board].

Section 10. District Training Program Evaluation. (1) The district or group of districts plan[consortium proposal] for a district training[an alternative teacher preparation] program shall include a schedule for short-range program evaluation to include, but not be limited to, an evaluation of the effectiveness of the formal instruction in relation to acquisition by the candidate of the knowledge and competencies specified in 16 KAR 1:010[Section 5 of this administrative regulation], the supervised [student] teaching, the assistance provided by the professional support team, and the effectiveness of the candidate in the classroom during the two (2) eighteen (18) week training sessions.

(2) The plan shall include a schedule for long-range program evaluation to include, but not be limited to, the goals of the alternative preparation program and the effectiveness of the program in meeting these goals.

~~(3)[(a) The Education Professional Standards Board shall conduct periodic reviews of the district training programs which shall include on-site evaluations to verify the quality of the programs. The on-site evaluations shall be scheduled in advance with the district to allow sufficient time for the district to provide evaluation results and other necessary records and documents, ensure availability of program staff and candidates and provide other facilities for the conduct of the evaluation.~~

~~(b) The Educational Professional Standards Board shall provide a copy of its evaluation report to the district within thirty (30) working days of the site visit. The district shall provide a written response to all program weaknesses identified in the board's report and shall forward this response to the board within thirty (30) working days of receipt of the board's evaluation report. The board shall review the report and response and shall take appropriate action.~~

~~(c) The board may conduct on-site evaluations of any approved district training program to evaluate the quality of the programs. If in the judgment of the board a district[an alternative] training program exhibits continuing [and insurmountable] weaknesses, the board may direct termination of the program at the end of the current school year.~~

Section 11. Continuance[Extension] of Program Approval. (1) ~~A~~[Over the signature of the appropriate superintendent or superintendents, a] district or group[consortium] of districts may apply for continuance[an extension] of an approved district[alternative] training program for an additional period of time not to exceed seven (7)[five (5)] years. The request for continuance[extension] shall reference program evaluation results described under Section 10 of this administrative regulation, and shall specify significant changes in program components that have occurred since the training program received prior board approval and that are planned for implementation in subsequent training periods.

(2) The request for continuance[extension] shall ~~[specify how program costs in terms of salaries, training personnel, staff time and district facilities shall be accommodated within the district's budget, and shall]~~ provide specific examples of demonstrating[other assurances of] program quality[as may be requested by the Education Professional Standards Board]. The request for continuance shall set forth statistical information related to teacher retention for all prior candidates who have completed the training program. Standards for program approval and program quality specified under Sections 2 through 10 of this administrative regulation shall be maintained under any program extension.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: December 9, 2019

FILED WITH LRC: December 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public

hearing on this proposed administrative regulation shall be held on February 24, 2020, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna L. Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna L. Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for the district training program established in KRS 161.048 and KRS 161.049.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that districts know how to develop and provide a district training program. It is also necessary to provide candidates with the requirements of the program and certification through this route.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.020 requires a certificate of legal qualifications for any public school position for which a certificate is issued. KRS 161.048 and KRS 161.049 directs the Education Professional Standards Board (EPSB) to adopt administrative regulations establishing standards and procedures for local district training programs and the approval for these programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation delineates the requirements for the district training 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 updates the language to provide consistency of terms. It also adds relevant portions of 16 KAR 9:050 and 16 KAR 9:070 to place all regulatory requirements for the district training program into one regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to streamline the regulatory requirements of the district training program by placing all regulatory requirements and procedures for the district training program into one administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment aligns with the requirements of KRS 161.048 and KRS 161.049 and places all regulatory requirements and procedures for the district training program into one administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will place all regulatory requirements and procedures for the district training program into one administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts and groups of districts interested in offering a district training program and applicants for certification through this route. There are currently 172 school districts 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: Districts, or groups of district, interested in offering a district training program will have to submit the appropriate documentation to the EPSB for review and approval. Applicants for certification through this route, will have to successfully meet the requirements of the district training program, including the assessments, and submit the appropriate application to the EPSB.

(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 fee established by the EPSB for the district training program. It is a voluntary program that districts may establish to prepare candidates for teacher certification. Any cost associated with the program would be determined by the district.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Placing all regulatory standards and procedures for the district training program in one regulation will make it easier for those wishing to develop or pursue such a program. A district training program allows districts to prepare candidates for initial teacher certification.

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

(a) Initially: Minimal cost associated with staff time to review program submissions.

(b) On a continuing basis: Minimal cost associated with staff time to review program submissions, and process applications for certification through this route.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State 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 increase in fees or funding expected to be needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board and 172 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.020, KRS 161.028, KRS 161.030, KRS 161.048, KRS 161.049.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this amendment.

(c) How much will it cost to administer this program for the first year? There are no costs associated with this amendment. Any costs for the district training program would be determined at the district level.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the amendment. Any costs for the district training program would be determined at the district level.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, establishes the standards and procedures for a district training program.

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 2:005. Life Mortality Table[Life expectancy table].

RELATES TO: KRS 140.100

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 all tax laws of this state. KRS 140.100(2) requires the application of the appropriate United States life mortality tables when ascertaining the value of future, contingent, or limited estates, which includes life estates and annuities. This administrative regulation establishes the appropriate United States life mortality table as required by KRS 140.100(2).

Section 1. The mortality table as prescribed in Section 7520(a)(1) of the Internal Revenue Code, 26 U.S.C. 7520(a)(1)[The United States Decennial Life Tables published by the United States Department of Health and Human Services, National Center for Health Statistics,] shall be utilized when computing the value of a beneficiary's life estate, annuity, remainder interest, or any other interest in the estate which is based on the life expectancy of the beneficiary or some other person. The mortality table prescribed by the Internal Revenue Service as of January 1 of the year of the decedent's death shall be used.[Section 2. For inheritance tax purposes, the value of future, contingent, or limited estates shall be computed using Table 1, Life Table for the Total Population: United States, 1999- 2001, as published in United States Decennial Life Tables for 1991-2001, United States Life Tables, Vol. 57, No. 1 (Aug. 5, 2008).

Section 3. Incorporation by Reference.

(1) "Table 1, Life Table for the Total Population: United States, 1999- 2001, as published in United States Decennial Life Tables for 1991- 2001, United States Life Tables, Vol. 57, No. 1", Aug. 5, 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 5 p.m.]

DANIEL BORK, Commissioner

APPROVED BY AGENCY: December 3, 2019

FILED WITH LRC: December 3, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2020 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 February 29, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed

VOLUME 46, NUMBER 7– JANUARY 1, 2020

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 2:005 to remove outdated reference material in Section 3: Incorporated by Reference. This regulation also updates the life expectancy table to a more current version and provides for automatic updates to IRS published life expectancy tables.

(b) The necessity of this administrative regulation: Amending this administrative regulation allows a more current version of the life expectancy table to be used and allows for it to be updated automatically by reference to IRS life expectancy tables.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 131.130(1) grants the Department of Revenue the authority to promulgate administrative regulations as it deems necessary for the administration of Kentucky's tax laws.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: See (1)(b).

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

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer or taxpayer representative that needs to calculate inheritance tax based on future, contingent, and life estates will find appropriate guidance in 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: There are no actions required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no costs associated with these changes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers and taxpayer representatives will be able to locate current guidance regarding which life expectancy table to use for Kentucky inheritance tax purposes.

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

(a) Initially: There are no additional costs associated with this amendment. Any applicable cost will be absorbed by the current department budget.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Currently budgeted department funding.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? Tiering is not applied. The updating of this administrative regulation will impact any taxpayer utilizing the guidance within equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Finance and Administration Cabinet, Department of Revenue will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no effect on expenditures and revenues for government agencies because of amending this administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: Not applicable.

FINANCE AND ADMINISTRATION CABINET Department of Revenue (Amendment)

103 KAR 30:170. Containers, wrapping, and packing materials.

RELATES TO: KRS 139.010, 139.470

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation defines and clarifies the sales and use tax law as it applies to containers, wrapping and packing materials, labels and related products.

Section 1. Definitions.

(1) "Containers" means articles used for shipment or delivery of tangible personal property. Examples of such articles are wrapping materials, bags, cans, twine, gummed tape, boxes, bottles, drums, carboys, cartons, baling wire, and sacks.

(2) "Nonreturnable containers" means all containers other than those defined in subsection (3) of this section. Examples are wrapping and packing materials, paper bags, twine, medicine, and distilled spirits bottles.

(3) "Returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. Examples of returnable containers are milk bottles, steel drums, beer and soft drink bottles, wine barrels, chemical carboys, totes, and gas cylinders.

Section 2. Sales of Returnable Containers.

(1) Sales of returnable containers when sold without the contents to manufacturers, compounders, bottlers, etc., who place the contents in the container and sell the contents together with the container are not subject to the sales or use tax. The container is not subject to the tax when it is sold at retail in connection with a retail sale of its contents. The fact that the retailer may require a deposit against the return of the container or allows a credit upon its return does not alter the rule. Returnable containers are not subject to the tax when they are resold by the final buyer for refilling.

(2) Sales of returnable containers, for example totes, to manufacturing suppliers who place the contents in the totes and sell the contents but not the tote to their manufacturing customer are subject to the sales and use tax. As the tote is not sold to the manufacturer, the sales and use tax exemption found in KRS 139.470(2) is not applicable.

Section 3. Sales of Nonreturnable Containers.

(1) Sales of nonreturnable containers to manufacturers, compounders, bottlers, etc., for use in packaging their product for resale which are not intended to be returned for reuse are not subject to the sales or use tax. Bottle caps and crowns shall be treated at all times as nonreturnable containers for use in packaging a product for resale.

(2) Sales of wrapping paper, clothes hangers, twine, tape, and similar articles to persons who use them to package merchandise for sale at retail are usually sales made for resale and are therefore not subject to the tax. Sales of such articles to persons who use them in the conduct of an activity other than sale of tangible personal property at retail[, for example, laundries and dry cleaning establishments,] are subject to the sales or use tax.

(3) Sales of nonreturnable paper napkins, straws, and like articles to restaurants, lunch counters, etc., who use them in connection with the sale and serving of food are sales made for resale and are therefore not subject to the tax.

Section 4. Labels and Name Plates.

(1) Sales of labels and name plates are not subject to the sales or use tax if:

(a) They are affixed to a nonreturnable container of property sold; or

(b) They are affixed to returnable containers if a new label is affixed to the container each time it is refilled.

(2) Labels, name plates, and price tags which are permanently affixed to the product for sale become a component part of that product and thus not subject to tax when sold to the manufacturer to be affixed by him.

(3) Price tags, shipping tags, and advertising materials used in connection with the sale of property or enclosed with the property sold are subject to the tax.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: December 3, 2019

FILED WITH LRC: December 3, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2020, 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 February 29, 2020. 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 defines and clarifies the sales and use tax law as it applies to containers, wrapping and packing materials, labels and related products.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update outdated regulatory language due to statutory changes and to clarify previous guidance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 13A, 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 outdated information due to statutory changes 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: This amendment will change the existing administrative regulation by removing outdated guidance regarding the tax treatment for purchases of this type made by laundries and dry cleaning establishments. Laundries and dry cleaning establishments became taxable with the expansion of the sales tax base in KRS 141.200(2)(l).

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove outdated guidance that could deem this administrative regulation deficient.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer who may utilize a returnable or non-returnable container may be impacted by this administrative regulation. All laundries and dry cleaning establishments making purchases of this type for resale in the performance of their taxable service may be effected by this amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No known actions are necessary to comply with this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No known costs is associated with compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Laundries and dry cleaning establishments may now issue a resale certificate for the exempt purchase of materials sold to the customer at retail as part of the taxable service.

(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 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 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. 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: Not applicable.

FINANCE AND ADMINISTRATION CABINET

Department of Revenue

(Amendment)

103 KAR 40:050. Transporter's reports.~~[Transportation.]~~

RELATES TO: KRS 243.020, 243.200, 243.850

STATUTORY AUTHORITY: KRS 131.130, 131.131~~[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 summarizes the statute dealing with the transportation of alcoholic beverages and outlines reporting requirements of the ~~department~~Department of Revenue.

Section 1. Report Required.

(1) All transporters holding a ~~Kentucky Distilled Spirits and Wine~~ Transporter's license issued under KRS 243.200 shall~~[or privilege are required to]~~ file reports with the ~~department~~Department of Revenue on or before the 20th of each month covering the preceding month's transactions. It is necessary

that only one (1) report, prepared on forms supplied by the ~~department~~Department of Revenue, be submitted to cover each unit shipment of alcoholic beverages transported into or between points in Kentucky.

(2) Reports are required on all shipments of alcoholic beverages delivered to a Kentucky wholesaler, distiller, or rectifier.

(3) When a shipment is handled by two (2) or more ~~licensed transporters~~carriers, the ~~licensed transporter~~carrier making final delivery to the consignee or retiring the waybill is required to submit the report to the department.

Section 2. ~~Information Required.~~

~~(1) Each report must show the state license number, the name and address of the consignor and the consignee, shipping date, delivery date, number of barrels and number of cases according to size for each shipment. Transporters are required to make a notation "For Consolidation" on all reports covering shipments delivered for this purpose.~~

~~(2) Each report shall be prepared and signed by an official of the transporting company.~~

Section 3. ~~Report Not Required.~~

~~(1) Transporters~~Carriers are not required to submit a report on the following:

~~(a) Shipments~~shipments of spirits consigned by Kentucky wholesalers to Kentucky retailers;

~~(b) Shipments~~shipments of spirits delivered to a different transporter~~[some other carrier]~~ in Kentucky;

~~(c) Shipments~~shipments originating from a Kentucky wholesaler, distiller, or rectifier and delivered to points outside of Kentucky; and

~~(d) Shipments~~shipments of spirits originating in some other state, transported through Kentucky and delivered elsewhere.

(2) A railroad involved in switch movement only is not considered the delivering ~~transporter~~carrier.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: December 3, 2019

FILED WITH LRC: December 3, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2020, 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 February 29, 2020. 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 summarizes the reporting requirements for the transportation of alcoholic beverages in Kentucky.

(b) The necessity of this administrative regulation: The amendment is necessary to remove incorrect or unnecessary language per 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 243.850.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to simplify taxpayer requirements for reporting purposes.

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

(a) How the amendment will change this existing administrative regulation: The amendment removes unnecessary language in Section 1, removes Section 2 in its entirety, updates Section 3 formatting and language concerning licensees, and adds an authorizing statement to the Necessity, Function, and Conformity statement per 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: Approximately 350 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: None that the department is aware of.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This will not fiscally impact the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The amended regulation will provide more clarity to 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? (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 13A, KRS 131.130, KRS 131.131, and KRS 243.850.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 (+/-): \$0

Expenditures (+/-): \$0

Other Explanation: Not applicable.

GENERAL GOVERNMENT Board of Physical Therapy (Amendment)

201 KAR 22:170. Physical Therapy Compact Commission.

RELATES TO: KRS 327.300(12)

STATUTORY AUTHORITY: KRS 327.300(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.300(12) requires the Board of Physical Therapy to review any rule adopted by the Physical Therapy Compact Commission within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. This administrative regulation sets forth the Rules adopted by the Physical Therapy Compact Commission.

Section 1. The Kentucky Board of Physical Therapy shall comply with all bylaws, rules, and administrative regulations of the Physical Therapy Compact Commission, which includes the Physical Therapy Compact Commission Rules and Bylaws.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Physical Therapy Compact Commission Rules", October 2019[2018]; and

(b) "Physical Therapy Compact Commission Bylaws", October 2018.

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) This material may be obtained on the Kentucky Board of Physical Therapy's Web site at <https://pt.ky.gov>.

(3) This material may also be obtained at:

(a) The Physical Therapy Compact Commission, 124 West Street South, Third Floor, Alexandria, Virginia, 22314; or

(b) <http://www.ptcompact.org>.

DAN MARTIN, PT, MPT, Board Chair

APPROVED BY AGENCY: December 5, 2019.

FILED WITH LRC: December 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 28, 2020, at 2:00 p.m. (EST) at 312 Whittington Parkway,

Suite 102, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 29, 2020 at 11:59 p.m. (EST). Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 429-7140, fax (502) 429-7142, ScottD.Majors@ky.gov; and M. Keith Poynter, General Counsel, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, phone (502) 210-7112, fax (502) 584-5055, MartinK.Poynter@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors and M. Keith Poynter

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the rules for the Physical Therapy Compact Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.300(12).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It promulgates the rules established by the Physical Therapy Compact Commission as administrative regulations pursuant to KRS 327.300(12).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement that any rule adopted by the Physical Therapy Compact Commission receive appropriate oversight.

(2) If 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 Physical Therapy Compact Rules more clearly defined when the denial or revocation of a license serves as an encumbrance.

(b) The necessity of the amendment to this administrative regulation: The amendment to the Physical Therapy Compact Rules is necessary to comport with the requirements of KRS 327.300(12).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the Physical Therapy Compact Rules is necessary to comport with the requirements of KRS 327.300(12).

(d) How the amendment will assist in the effective administration of the statutes: The Physical Therapy Compact Rules more clearly defined when the denial or revocation of a license serves as an encumbrance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Physical Therapy.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 denial or revocation of a license by the Kentucky Board of Physical Therapy that results in adverse action reported to the national practitioner data bank will serve as an encumbrance placed upon the license or compact privilege, as set forth in the Physical Therapy Compact Commission Rules.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Credentialed physical therapists and physical therapist assistants in Kentucky will be able to participate in the Physical Therapy Licensure Compact.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency Revenue Fund and funds derived from compact privilege applications from other states.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Physical Therapy.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.300(12).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

(c) How much will it cost to administer this program for the first year? 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:

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

301 KAR 2:195. Falconry, raptor take, and raptor propagation.

RELATES TO: KRS 150.010, 150.180, 150.183, 150.290, 150.305, 150.320, 150.330, 150.360

STATUTORY AUTHORITY: KRS 150.025(1), 150.280(1), 50 C.F.R. Parts 13, 17, 21, 22

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative

regulations establishing open seasons for the taking of wildlife, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area. KRS 150.280(1) requires the department to promulgate administrative regulations establishing procedures for propagating and holding of protected wildlife. 50 C.F.R. Parts 13, 17, 21, and 22 establish requirements for permitting, taking, possessing, and selling of raptors and endangered and threatened species. This administrative regulation establishes permitting, taking, possessing, and reporting requirements for people engaged in falconry and raptor propagation.

Section 1. Definitions. (1) "Adult" means a raptor that is at least one (1) year old.

(2) "Captive-bred raptor" means a raptor, or the eggs thereof, hatched in captivity from parents in captivity.

(3) "Eyas" means a young raptor that is still in the nest and not capable of flight.

(4) "Falconry" means caring for and training wild or captive-bred raptors for the pursuit of wild game.

(5) "Hack" means the temporary release of a raptor held for falconry to the wild so that it can survive on its own.

(6) "Hybrid raptor" means an offspring produced by two (2) distinct raptor species.

(7) "Imprinted" means a raptor that has been hand-raised by a human in isolation from the sight of other raptors from two (2) weeks of age through fledging.

(8) "Native raptor" means a raptor species which has historically existed or currently exists in the wild in Kentucky without introduction by humans.

(9) "Passage bird" means a raptor less than one (1) year of age that is capable of sustained flight and is no longer dependent on parental care.

(10) "Wild raptor" means a raptor that was originally taken from the wild.

Section 2. Federal requirements. Except as established in Sections 3 through 11 of this administrative regulation, a person shall be in compliance with the federal requirements established in 50 C.F.R. Parts:

- (1) 13;
- (2) 17;
- (3) 21; and
- (4) 22.

Section 3. Permits and Licenses. (1) A person shall be required to obtain and possess a valid falconry permit to take or possess a raptor for use in falconry.

(2) A raptor obtained with a valid falconry permit shall not be used or kept for purposes other than falconry.

(3) A person with a valid state or federal falconry permit:

(a) May take wildlife pursuant to applicable statewide requirements if the falconer:

1. Has a valid Kentucky hunting license; or
2. Is hunting license exempt pursuant to KRS 150.170; and

(b) Shall not be required to obtain a wildlife transportation permit pursuant to 301 KAR 2:081 and 2:082 if the person:

1. Is importing or transporting a legally held falconry raptor into Kentucky; or

2. Is transporting a legally held falconry raptor into and through Kentucky to a destination outside of Kentucky.

Section 4. Falconry Permit Requirements, Classes of Permits, and Apprentice Sponsors. (1) To obtain a falconry permit of any class, a person shall:

(a) Complete a Kentucky Falconry Permit Application form provided by the Department; and

(b) Submit to the department:

1. The completed application;
2. The appropriate fee, as established in 301 KAR 3:022; and
3. A completed Raptor Facilities and Equipment Inspection Report form signed by a department[state] conservation officer, department biologist, or department approved representative.

(2) An apprentice falconry permit applicant shall:

(a) Be at least twelve (12) years old;

(b) Obtain a sponsor who holds a valid Kentucky general or master falconry permit pursuant to subsection (12) of this section;

(c) If under eighteen (18) years old, have a parent or legal guardian co-sign the application;

(d) Contact the department to schedule a time to take a written exam administered by the department;

(e) Provide photo identification prior to taking the exam;

(f) Complete the written exam within ninety (90) minutes;

(g) Only take the written exam one (1) time in a given day; and

(h) Pass the written examination by scoring a minimum of eighty (80) percent.

(3) An applicant shall not take more than three (3) exams in any twelve (12) month period.

(4) A person shall submit an application within twelve (12) months of passing the falconry exam, or the application shall be invalid.

(5) An apprentice class falconry permit holder shall:

(a) Only possess one (1) of the following wild or captive-bred raptors at any given time:

1. American kestrel (*Falco sparverius*);
2. Red-tailed hawk (*Buteo jamaicensis*);
3. Red-shouldered hawk (*Buteo lineatus*); or
4. Harris's hawk (*Parabuteo unicinctus*);

(b) Not possess a raptor:

1. Taken from the wild as a nestling; or

2. That is imprinted on humans; and

(c) Only take a wild raptor under the direct supervision of the permit holder's sponsor.

(6) A general class falconry permit applicant shall:

(a) Be at least sixteen (16) years old;

(b) If under eighteen (18) years old, have a parent or legal guardian co-sign the application;

(c) Have practiced falconry at the apprentice level for at least two (2) years; and

(d) Have complied with all previous year reporting requirements, if applicable, pursuant to Section 7 of this administrative regulation.

(7) A first time general class permit applicant shall:

(a) Submit to the department a completed Kentucky Apprentice Falconer Activity Report;

(b) Practice falconry with a wild raptor at the apprentice level for at least two (2) years; and

(c) Maintain, train, and hunt with a raptor for an average of six (6) months per year with at least four (4) months in each year.

(8) A general class falconry permit holder shall:

(a) Be allowed to possess the following:

1. A raptor obtained from the wild;
2. A hybrid raptor; or
3. A captive-bred raptor; and

(b) Not possess more than three (3) of the following raptors at any given time:

1. Great horned owl (*Bubo virginianus*); or
2. Any member of the Order Falconiformes, except for the

following species which shall not be possessed:

- a. Golden eagle (*Aquila chrysaetos*);
- b. Bald eagle (*Haliaeetus leucocephalus*);
- c. White-tailed eagle (*Haliaeetus albicilla*); or
- d. Stellar's sea eagle (*Haliaeetus pelagicus*).

(9) A master class falconry permit applicant shall:

(a) Have held a valid general class falconry permit for at least five (5) years; and

(b) Have complied with all previous year reporting requirements, pursuant to Section 7 of this administrative regulation.

(10) A first time master class permit applicant shall submit to the department a completed Kentucky General Falconer Upgrade Report, signed by the applicant and one (1) reference who is a permitted master or general class falconer, attesting that the applicant has practiced falconry:

(a) At the general class permit level for at least five (5) years; and

(b) For an average of four (4) months a year, in at least four (4) out of the last five (5) years.

(11) A master class falconry permit holder:

(a) Shall not possess more than five (5) of the following wild raptors at any given time:

1. Great horned owl; and

2. Any member of the Order Falconiformes except a bald eagle;

(b) Shall obtain prior approval from the department pursuant to the requirements of 50 C.F.R. 21 and 22 to possess any of the following raptors:

1. Golden eagle;

2. White-tailed eagle; or

3. Stellar's sea eagle; and

(c) May possess any number of captive-bred raptors of the species allowed in paragraph (a) and (b) of this subsection.

(12) An apprentice sponsor shall:

(a) Not have more than three (3) apprentices at any given time;

(b) Be at least eighteen (18) years old;

(c) Possess a valid Kentucky general or master class falconry permit;

(d) Have held a general class falconry permit for a minimum of two (2) years; and

(e) Submit a signed letter to the department:

1. Attesting that the sponsor will assist the apprentice in:

a. Learning about the husbandry and training of raptors held for falconry;

b. Learning relevant wildlife laws and regulations;

c. Deciding which species of raptor is most appropriate for the apprentice to possess;

d. Providing direct supervision to the apprentice while trapping wild raptors; and

e. Evaluating the apprentice's facility and bird a minimum of one (1) time every twelve (12) months; and

2. Containing the sponsor's:

a. Name;

b. Falconry permit number;

c. Address; and

d. Telephone number.

(13) A sponsor who is withdrawing sponsorship of an apprentice shall:

(a) Notify the department in writing within five (5) days of withdrawing the sponsorship; and

(b) Provide the apprentice with a signed and dated document stating the length of time that the apprentice practiced falconry under the sponsor's guidance.

(14) An apprentice who loses sponsorship shall obtain a new sponsor within thirty (30) days from the sponsor's notification of withdrawal.

(15) A new sponsor shall be in compliance with the requirements established in subsection (7) of this section.

(16) If an apprentice fails to obtain a new sponsor within thirty (30) days, the department shall:

(a) Revoke the apprentice's falconry permit; and

(b) Confiscate any raptor in the apprentice's possession if the apprentice does not transfer ownership of the raptor to another licensed falconer.

(17) A non-resident falconer who moves to Kentucky to establish residency shall apply for the appropriate Kentucky falconry permit within thirty (30) days after moving.

(18) A resident falconry applicant who is a new resident of the United States shall obtain the appropriate Kentucky falconry permit by:

(a) Meeting the application requirements established in subsection (1) of this section;

(b) Contacting the department to schedule a time to take a written examination administered by the department;

(c) Passing the written examination by scoring a minimum of eighty (80) percent; and

(d) Providing to the department written documentation of previous falconry experience including:

1. The number of years the applicant has practiced falconry;

2. The raptor species used in falconry; and

3. The game species taken with falconry.

(19) A person who held a valid Kentucky falconry permit within the last five (5) years, but has allowed the permit to lapse, may apply for reinstatement at the class level previously held by:

(a) Complying with the application requirements established in subsection (1) of this section; and

(b) Providing the department with proof of previous certification at that class level.

(20) An apprentice or general falconer whose Kentucky falconry permit has lapsed for a period greater than five (5) years may apply for reinstatement at the class level previously held by:

(a) Complying with the application requirements established in subsection (1) of this section;

(b) Complying with the examination requirements established in subsection (2) of this section; and

(c) Providing the department with proof of previous certification at that class level.

(21) A master class permittee whose Kentucky falconry permit has lapsed for a period greater than five (5) years will be reinstated at the general class level, provided he satisfies the application requirements in subsection (1) of this section.

(a) A person formerly permitted at the master class level, and reinstated at the general class level shall actively practice falconry for an average of four (4) months a year, in at least two (2) out of the last three (3) years prior to upgrading to a master class permit.

(b) A person applying for master class reinstatement shall:

1. Submit to the department a Kentucky General Falconer Upgrade Report;

2. Have complied with all previous years' reporting requirements, as established in Section 7; and

3. Provide the department with proof of previous certification at the master class level.

(22) A falconry permit holder shall not be required to pay the permit fee established in 301 KAR 3:022 if the permit holder's current permit has not yet expired and the permit holder is applying for:

(a) An upgrade to the next falconry class; or

(b) A facility relocation.

Section 5. Facility, Equipment, and Care Requirements. (1) A falconry permit holder shall comply with all federal requirements established in 50 C.F.R. Part 21 for the permit holder's:

(a) Facility;

(b) Equipment; and

(c) Treatment and care for possessed raptors.

(2) A permittee shall keep all:

(a) Raptors in humane and healthy condition; and

(b) Facilities and equipment in serviceable, safe, and sanitary condition, as established in 50 C.F.R. Part 21.

(3) A falconry permit holder who is relocating a raptor facility shall:

(a) Notify the department within five (5) business days of relocation; and

(b) Have a relocated raptor facility inspected and approved by a department conservation officer, department biologist, or department approved representative within thirty (30) days of relocation.

(4) A department conservation officer, department biologist, or department approved representative shall only inspect a raptor facility:

(a) In the presence of the permit holder;

(b) On a weekday; and

(c) Between 8 a.m. and 8 p.m. local time.

Section 6. Banding, Tagging, and Telemetry Requirements. (1) A falconry permit holder shall comply with federal banding, tagging, and telemetry requirements established in 50 C.F.R. Part 21.

(2) A falconry permit holder who is required by federal regulations to band a raptor shall:

(a) Contact the department to request leg bands at least fifteen (15) days prior to obtaining a raptor; and

(b) Only use U.S. Fish and Wildlife Service leg bands that are issued by the department.

(3) A falconry permit holder shall attach at least two (2) radio transmitters to a hybrid raptor if the permit holder is flying it untethered in the wild.

Section 7. Raptor Take and Release, Recordkeeping, and Reporting Requirements. (1) Unless exempted by KRS 150.170, a Kentucky falconry permit holder shall have in possession a valid Kentucky hunting license when taking a raptor from the wild.

(2) When taking a raptor from the wild, a nonresident shall have in possession:

- (a) A valid Kentucky nonresident hunting license;
 - (b) A valid falconry permit or equivalent from the nonresident's home state; and
 - (c) An approved Kentucky Nonresident Raptor Take Form.
- (3) To obtain a Kentucky Nonresident Raptor Take Form, a person shall:

- (a) Print a copy of the form from the department's Web site at fw.ky.gov; or
- (b) Contact the department at 800-858-1549 and request a mailed copy.

(4) A person shall submit to the department a completed and signed Kentucky Nonresident Raptor Take Form at least fifteen (15) working days prior to the requested take date.

(5) A falconry permit holder shall be responsible for complying with all applicable federal requirements if taking raptors on federal land.

(6) A falconry permit holder who is a nonresident shall only take one (1) legal raptor in Kentucky per calendar year.

(7) An approved Kentucky Nonresident Raptor Take Form shall only be issued to a person whose state of residence allows a Kentucky resident to legally take a raptor from that state.

(8) A nonresident falconer who takes a raptor in Kentucky shall submit to the department a completed and signed Falconry Take Location Report within five (5) days of taking a bird.

(9) A licensed falconer shall comply with all raptor take requirements established in 50 C.F.R. 21 in addition to the requirements established in this section.

(10) A resident falconry permit holder shall not take more than two (2) raptors from the wild in any calendar year.

(11) An eyas shall only be taken:

- (a) By a general or master class falconry permit holder; and
- (b) From January 1 through July 31.

(12) A person shall not take more than one (1) sharp-shinned hawk (*Accipiter striatus*) eyas per calendar year.

(13) There shall be an annual maximum quota for sharp-shinned hawk eyases of:

- (a) Ten (10) for Kentucky residents; and
- (b) Five (5) for nonresidents.

(14) Prior to taking a sharp-shinned hawk eyas, a person shall be responsible for calling the department at 800-858-1549 to check if the sharp-shinned hawk eyas annual quota has been reached.

(15) A person shall not take a sharp-shinned hawk eyas from a nest unless there are at least three (3) eyases in the nest.

(16) Each person who takes a sharp-shinned hawk eyas shall submit to the department the Falconry Take Location Report within five (5) days of possession.

(17) Any permit class falconer may take a passage bird if it is a species the falconer is allowed to possess as established in Section 4 of this administrative regulation.

(18) The allowable period of take for:

- (a) A passage bird, other than a great horned owl, shall be September 1 through January 31;
- (b) An adult or passage bird great horned owl shall be September 1 through October 31; and
- (c) An adult American kestrel shall only be taken from September 1 through January 31.

(19) An adult American kestrel or adult great horned owl shall only be taken by a:

- (a) General class permit holder; or
- (b) Master class permit holder.

(20) ~~[A person shall not take a peregrine falcon (*Falco peregrinus*) from the wild in Kentucky.]~~

(21)] A person shall not release the following raptors into the

wild:

- (a) A non-native raptor;
- (b) A hybrid raptor; or
- (c) A captive-bred, native raptor.

~~(21)](23)] Prior to releasing a raptor into the wild, a person shall remove all leg bands from the bird, except that a falconer who intends to release a wild caught peregrine falcon previously used in falconry shall contact the department's Falconry Coordinator to:~~

~~(a) Have the department band the bird with a permanent band; and~~

~~(b) Release the bird only in a county approved in writing by the department's Falconry Coordinator.~~

~~(22)](23)] A falconry permit holder shall complete and submit to the department a federal form 3-186A or enter the required information in the federal database at <https://epermits.fws.gov/falcP/> [<http://permits.fws.gov/186A>] within five (5) days if a raptor is:~~

- (a) Acquired;
- (b) Transferred;
- (c) Released;
- (d) Lost;
- (e) Rebanded;
- (f) Microchipped;
- (g) Stolen; or
- (h) Dead.

~~(23)](24)] A falconer shall retain copies of each submitted 3-186A form or the electronically submitted data for a minimum of five (5) years following a raptor's:~~

- (a) Transfer;
- (b) Release;
- (c) Loss; or
- (d) Death.

Section 8. Transfer of Ownership and Propagation. (1) A falconry permit holder may transfer ownership of a wild-caught raptor pursuant to 50 C.F.R. Part 21, but shall not engage in the following activities with wild-caught raptors:

- (a) Selling;
- (b) Purchasing;
- (c) Trading; or
- (d) Bartering.

(2) A falconry permit holder may transfer a wild-caught raptor to a person who possesses a valid federal raptor propagation permit if:

(a) 1. The raptor has been used in falconry for at least one (1) year for the following species:

- a. Sharp-shinned hawk;
- b. Cooper's hawk (*Accipiter cooperii*);
- c. Merlin (*Falco columbarius*); or
- d. American kestrel; or

2. The raptor has been used in falconry for at least two (2) years for all other legal species of raptor; and

(b) The person receiving the transferred bird possesses a valid state captive wildlife permit.

(3) A person who legally possesses a captive-bred raptor may engage in the activities listed in subsection (1)(a) through (d) of this section if:

- (a) 1. The transferred bird is marked with a metal leg band; or
- 2. The transferred bird is implanted with a microchip pursuant to 50 C.F.R. Part 21; and

(b) The person in receipt of the bird possesses:

- 1. The appropriate class falconry permit; or
- 2. A valid federal raptor propagation permit.

(4) A person shall not breed or propagate a native raptor without first obtaining:

(a) A federal raptor propagation permit, pursuant to 50 C.F.R. Part 21; and

(b) The appropriate Kentucky captive wildlife permit, pursuant to 301 KAR 2:081.

(5) A person who is propagating a native raptor shall submit to the department copies of all the following materials required by 50 C.F.R. Part 21:

- (a) The raptor propagation application;

- (b) Propagation records; and
- (c) Propagation reports.

(6) The materials required in subsection (5) of this section shall be submitted to the department by the same dates required in 50 C.F.R. Part 21.

Section 9. Other Activities. (1) A falconry permit holder may use a raptor for conservation education programs, pursuant to 50 C.F.R. Part 21.

(2) A falconry permit holder who is in compliance with the permit requirements for Special Purpose Abatement, pursuant to 50 C.F.R. Part 21, may receive payment for nuisance wildlife control work if the permit holder also possesses a valid Kentucky Commercial Nuisance Wildlife Control permit, pursuant to 301 KAR 3:120.

(3) A person may assist a permitted wildlife rehabilitator, as established in 301 KAR 2:075, in conditioning raptors for subsequent release into the wild if the person is:

- (a) A general or master class falconry permit holder; and
- (b) Working with a species the falconry permit holder is allowed to possess.

(4) A general or master class permit holder may hack a raptor, previously used for falconry, if the permit holder is in compliance with 50 C.F.R. 21 and contacts the department to provide the information established in paragraph (a) through (d) of this subsection.

- (a) The hack site location;
- (b) The species of raptor;
- (c) The origin of the raptor; and
- (d) The planned hacking dates.

Section 10. Passage Tundrius Peregrine Falcon Take Opportunity Drawing. (1) Dependent upon the number of passage tundrius peregrine falcon take opportunities allocated to the department by the U.S. Fish and Wildlife Service, the department shall administer a random drawing annually for the passage tundrius peregrine falcon take opportunities allocated.

(2) One passage tundrius peregrine falcon take opportunity, authorizing the take of one (1) passage tundrius peregrine falcon, will be awarded per drawn falconer.

(3) To be eligible for the passage tundrius peregrine falcon take opportunity drawing, falconers shall:

- (a) Be a resident of Kentucky;
- (b) Have a valid Kentucky resident hunting license or be license exempt, as established in KRS 150.170;
- (c) Have a valid Kentucky master class falconry permit, pursuant to Section 4 of this administrative regulation;
- (d) Submit to the department a complete and accurate online application at fw.ky.gov by July 31; and
- (e) Not have been convicted of violating any Kentucky falconry regulation in the past five (5) years.

(4) The department will notify the drawn falconer, by their preferred method of contact as indicated on the application, no later than August 15.

(5) Upon notification, drawn falconers must contact the department's Falconry Coordinator by phone or email within ten (10) calendar days to accept the passage tundrius peregrine falcon take opportunity. Failure to accept a passage tundrius peregrine falcon take opportunity within ten (10) calendar days will result in a forfeiture of the passage tundrius peregrine falcon take opportunity.

(6) If the passage tundrius peregrine falcon take opportunity is forfeited, the department shall conduct additional random drawings until the passage tundrius peregrine falcon take opportunity is accepted or until the take period has passed, as established in this section.

(7) If a passage tundrius peregrine falcon take opportunity is awarded and accepted, the drawn falconer shall:

- (a) Carry on his or her person an authorization letter provided by the department to take one (1) passage tundrius peregrine falcon;
- (b) Only take a passage tundrius peregrine falcon between September 20 and October 20 of the year the passage tundrius peregrine falcon take opportunity is awarded;

(c) Not take or attempt to take a passage tundrius peregrine falcon from a county in which the trapping of a passage tundrius peregrine falcon is prohibited, as established by the department;

(d) Immediately release any captured peregrines of non-tundrius subspecies or birds with a band or research marker, except that bands and research marker information must be photographed or otherwise recorded and reported to the department within forty-eight (48) hours of release;

(e) Report to the department's Falconry Coordinator the take of a passage tundrius peregrine falcon within twenty-four (24) hours by phone or email at FWFalconry@ky.gov;

(f) Within ten (10) calendar days of taking of a passage tundrius peregrine falcon, make arrangements for the department to:

1. Inspect the passage tundrius peregrine falcon;
 - a. If the captured falcon is determined not to be a passage tundrius peregrine falcon, the bird shall be surrendered to the department on site; and
 2. Band the captured passage tundrius peregrine falcon with a U.S. Fish and Wildlife Service falconry band; and
 - (g) Not be eligible to participate in the random drawing for the subsequent two (2) years.
- (8) The passage tundrius peregrine falcon take opportunity is nontransferable.

Section 11[40]. Revocation of Permits and Appeal Procedure.

(1) The department shall revoke the permit, deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit for a period of one (1) year of a person who:

- (a) Violates any provision of KRS Chapter 150;
- (b) Violates any department regulation;
- (c) Violates any federal statute or regulation related to hunting, fishing, or wildlife; or
- (d) Falsifies a falconry permit application.

(2) A person whose permit is denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(3) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30)[ten (40)] days after notification of the denial or revocation.

(4) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(5) The hearing officer's recommended order shall be considered by the commissioner and the commissioner shall issue a final order pursuant to KRS Chapter 13B.

Section 12[44]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Kentucky Falconry Permit Application", 2018 edition;
- (b) "Raptor Facilities and Equipment Inspection Report", 2013 edition;
- (c) "Falconry Take Location Report", 2013 edition;
- (d) "Kentucky Nonresident Raptor Take Form", 2013 edition;
- (e) "Kentucky Apprentice Falconer Activity Report", 2018 edition; [and]
- (f) "Kentucky General Falconer Upgrade Report", 2018 edition;
- (g) "Kentucky Passage Tundrius Peregrine Falcon Falconry Take Opportunity Application", 2019 edition; and
- (h) "Kentucky Counties Where Trapping Of Passage Tundrius Peregrine Falcons Is Prohibited", 2019 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:

FILED WITH LRC: December 13, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2019 at 8:00 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 February 29, 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 administrative regulation establishes permitting, taking, possessing, and reporting requirements for people engaged in falconry and raptor propagation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to manage and conserve raptors and to provide reasonable opportunities for sport and recreation. This regulation is also necessary to comply with federal regulation requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing open seasons for the taking of wildlife, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area. KRS 150.280(1) requires the department to promulgate administrative regulations establishing procedures for propagating and holding of protected wildlife. 50 C.F.R. Parts 13, 17, 21, and 22 establish requirements for permitting, taking, possessing, and selling of raptors and endangered and threatened species.

(d) How will this administrative regulation assist in the effective administration of the statutes: By establishing guidelines on raptor propagation and falconry, this administrative regulation facilitates the conservation and management of birds of prey in compliance with the above statutes and 50 C.F.R. Parts 13, 17, 21, 22.

(2) If 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 take of passage tundra peregrine falcons from the wild by master falconers in Kentucky. This species was previously not allowed to be taken from the wild in Kentucky.

(b) The necessity of the amendment to this administrative regulation: This amendment will maximize opportunity for the sportsmen and women of the Commonwealth by providing a new opportunity for Kentucky falconers.

(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: Currently, there are 90 falconry permit holders who may be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment is to provide an optional opportunity. Falconers are not required to comply with this

amendment unless they chose to enter the drawing.

(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 fee required to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments to this regulation will provide a new opportunity to take a new species of raptor from the wild in Kentucky.

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

(a) Initially: \$7000 in program staff time.

(b) On a continuing basis: At least \$2800 in program staff time, but more if the number of take opportunities increase.

(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. There is no increase in fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is applied. This opportunity is only available to individuals who have demonstrated their proficiency in falconry by reaching the master class falconer level.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 150.025(1), 150.280(1), and 50 C.F.R. Parts 13, 17, 21, and 22.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for the first year or ever; however, the falconry permit program generates approximately \$5,000 annually through the sale of falconry permits.

(b) How 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; however, the falconry permit program generates approximately \$5,000 annually through the sale of falconry permits.

(c) How much will it cost to administer this program for the first year? The cost to administer this program is approximately \$15,000 annually.

(d) How much will it cost to administer this program for subsequent years? The cost to administer this program in subsequent years is approximately \$15,000 annually.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources is required to set falconry requirements and seasons that are within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Parts 20 and 21 contain minimum federal standards governing falconry, including falconry possession limits, permit requirements, facilities and care standards, and reporting requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate defines the regulatory frameworks that a state may allow. States are allowed to be more restrictive, but not more liberal in their respective regulations. Kentucky will be more restrictive in the take requirements for peregrine falcons because they are of conservation concern in the state.

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

301 KAR 2:300. Black bear seasons and requirements.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

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 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. This administrative regulation establishes bear hunting and chasing seasons, bear hunting areas, legal methods of take, and permitting, checking, and recording requirements.

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Bear" means the species *Ursus americanus*.

(6) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(7) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to harvest one (1) black bear of either sex.

(8) "Bear Zone 3" means Adair, Bath, Boyd, Carter, Casey, Clark, Cumberland, Elliot, Estill, Fleming, Garrard, Greenup, Lee, Lewis, Lincoln, Madison, Menifee, Montgomery, Morgan, Powell, Rowan, and Wolfe counties.

(9) "Bell Zone" means Bell County.

(10) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

(11) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(12) "East Zone 2" means Breathitt, Clay, Floyd, Johnson,

Knott, Knox, Lawrence, Leslie, Magoffin, Martin, Owsley, Perry, and Pike counties.

(13) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(14) "Harlan Zone" means Harlan County.

(15) "Letcher Zone" means Letcher County.

(16) "License year" means the period from March 1 through the last day of February.

(17) "McCreary Zone" means McCreary County.

(18) "Modern gun" means a rifle, handgun, or shotgun loaded from the rear of the barrel.

(19) "Muzzleloader" means a rifle, shotgun, or handgun loaded from the discharging end of the barrel or discharging end of the receiver.

(20) "Wayne Zone" means Wayne County.

(21)[(20)] "West Zone 2" means Clinton, Jackson, Laurel, Pulaski, Rockcastle, Russell, [Wayne,] and Whitley counties.

(22)[(24)] "Youth" means a person under the age of sixteen (16) on the day of the hunt.

(23)[(22)] "Youth bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements. (1) Unless exempted by KRS 150.170, a person, while using dogs to chase a bear, shall carry on his or her person[~~proof of purchase of~~] a valid Kentucky hunting license and a valid:

(a) Bear chase permit; or

(b) Youth bear chase permit.

(2) A bear chase permit or youth bear chase permit shall only be purchased by a resident of Kentucky.

(3) A person shall not:

(a) Kill or intentionally injure a bear during a chase-only season;

(b) Chase a bear except during daylight hours while a chase season is open;

(c) Chase a bear from a baited area:

1. While bait is present; or

2. For thirty (30) days after the bait has been removed; or

(d) Disturb a bear in a den.

(4) A person shall only use a dog to chase a bear on private land with permission of the landowner or public hunting areas in all bear zones, except that it shall be prohibited to chase bears with dogs in the areas established in paragraphs (a) through (h) of this subsection:

(a) McCreary Zone;

(b) Daniel Boone National Forest;

(c) Miller-Welch Central Kentucky Wildlife Management Area;

(d) Beaver Creek Wildlife Management Area;

(e) Cane Creek Wildlife Management Area;

(f) Mill Creek Wildlife Management Area;

(g) Pioneer Weapons Wildlife Management Area;

(h) Redbird Wildlife Management Area.

Section 4. Chasing Bears with Dogs. A person shall not use a dog to chase a bear except during the seasons established in subsections (1) and (2) of this section.

(1) The chase-only season shall be from:

(a) June[~~July~~] 1 through August 31; and

(b) September 9 through September 30; and

(2) The bear quota hunt with dogs season shall be pursuant to Section 8(1) of this administrative regulation.

Section 5. Bear Permit Requirements. Unless exempted by KRS 150.170, a person hunting a bear shall carry on his or her person[~~possess proof of purchase of~~] a valid Kentucky hunting license and the appropriate valid bear permit or permits while hunting during the seasons established in Section 8(1) of this administrative regulation.

Section 6. Hunter Restrictions. (1) A person shall not:

- (a) Harvest a bear except during daylight hours;
 - (b) Use a dog during the modern gun, archery - crossbow, or muzzleloader season for bears, except leashed tracking dogs may be used to recover a wounded or dead bear;
 - (c) Hunt bear on a baited area:
 - 1. While bait is present; or
 - 2. For thirty (30) days after the bait has been removed;
 - (d) Harvest:
 - 1. A female bear that has a cub; or
 - 2. A bear that weighs less than seventy-five (75) pounds;
 - (e) Harvest a bear that is swimming;
 - (f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform;
 - (g) Harvest a bear in a den;
 - (h) Disturb a bear in a den for the purpose of taking the bear if the bear exits the den; or
 - (i) Use radio telemetry equipment to locate a bear that is equipped with a radio-tracking collar.
- (2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 7. Weapon Restrictions. (1) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take a bear:

- (a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;
- (b) A firearm:
 - 1. With an action that fires a single round of ammunition upon each manipulation of the trigger;
 - 2. Of .270 caliber or larger; and
 - 3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;
- (c) A muzzleloader of .50 caliber or larger;
- (d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or
- (e) A handgun loaded with:
 - 1. Centerfire cartridges;
 - 2. Bullets of .270 caliber or larger designed to expand upon impact; and
 - 3. Cartridges with a case length of 1.285 inches or larger.
- (2) A crossbow shall contain a working safety device.
- (3) A bear hunter shall not use a magazine capable of holding more than ten (10) rounds.
- (4) A bear hunter may use archery, crossbow, or muzzleloader equipment to take a bear during bear modern gun season.

Section 8. Bear Season Dates and Bag Limits. (1) A legal bear hunter shall only kill a bear in the open bear zones during the seasons established in paragraphs (a) through (c) of this subsection:

- (a) The archery – crossbow season for bears, which shall be for seven (7) consecutive days beginning on the fourth Saturday in October in all bear zones, except Bear Zone 3;
 - (b) The modern gun season for bears, which shall be for seven (7) consecutive days beginning on the second Saturday in December in all bear zones; and
 - (c) The bear quota hunt with dogs season, which shall be for fourteen (14) consecutive days beginning on the third Monday in October in all bear zones, except the McCreary Zone.
- (2) A person shall not harvest more than one (1) bear in a license year.

Section 9. Bear Season Closure. (1) The archery - crossbow season for bears in each open bear zone shall close after daylight hours on the day the quotas established in paragraphs (a) through (f) of this subsection have been reached.

- (a) Bell Zone, two (2) female bears;
- (b) East Zone 2, two (2) female bears;
- (c) Harlan Zone, two (2) female bears;
- (d) Letcher Zone, two (2) female bears;

(e) McCreary Zone, one (1) female bear; ~~and~~

(f) Wayne Zone, two (2) female bears; and

~~(g) West Zone 2, one (1) female bear~~ (g) West Zone 2, one (1) female bear;

(2) The modern gun season for bears in each open bear zone shall close after daylight hours on the day the quotas established in paragraphs (a) through (g) of this subsection have been reached.

- (a) Bell Zone, two (2) female bears;
- (b) East Zone 2, three (3) female bears;
- (c) Harlan Zone, two (2) female bears;
- (d) Letcher Zone, two (2) female bears;
- (e) McCreary Zone, one (1) female bear;
- (f) Wayne Zone, two (2) female bears;
- ~~(g) West Zone 2, two (2) female bears; and~~
- ~~(h) Zone 3, two (2) female bears.~~

(3) The quota hunt with dogs season for bears in each open bear zone will close after daylight hours on the day the quotas established in paragraphs (a) through (f) of this subsection have been reached.

- (a) Bell Zone, one (1) female bear;
- (b) East Zone 2, two (2) female bears;
- (c) Harlan Zone, two (2) female bears;
- (d) Letcher Zone, two (2) female bears;
- (e) Wayne Zone, two (2) female bears; and
- ~~(f) West Zone 2, one (1) female bear~~ (f) West Zone 2, one (1) female bear; and
- ~~(g) Zone 3, one (1) female bear.~~

(4) A bear hunter shall call 800-858-1549 after 9 p.m. each day of any open bear season to determine if the quota has been reached for that season.

Section 10. Bear Quota Hunt with Dogs Requirements. (1) A person shall only harvest a bear using a legal weapon with the use of unleashed dogs that are actively pursuing, chasing, baying, or treeing a bear prior to harvest.

(2) A dog used to harvest bears shall be a purebred or a crossbreed of the recognized dog breeds established in paragraphs (a) through (l) of this subsection.

- (a) Airedale;
- (b) American black and tan coonhound;
- (c) Black mouth cur;
- (d) Bluetick coonhound;
- (e) English coonhound;
- (f) Leopard cur;
- (g) Majestic tree hound;
- (h) Mathis;
- (i) Mountain cur;
- (j) Plott hound;
- (k) Redbone coonhound; or
- (l) Treeing walker coonhound.

(3) The bear quota hunt with dogs season shall also be open as a chase-only season for any person who possesses a valid bear chase permit, even if the quota has been met.

Section 11. Hunter Orange Clothing Requirements. (1) During any modern gun or muzzleloader season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

- (a) Waterfowl; or
- (b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

- (a) May display a small section of another color; and
- (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 12. Bear Reserves. The areas established in subsections (1) through (3) of this section shall be closed to all bear hunting and bear chase with dogs.

- (1) Cumberland Gap National Historical Park;
- (2) Hensley-Pine Mountain Wildlife Management Area; and
- (3) Big South Fork National River and Recreation Area.

Section 13. Harvest Recording and Check-in Requirements.
(1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

- (a) Species taken;
- (b) Date taken;
- (c) County where taken; and
- (d) Sex of the bear.

(2) A person who has harvested a bear shall:

- (a) Retain a completed hunter's log;
- (b) Telecheck the bear by 8 p.m. Eastern Standard Time the day the bear was harvested by:

1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and

2. Recording the confirmation number on the hunter's log;

(c) Arrange for department personnel to inspect the bear by:

1. Calling the department at 800-858-1549 within twenty-four (24) hours of harvest; and

2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex by including the attached:

a. Testicles, scrotum, or penis for a male bear; or

b. Udder or vulva for a female bear; and

(d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

RICH STORM, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY:

FILED WITH LRC: December 13, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2019 at 9:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through February 29, 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 black bear chase and hunt seasons, chase and hunt requirements, bag limits, and legal methods of take.

(b) The necessity of this administrative regulation: To establish bear hunting season requirements and methods of take to provide reasonable hunting and chasing opportunity, while properly managing bear populations in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations to establish open seasons for the taking of wildlife, regulate bag limits, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of Chapter 150 or its regulations.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by defining the seasons, bag limits, and methods of chase and take used to manage black bears 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 add the month of June to the bear chase season, establish Wayne County as a separate bear zone and set the quota within that new zone.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to improve hunter opportunity by lengthening the chase season which will better condition the dogs for the bear hunt with dogs season later in the fall. Additionally, this amendment will allow for more hunting opportunity in Wayne County due to its delineation as a separate zone with an increased quota.

(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 hunters that pursue black bears with dogs will be affected by this regulatory amendment. In 2019, there were 63 licensed bear hunters in Kentucky that additionally purchased a bear chase permit. Additionally, all bear hunters will be impacted. In 2018, there were 1183 licensed bear hunters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Those who chase bears with dogs must comply with the individual requirements and restrictions for chase-only seasons for bears, as listed in the fall hunting guide published by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Hunters that choose to chase bears during the extended bear chase season will not incur any additional costs. Additionally, all bear hunters will not incur any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Houndsmen will have an earlier season with increased bear activity and an additional twenty-one month of chase-only season in the month of June. Bear hunters will have more hunting opportunity in Wayne County.

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

(a) Initially: There will be a small administrative cost to the department to implement this regulation.

(b) On a continuing basis: There will be a small 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 a fee or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not used because all persons who hunt bear are required to abide by the same seasons, methods of take, bag limits, harvest recording procedures, and checking requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 and 150.390.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 amount of revenue generated by this administrative regulation for the first year is unknown.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue generated by this administrative regulation for subsequent years is unknown.

(c) How much will it cost to administer this program for the first year? There will be a small administrative cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be a small administrative cost 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 (+/-): Unknown; see 4 (a) and (b) above.

Expenditures (+/-): Minimal; see 4 (c) and (d) above.

Other Explanation:

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

301 KAR 4:090. Taxidermy, cervid meat processors, and the buying and selling of inedible wildlife parts.

RELATES TO: KRS 150.010, 150.175, 150.180, 150.183, 150.305, 150.330, 150.370, 150.411, 150.722, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.4111

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of wildlife. KRS 150.4111 authorizes a person to sell the inedible parts of any legally taken wildlife to a licensed taxidermist for the purpose of mounting, authorizes a licensed taxidermist to buy or sell the inedible parts of any legally taken wildlife for the purpose of mounting, and authorizes any person to purchase from or sell to a licensed taxidermist any legally mounted specimen. This administrative regulation establishes the requirements for the buying and selling of inedible wildlife parts, ~~and~~ the proper disposal of cervid carcasses and parts, ~~and the registration of cervid meat processors.~~

Section 1. Definitions. (1) "Cervid" means a member of the family Cervidae.

(2) "Federally protected wildlife" means any federally threatened or endangered species or any native migratory bird.

(3) "Furbearer" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, least weasel, long-tailed weasel, river otter, bobcat, coyote, or striped skunk.

(4) "Licensed taxidermist" means any person, partnership, firm, or corporation ~~who~~~~that accepts remuneration for the mounting of skins or other inedible wildlife parts and who~~ holds a valid Kentucky taxidermist license, as established in KRS 150.175.

(5) "Mounting" means to arrange processed wildlife for the purpose of display.

(6) "Permanently preserved pelt" means any processed furbearer pelt, but does not include raw fur or pelts treated with salt, borax, or sunlight.

Section 2. Licenses Required. (1) Any person, partnership, firm, or corporation engaged in the business and accepting remuneration for ~~stuffing or~~ mounting skins or other inedible parts of wildlife shall possess a valid Kentucky taxidermist license.

(2) A licensed taxidermist shall:

(a) Openly display a valid taxidermist license at the place of business; and

(b) Have all records pertaining to the business and all wildlife specimens or wildlife parts available for inspection during normal business hours by a department conservation officer.

(3) A person or business who transforms a legally acquired~~[-processed]~~ inedible wildlife part into a hand-crafted or manufactured finished product shall not be required to possess a license from the department, except as established in Section 2(1) of this administrative regulation.

(4) A person or business is not required to possess a license to buy or sell legally acquired furbearer inedible parts, secretions, or permanently preserved pelts, excluding raw fur.

(5) In addition to the appropriate state license, all licensed taxidermists who mount federally protected species shall possess a valid federal taxidermist license issued by the U.S. Fish and Wildlife Service.

Section 3. Labeling Requirements. (1) Any individual who engages in taxidermy~~[Each licensed taxidermist]~~ shall keep records of the name, address, and phone number of the owner and the date killed of all wildlife or wildlife parts in their possession and shall tag each specimen or part to identify its owner.

(2) Wildlife heads harvested in Kentucky or other parts separated from the carcass for mounting by any individual who engages in taxidermy~~[a licensed taxidermist]~~ shall have the hunter's confirmation number, if applicable, attached to the separated part.

Section 4. Cervid carcass disposal. (1) A licensed taxidermist shall dispose of any unused cervid carcass material by:

(a) Burying the carcass or parts in an opening in the earth at least four (4) feet deep with the carcass or parts covered with two (2) inches of quicklime and at least three (3) feet of earth;

1. With the cervid abdominal cavity, if applicable, opened wide the entire length;

2. At a point which is never covered with the overflow of ponds or streams; and

3. Not less than 100 feet from any watercourse, sinkhole, well, spring, public highway, residence, or stable; or

(b) Depositing the carcass or parts in a contained landfill, as established in KRS Chapter 224.

Section 5. Cervid Meat Processor Registration. (1) A cervid meat processor, as defined in KRS 150.722, shall register with the department each calendar year prior to butchering or making meat products for human consumption, by completing the online registration process at fw.ky.gov.

Section 6. Incorporation by Reference. (1) "Cervid Meat Processor Registration", 2019 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time.

RICH STORM, Commissioner

DON PARKINSON, Secretary

APPROVED BY AGENCY:

FILED WITH LRC: December 13, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

February 26, 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 February 29, 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 administrative regulation establishes the requirements for the buying and selling of inedible wildlife parts, the proper disposal of cervid carcass waste for taxidermists, and the registration process for cervid meat processors.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the registration requirements for cervid meat processors, the requirements for disposal of cervid carcass waste, and the buying and selling of inedible wildlife parts to sustain and protect the wildlife resources of the state, while providing a legal and reasonable market.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations regarding the buying, selling, or transporting of wildlife. KRS 150.4111 authorizes a person to sell the inedible parts of any legally taken wildlife to a licensed taxidermist for the purpose of mounting, authorizes a licensed taxidermist to buy or sell the inedible parts of any legally taken wildlife for the purpose of mounting, and authorizes any person to purchase from or sell to a licensed taxidermist any legally mounted specimen.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in administering the above statutes by establishing the requirements for the buying and selling of inedible wildlife parts, the proper disposal of cervid carcasses and parts, and the registration requirements for cervid meat processors.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes the registration requirements for cervid meat processors.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide the department with accurate contact and location information of cervid meat processors and will allow the department to both effectively communicate CWD response measures with processors, as well as better enforce current laws associated with these establishments.

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: During the 2018-2019 license year, 330 taxidermy licenses were sold.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each cervid meat processor must register with the department each calendar year, prior to butchering or making meat for human consumption from ten or more cervids, by completing an online registration form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to individuals to register online. The registration is free.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In the event of a disease outbreak in Kentucky, the department will be able to effectively communicate with deer processors to implement a response plan to help manage and contain the disease.

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

(a) Initially: There will not be a cost to the department to implement this regulation initially.

(b) On a continuing basis: There will not be a cost to the department on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied, as the same requirements apply to all cervid meat processors.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS150.025(1) and 150.4111.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explain

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Conservation
(Amendment)

416 KAR 1:010. Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.

RELATES TO: KRS 146.080- 146.115[146.121], 224.71-100-224.71-140, KRS 262.010 – 262.660 [Chapter 262]

STATUTORY AUTHORITY: KRS 146.110-146.115[146.121]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.110 to 146.115[146.121] authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. The fund provides cost-share assistance to persons engaged in agricultural and silvicultural production for implementation of best management practices for such purposes as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; and reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution. This administrative regulation establishes criteria for participation in that cost-share program.

Section 1. Definitions.

(1) "Agricultural or silvicultural production" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, small grains, fruit and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.

(2) "Agriculture water quality plan" is defined by KRS 224.71-100(10)~~means a document incorporating the conservation plan, compliance plan, or forest stewardship management plan as necessary to prevent groundwater and surface water pollution from an agricultural or silvicultural production~~.

(3) "Animal waste" means feces, urine or other excrement, digestive emission, urea or similar substance emitted by animals (including any form of livestock, poultry or fish). This includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically found with this waste.

(4) "Applicant" means a person who applies for cost-share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(5)[(4)] "Available funds" means moneys budgeted, unobligated and approved by the commission for cost-share assistance.

(6)[(5)] "Best management practices" means, for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service and the Soil and Water Conservation Commission. ~~[Best management practices shall establish a minimum level of acceptable quality for planning, siting, designing, installing, operating, and maintaining these practices.]~~

(7)[(6)] "Case file" means the collection of materials that are assembled and maintained for each application for cost-share assistance.

[(7)] "Compliance plan" means a conservation plan containing best management practices developed for persons engaged in agricultural production by the United States Department of Agriculture Natural Resources Conservation Service in conjunction with local conservation districts as required for eligibility under the Federal Food Security Act.]

(8) "Conservation district" or "district" is defined by KRS 262.010(3) ~~[means a subdivision of state government organized pursuant to KRS Chapter 262 for the specific purpose of assisting~~

persons engaged in agricultural or silvicultural production and land users in solving soil and water resources problems, setting priorities for conservation work to be accomplished, and coordinating the federal, state, and local resources to carry out these programs.

~~(9) "Conservation plan" means a plan describing best land management practices, including an installation schedule and maintenance program, which when completely implemented, will improve and maintain soil, water, and related plant and animal resources of the land in accordance with the Natural Resources Conservation Service Technical Guide or developed by others in accordance with the Natural Resources Conservation Service Technical Guide and in cooperation with a conservation district.]~~

~~(9)[(10)] "Cost-share assistance" means cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.~~

~~(10)[(11)] "District supervisor" means a member of the governing board of a conservation district.~~

~~(12) "Ecosystem-based assistance process" means a specific application of a planning process that considers the integration of ecological, economic, and social factors to maintain and to enhance the quality of the environment to best meet current and future needs, which may include the following components:~~

~~(a) Inclusion of private land and public land within the watershed;~~

~~(b) Identification of and suggested solutions for various resource problems within the watershed;~~

~~(c) Establishment of opportunities for public participation in plan development and implementation;~~

~~(d) Inclusion of mechanisms for developing a comprehensive resource plan for the watershed and for reporting conservation accomplishments within the watershed;~~

~~(e) Identification and prioritization of local resource concerns, and inclusion of mechanisms to address these concerns within the watershed; and~~

~~(f) Development within current county conservation district boundaries with coordination of plans across county lines for protection of the watershed.]~~

~~(11)[(13)] "Eligible land" means land on which agricultural or silvicultural production is being conducted. [(14) "Eligible person" means a person eligible to apply for cost-share assistance.~~

~~(15) "Eligible practices" means those best management practices that have been approved by the commission.~~

~~(16) "Forest stewardship management plan" means a plan developed by the Environmental and Public Protection Cabinet's Division of Forestry or other cooperating entities which establishes practices for a person engaged in an agricultural or silvicultural production to manage forest lands in accordance with sound silvicultural and natural resource principles.]~~

~~(12)[(17)] "Groundwater" means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon.~~

~~(13)[(18)] "Obligated funds" means moneys from a district's portion of the Kentucky Soil Erosion and Water Quality Cost-share Fund allocated by the commission and committed to an applicant after final approval of the application for cost-share assistance.~~

~~(14)[(19)] "Performance and maintenance agreement" means a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.~~

~~(15)[(20)] "Program year" means the period from July 1 to June 30.~~

~~(16)[(21)] "Soil and Water Conservation Commission" or "commission" means the commission established by KRS 146.090.~~

~~(17)[(22)] "Surface water" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger shall not be considered to be surface waters of the~~

Commonwealth.

(18)(23) "Water priority protection region" means an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.

(19)(24) "Watershed" means all the area from which all drainage passes a given point downstream.

Section 2. Eligibility of Persons. (1) Eligible persons. Persons conducting agricultural or silvicultural production are eligible to receive cost-share assistance for best management practices if the following conditions are met:

(a) The person has [had] prepared [a conservation plan, a compliance plan, a forest management or forest stewardship plan, or] an agriculture water quality plan; and

(b) The person agrees to perform and to maintain best management practices for the period of time specified by the commission.

(2) Ineligible persons. A person engaged in agricultural or silvicultural production shall not be eligible for further cost-share assistance if the applicant has: [who has]

(a) Failed or refused to comply with agriculture water quality planning requirements and has been deemed a "bad actor" pursuant to [under] KRS 224.71-130; or

(b) Failed to comply with practice lifespans or complete previous cost-share projects within five (5) years prior to the application date. [shall lose eligibility for further cost-share assistance.]

Section 3. Eligible Best Management Practices. (1) Purposes of best management practices. The Kentucky Soil Erosion and Water Quality Cost-share Funds shall be used to provide cost-share assistance for development and implementation of best management practices for the following purposes:

(a) Providing cleaner water through the reduction in sediment loading of Kentucky streams, rivers, and lakes;

(b) Reducing the loss of topsoil vital to sustain production of food and fiber; and

(c) Preventing surface water and groundwater pollution.

(2) Approved best management practices. Complete listings of eligible best management practices are contained in the document titled "The 2019 Kentucky Soil and Water Quality Cost-Share Practice Handbook". [entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual", incorporated by reference in Section 13 of this administrative regulation.

(3) A district may request the commission's approval of best management practices not included in the commission's list of approved practices if those best management practices solve a problem unique to the requesting district and conform to one or more of the purposes listed in subsection (1) of this section. A request shall be filed in writing with the commission in time for the commission to review the request and to notify the district of its decision prior to the advertisement of the program for the next program year. Conservation practices may be included in a district's list of eligible practices offered for cost-share assistance only if approved by the commission in accordance with this subsection.]

Section 4. Solicitation of Applications. The commission shall establish for each program year a deadline for submittal of applications for cost-share assistance. Each conservation district shall provide an opportunity for persons within the district to submit applications in time for the next program year by advertising the availability of cost-share assistance in appropriate news media, such as electronic media, local newspapers, local radio stations, and any newsletters published by the district.

Section 5. Contents and Completion of Applications. (1) Contents of application. An applicant shall submit to the conservation district in which the eligible land is located an [the] application [incorporated by reference in Section 13 of this administrative regulation] in order to apply for cost-share assistance. The applicant shall include with [append to] the application:

(a) An [Any conservation plan, compliance plan, forest stewardship plan, or] agriculture water quality plan in effect for the eligible land that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110; and

(b) If known to the applicant or as made in consultation with the appropriate technical agency, the anticipated total cost of the best management practice to be implemented and the percentage, if any, of the cost which the applicant proposes to bear, which percentage shall not be less than minimums established by the commission for the particular best management practice.

(2) An applicant that is applying for cost-share funds for best management practices involving nutrient storage shall include a nutrient management plan as detailed in the Statewide Agriculture Water Quality Plan.

(3) Completion of applications. An applicant who does not have an [a conservation plan, compliance plan, forest stewardship plan, or] agriculture water quality plan in effect for the eligible land that is compliant with KRS 224.71-120 and updated to be current with the Statewide Agriculture Water Quality Plan authorized by KRS 224.71-110; or who has not determined the anticipated total cost of the requested best management practice may request technical assistance from the conservation district in developing a best management practices plan and determining costs. When the best management practices plan has been developed and the anticipated total cost determined, the application will be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

Section 6. Review of Applications. Each conservation district shall review and determine the eligibility of all applications which were submitted to the district by the established deadline. The board of supervisors for the district shall vote upon eligibility at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 to 61.850, and record the outcome in the minutes of the board of supervisors for that meeting. A district supervisor who is also an applicant for cost-share assistance shall not vote on eligibility. The district shall forward the applications to the commission within fifteen (15) days after determining eligibility. [A district may submit both individual applications for eligible lands within the district and watershed-based applications for eligible lands within the district.]

Section 7. Prioritization of Applications. The commission shall prioritize the applications of persons determined by the conservation districts to be eligible for cost-share assistance and shall make the final award of cost-share assistance.

(1) Classification of priorities. Applications shall be prioritized based on the following criteria:

(a) Applicants conducting agricultural or silvicultural production needing animal waste management systems where animal waste has been identified by the Energy and Environment [Environmental and Public Protection] Cabinet as a water pollution problem; and

(b) Applicants who are members of agricultural districts; and

(c) Applicants who have implemented a conservation plan, a compliance plan, an agriculture water quality plan, or a forest stewardship plan, and are part of a watershed where the ecosystem based assistance process is ongoing].

(2) Applications within each classification identified in subsection (1) of this section shall be prioritized based on the following criteria:

(a) Presence of water pollution, based on:

1. Notification by a local, state or federal agency that the applicant's agricultural or silvicultural production has caused or contributed to water pollution;

2. Determination of the Energy and Environment [Environmental and Public Protection] Cabinet that a surface water affected by the applicant's agricultural or silvicultural production is not meeting its designated use;

3. Identification by the Energy and Environment [Environmental and Public Protection] Cabinet of a water priority protection region encompassing the location of the applicant's agricultural or silvicultural production; and

4. Other documentation of water pollution, such as through a biological assessment; or

5. Potential for development of water pollution from agricultural or silvicultural production in the watershed in which the applicant's agricultural or silvicultural production is being conducted.

(b) Types of water pollutants, based on:

1. Animal waste;
2. Sediment run-off;
3. Nutrient loading; or
4. Pesticide application, storage or disposal.

(c) Proximity of pollutant to groundwater or surface water;

(d) Magnitude of water pollution; and

(e) Location in a priority watershed as identified by the Agriculture Water Quality Authority or Division of Water including a source water protection area. [designated water quality planning area, based on the existence of:

1. An ecosystem-based assistance process;
2. A Federal Clean Water Act Section 319 demonstration area;
3. A wellhead protection area; or
4. An agriculture water priority protection region.]

Section 8. Allocation of Cost-share Assistance.

(1) The available funds received by the commission for the cost-share program shall be held by the Kentucky Division of Conservation and disbursed to the conservation districts based on requests from the districts approved by the commission after a practice has been completed and all paperwork has been signed as complete and submitted for payment. [allocated to the conservation districts based on requests from districts approved by the commission prior to each program year.] The district shall be granted [receive] a share of the Kentucky Soil Erosion and Water Quality Cost-share Fund that shall be held by the Kentucky Division of Conservation based on the commission's approval of an initial district request based on the objectives identified in Section 8 of this administrative regulation, and in accordance with the prioritization system established in Section 7 of this administrative regulation.

(2) Any funds granted [allocated] by the commission and distributed by the Kentucky Division of Conservation to a district for a practice that results in overpayment [program year] shall revert to the commission if the district has not received prior permission to obligate the funds to another applicant [obligated the funds] within one (1) year from receipt [allocation].

(3) The commission shall retain ten (10) percent of the annual appropriation [available funds] in a contingency fund to be allocated to assist persons engaged in agricultural or silvicultural productions and implementing the agriculture water quality program mandated by Subchapter 71 of KRS Chapter 224[KRS 224.74].

Section 9. Design of Best Management Practices. Once cost-share assistance has been awarded by the commission, the local district shall designate a technician to develop final design and layout for the approved best management practices.

Section 10. Execution of Performance and Maintenance Agreements. After an application has been awarded cost-share assistance and before the applicant has received [receives] payment of the cost-share funds, the applicant and the conservation district shall execute a performance and maintenance agreement.

(1) Requirements of performance and maintenance agreements. The performance and maintenance agreement shall require the applicant to meet the following requirements:

(a) The applicant shall agree to perform those best management practices approved in accordance with this administrative regulation;

(b) The applicant shall agree to maintain approved best management practices for the expected life of each practice agreed upon in the performance and maintenance agreement;

(c) Upon completion of the approved best management practice the applicant shall notify the district that the practice has been installed and shall provide to the district for its inspection all

vouchers, bills, and receipts associated with the practice; and

(d) The applicant shall agree that at the time of transfer of ownership of land where a best management practice has been applied using cost-share assistance and the expected life assigned the practice has not expired, the applicant shall execute a contract with the transferee requiring continuation of those practices until completed;

~~[(e) The applicant shall agree that if the applicant destroys the best management practice installed or voluntarily relinquishes control or title to the land on which the installed practice has been established and the new owner, heir, or operator does not agree in writing to properly maintain the practice for the remainder of its specified lifespan, the applicant shall refund all or part of the cost-share assistance, as determined by the district; and~~

~~(f) The applicant shall agree that if the applicant does not maintain the approved best management practices on the schedule provided in the plan the applicant shall forfeit the cost-share assistance, and the commission shall be authorized to recover the funds disbursed.]~~

(2) Effect of performance and maintenance agreement. Requirements for performance and maintenance of best management practices applied using cost-share assistance shall be established in the performance and maintenance agreement and reviewed with the applicant at the time of application submittal and before completion of a certification of practices.

(3) Refund of funds disbursed. (a) The district shall [may] require a refund of cost-share assistance funds if the district determines: [when]

1. An approved best management practice has not been [performed or] maintained in compliance with approved design standards and specifications for the practice during its expected life as agreed in the performance and maintenance agreement; or.]

2. a. The applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds and the new owner, heir, or operator does not agree in writing to properly maintain the practice for the remainder of its specified lifespan.

b. If the applicant voluntarily relinquishes control or title to the land on which the best management practice that was installed using cost-share funds pursuant to clause a. of this subparagraph, then the applicant shall only be responsible for refunding to the district the amount of funds prorated on the number of years remaining in the best management practice maintenance agreement.

(b) 1. If the district determines that the applicant shall refund the amount of the cost-share, the applicant shall have thirty (30) days to make payment to the district. The district may grant the applicant an extension of time to make the refund upon the submission of a written request by the applicant.

2. If the applicant fails to timely refund the amount of the cost-share, the district shall refer the matter to the commission.

3. If the district declines to seek a refund, the district shall state its reason for not doing so and notify the commission and the applicant. The commission may review the matter to determine whether to seek a refund.

4. If the commission becomes aware of a situation described in subparagraphs (3)(a)1. or (3)(a)2., and the district fails to review the matter, the commission shall conduct a review of the matter and determine whether to seek a refund.

5. The commission shall be authorized to recover the amount of the cost-share by initiating a legal action in the Franklin Circuit Court.

(4) Application for future cost-share assistance. Best management practices that have been successfully completed and which later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, shall not prohibit the applicant from applying for additional cost-share assistance to restore the practices to their original design standards and specifications.

(5) Certification. Upon notification by the applicant that the approved best management practice has been completed and before disbursement of funds from the district, the appropriate technical agency shall certify to the district that the practice has

been installed in accordance with the document titled "The 2019 Kentucky Soil and Water Quality Cost-Share Practice Handbook". [entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual," incorporated by reference in Section 13 of this administrative regulation.]

(6) Limitations on awards. Cost-share assistance awarded to an applicant shall be limited to a maximum of seventy-five (75) percent of the actual cost, not to exceed an amount approved by the commission, for each best management practice, with the assisted applicant providing twenty-five (25) percent of the cost, which may include in-kind support, with a maximum of [\$7,500 per year to each applicant for all practices except for the more expensive animal waste storage practices which have a maximum of] \$20,000 per year [for each applicant]. An applicant shall only submit one application per program year. Cost-share assistance may be used with federal or local cost-share funds on the same practices as long as the total cost share payment does not exceed seventy-five (75) percent of the practice cost. Cost-share assistance shall not be awarded to best management practices in progress prior to cost-share approval or previously-installed practices by the applicant.

Section 11. Reporting and Accounting.

(1) District reporting and accounting. A district shall conduct the following reporting and accounting procedures:

(a) Maintain a control ledger showing the current approved applications [request] to the commission and cost share approved amounts [funds obligated] for approved applications, based on estimated cost;

(b) Submit a quarterly report to the commission indicating any [the] unobligated balance of allocated and disbursed cost-share funds as shown on each ledger;

(c) Submit an annual progress report to the commission showing accomplishments "to date" for the current program year; and

(d) Assemble case files for each approved application, filed by program year and accessible for public inspection, containing:

1. The approved application for allocated funds;
2. A copy of the estimated cost sheet;
3. Certification of practice completion;
4. Applicant's vouchers, bills or receipts;
5. Final designs for best management practices;
6. The performance and maintenance agreement;
7. Any amendments to the performance and maintenance agreement; and
8. A map locating the practices.

[~~(2) Commission reporting and accounting. The commission shall conduct the following reporting and accounting procedures:~~

~~(a) Receive and maintain reports from districts showing the unobligated balance of allocated and disbursed cost-share funds as shown on each ledger; and~~

~~(b) Submit consolidated quarterly reports based on the reports from districts on the unobligated balance of the Kentucky Soil Erosion and Water Quality Cost-share Fund.]~~

Section 12. Appeals.

(1) Procedure for filing appeal. An applicant aggrieved by a decision of the commission denying an application or limiting the amount of financial assurance may file a written appeal with the commission within thirty (30) days of the decision and shall set forth the basis for the appeal.

(2) Procedure for hearing appeal. The commission shall notify the applicant and the local district that they may appear before the commission and present testimony or written documentation on the issues presented by the appeal. The commission shall have sixty (60) days in which to make a decision and to notify the local district and the applicant.

(3) Review of final decision. The decisions of the commission may be appealed to the Franklin Circuit Court.

Section 13. Incorporation by Reference. (1) "The 2019 Kentucky Soil and Water Quality Cost-Share Practice Handbook ", October 2019 is incorporated by reference.

(2) This material may be inspected, copied, or obtained,

subject to applicable copyright law, at the Division of Conservation, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., Eastern Standard Time. [The documents entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual", dated March 1, 1995 is hereby incorporated by reference. It is available for public inspection and copying, subject to copyright law, at the office of the Soil and Water Conservation Commission, 691 Teton Trail, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m., Mondays through Fridays, excluding state holidays.]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: December 4, 2019

FILED WITH LRC: December 6, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2020 at 5:00 P.M. (Eastern Time) in Training Room C of the Energy and Environment Cabinet at 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2020. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for participation in the Kentucky Soil Erosion and Water Quality Cost-share Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the criteria for participation in the cost share program and to also establish other program requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 146.110 to 146.115 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. This administrative regulation establishes those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for the applicants for cost-share funds.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the maximum amount of cost-share funds that can be received by an applicant from \$7,500 to \$20,000. The amendments also updates methods in the administrative regulation that are no longer used by the Division in the management of cost-share funds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to change the maximum amount of cost-share funds an applicant can receive and to amend the procedures in the administrative regulation to more closely match current practice.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by changing the maximum amount of cost-share funds an

applicant can receive and to amend the procedures in the administrative regulation to more closely match current practices.

(d) How the amendment will assist in the effective administration of the statutes: The statutes provide the agency the authority to offer cost-share assistance to persons engaged in agricultural and silvicultural production for implementation of best management practices for such purposes as providing cleaner water. These amendments assist in this goal by increasing the maximum amount of funds that can be disbursed to an applicant.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 121 conservation districts in the Commonwealth. In FY18 and FY19 an average of 1812 farmers applied for cost-share grants. In FY18 \$8,904,428 in funds were awarded and \$8,475,983.62 in FY19.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 follow slightly different application procedures and will be required to refund cost-share funds if they fail to meet the requirements of the project design or maintenance requirements.

(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 the administrative regulation will not cost the entities in question (3) any additional funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in Question #3 will now have the ability to receive a maximum of \$20,000 instead of \$7,500.

(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? (Explain why or why not) No. All entities that apply for cost-share funds are eligible to receive funds depending on availability of funds and the project proposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Conservation and local conservation districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 146.110-146.115.

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

JUSTICE AND PUBLIC SAFETY CABINET Kentucky State Corrections Commission (Amendment)

500 KAR 10:001. Definitions for 501 KAR Chapter 10.

RELATES TO: KRS 196.700 - 196.736[196.740]

STATUTORY AUTHORITY: KRS 196.035, 196.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. The Kentucky State Corrections Commission shall award grants for[make grants to assist local jurisdictions in] the implementation and operation of community corrections programs. This administrative regulation defines the terms to be used in 500 KAR Chapter 10.

Section 1. Definitions.

(1) "Administrator" means the person designated to manage the information involved with the grants awarded under KRS 196.710 and assist the Kentucky State Corrections Commission with its duties.

(2) "Board" means the community corrections board specified in KRS 196.725 or the alternate board described in KRS 196.710(3) approved by the commission to act in the place of a community corrections board. [board specified in KRS 196.725.]

(3) "Cabinet" is defined by KRS 196.010(1).

(4) "Commission" is defined by KRS 196.700(1).

(5) "Department" is defined by KRS 196.010(3).[(2) "Cabinet" means the Justice Cabinet.

(3) "Commission" means the Kentucky State Corrections Commission.

(4) "Department" means the Department of Corrections.]

(6)[(5)] "Eligible applicant" means any local government agency or combination of agencies, private nonprofit, or charitable organization that[who] has an established a community corrections board.

(7)[(6)] "Grant funds" means funds awarded by the commission in accordance with KRS 196.710 for implementing a community corrections[for implementing a] program plan.

(8)[(7)] "Program plan" means a written plan describing the proposed community-based correctional programs to be offered in a judicial district, for the purpose of diverting felony[felon] offenders from prison.

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on September 12, 2019 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

JOHN C. TILLEY, Secretary

APPROVE BY AGENCY: November 25, 2019

FILED WITH LRC: December 3, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2020 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for 500 KAR Chap. 10 and the Kentucky State Corrections Commission's work governed by KRS 196.700 – 196.736.

(b) The necessity of this administrative regulation is: This administrative regulation is needed to establish uniform definitions for application in the chapter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the Prison Industry Enhancement Certification Program (PIECP) and the businesses involved in the program, the operating procedures of the commission, and the procedures addressing the handling of injury to inmates participating in the program. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement to have administrative regulations and establishes definitions for the operations of the commission in its work.

(2) If 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 alphabetizes the definitions, changes existing definitions to comply with KRS Chap. 13A, and adds a new definition.

(b) The necessity of the amendment to this administrative regulation: The amendment revises the definitions in compliance with KRS Chap. 13A and the changes in the operations of the commission in awarding grants and overseeing the PIECP.

(c) How the amendment conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the PIECP and the businesses involved in the program, the operating procedures of the commission, and the procedures addressing the handling of injury to inmates participating in the program. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment reorders the definitions to make them more easily accessible and adds new language needed for the chapter.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately fifty governments or organizations applying for or awarded grants by the commission. This affects approximately fifty-five KCI employees and an unknown number of inmates since private industry partnerships are not yet in place. It also affects a limited number of private businesses that partner with KCI in the PIECP. This affects the Department of Corrections administrative staff that assist the commission.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 applying for grants will have to understand the definitions and how they apply in the application requirements. Those awarded grants will have to understand the definitions and how they apply to handling money awarded and reporting requirements. Administrative staff will have to perform their work using the revised definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The definitions are not expected to involve any cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities and individuals will better understand the other administrative regulations in the chapter.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: A funding source is not needed for establishing definitions.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased in this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this administrative regulation impact Kentucky Correctional Industries (KCI), Department of Corrections, Justice and Public Safety Cabinet, Kentucky Labor Cabinet, Kentucky Education and Workforce Development Cabinet, other state agencies involved with the Prison Industry Enhancement Certification Program (PIECP), and private industry. This also impacts approximately fifty governments or organizations applying for or awarded grants by the commission. It also impacts a limited number of private businesses that partner with KCI in the PIECP.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 196.035, 196.704

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Establishing definitions 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? Establishing definitions does not generate revenue.

(c) How much will it cost to administer this program for the first year? No cost is anticipated by establishing definitions.

(d) How much will it cost to administer this program for subsequent years? No cost is anticipated by establishing definitions.

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:

**JUSTICE AND PUBLIC SAFETY CABINET
Kentucky State Corrections Commission
(Amendment)**

500 KAR 10:020. Administration and application procedure for community corrections grant program.

RELATES TO: KRS 196.700 - 196.736~~[196.740]~~

STATUTORY AUTHORITY: KRS 196.035, 196.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation ~~provides~~is necessary to provide the application process and administrative procedures for the community corrections grant programs ~~[enacted by the General Assembly]~~ in KRS 196.710.

Section 1. Application Process.

(1) The ~~administrator~~director shall notify eligible applicants of the availability of grant funds, requirements of the program, grant application format, and deadline for receiving applications by ~~sending~~mailing notices to each county government and judicial circuit.

(2) ~~The grant program requirements may be reviewed in full at the Justice and Public Safety Cabinet website under the Grants Management Branch and Kentucky State Corrections Commission grants.~~

(3) ~~An applicant shall:~~

(a) ~~Develop a community corrections program plan in compliance with KRS 196.720;~~

(b) ~~Have:~~

1. ~~A community corrections board established and functioning pursuant to KRS 196.725; or~~

2. ~~An alternate board as described in KRS 196.710(3). If an applicant seeks to operate its community corrections program with oversight by an alternate board instead of a community corrections board pursuant to KRS 196.710(3), it shall operate under the following requirements in KRS 196.725:~~

~~a. The board shall provide direction and assistance to the community corrections program in the design, implementation and evaluation of the community corrections program plan;~~

~~b. The board member shall not receive compensation for their duties as board members, but this shall not include the normal salary received by an employee if the employee is not hired to be a board member;~~

~~c. The board shall be subject to the open meetings law for any discussion or decision concerning the community corrections program, plan, or grant;~~

~~d. The board shall be subject to the open records law for any records concerning the community corrections program, plan, or grant;~~

~~e. The board shall meet on a regular basis; and~~

~~f. Its duties shall include duties (1) through (4) as stated in KRS 196.725; and~~

~~(c) Submit a completed application through the grant management system used by the cabinet on the Justice and Public Safety Cabinet Web site under the Grants Management Branch and Kentucky State Corrections Commission grants.~~

~~(4) The community corrections program plan shall include:~~

~~(a) A project overview containing a description of the cities and counties to be served and the general format of the programs;~~

~~(b) A projected budget detailing the manner in which the funds will be expended;~~

~~(c) Any local funds or contributions allocated to the development and implementation of the program plan; and~~

~~(d) Letters of certification of need and support from the circuit judge, Commonwealth attorney and the chief executive officer of the governmental unit.~~

~~(5) The community corrections program plan shall be approved by the board before an application is submitted.~~

~~(6) The application shall include:~~

~~(a) The community corrections program plan;~~

~~(b) 1. Records showing the creation of the community corrections board with meeting minutes; or~~

~~2. Request for approval of alternate board by commission;~~

~~(c) The following information for the board:~~

~~1. A list of board members and their area of representation, for example: crime victim, community leader;~~

~~2. Board meeting schedule;~~

~~3. Articles of incorporation, unless the board is an alternate board that is not incorporated; and~~

~~4. A letter of good standing for the corporation from the Secretary of State, unless the board is an alternate board that is not incorporated;~~

~~(d) A description of the function and operation of the board, for an alternate board;~~

~~(c) Contact information;~~

~~(d) A project narrative;~~

~~(e) The specific objectives and operations of the proposed project;~~

~~(f) Performance indicators;~~

~~(g) A proposed budget narrative; and~~

~~(h) Supporting documentation as required within the application.~~

Section 2. Eligibility Requirements. [(1)] The following programs ~~shall be~~are eligible ~~to apply~~ for funding pursuant to KRS 196.705:

(a) Victim restitution;

(b) Community service work;

(c) Home confinement;

(d) Electronic monitoring;

(e) Drug and alcohol counseling program;

(f) Day reporting centers; and

(g) Other programs that are for a purpose outlined in KRS 196.705. [(2)] Eligible applicants may apply for a grant to implement a program plan in a judicial circuit. Prior to submitting a program plan, the board shall approve the application which shall include:

(a) ~~Project overview containing a description of the cities and counties to be served and the general format of the programs;~~

~~(b) Letters of certification of need and support from the circuit judge, Commonwealth attorney and the chief executive officer of the governmental unit;~~

~~(c) A projected budget detailing the manner in which the funds shall be expended; and~~

~~(d) Any local funds or contributions allocated to the development and implementation of the program plan;~~

~~(e) All of these topics are contained in the form entitled "Kentucky Community Corrections Act Grant Application" which is hereby incorporated by reference. The "Kentucky Community Corrections Act Grant Application" is available for inspection and copying at the Division of Administrative Services, Kentucky Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m.~~

Monday through Friday.

~~Section 3. Department Assistance. The department shall provide consultation and technical assistance for the development of program plans within budget and staffing limitations of the department.]~~

Section 3[4]. Funds Restrictions. Grant funds shall be used for the development and implementation of new or enhanced programs and services for the targeted offenders. Such funds shall not be used to supplant funds previously committed to said programs and services by local or state government.

(1) Grant funds shall not be used in a manner prohibited by KRS 196.730 for jail operations or confinement, the renovation or construction of jail facilities, or the acquisition of land.

(2) Grant funds shall be disbursed on a quarterly basis, but the board shall not spend any funds unless services have been rendered.

Section 4[5]. Award Procedure.

(1) ~~The administrator shall forward copies of the grant applications to [director shall forward copies of the grant application form hereby incorporated by reference to members of] the commission who shall meet and determine which applications will be awarded grants within 100 days of the grant application [vote on the applications within sixty (60) days of the final] deadline.~~

(2) The commission shall make its[their] decision based on:

(a) The requirements in KRS 196.710;

(b) Assessment of the proposed program's ability to meet the purposes of community corrections programs stated in KRS 196.705;

(c) Strength of proposed program plan, including project overview and proposed budget;

(d) If applicable, whether grant requirements were met for a previous grant, including the proper submission of quarterly reports;

(e) An area of specific grant focus determined by the commission, if any; and

(e) Other factors of similar importance in assessing the strength of an application.

(3) ~~The administrator[priorities established by the commission. The director] shall notify the recipient of a grant award[recipient(s) of the grant(s) award(s)] within two (2) weeks of the decision.~~

(4)[(2)] Grants shall be made on a year-to-year basis with consideration for continued funding [until June 30, 1994] after review of submitted progress reports and audit reports. Funding shall not [No continuation funding shall] be provided to a program, which has failed to demonstrate:

(a) An effective sentencing alternative to incarceration;

(b) Successful program completions;

(c) Low arrest and supervision revocation rates;

(d) Cost savings; or

(e) Other positive outcomes supporting KRS 196.702(4)[reduce prison commitments].

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on September 12, 2019 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

JOHN C. TILLEY, Secretary

APPROVE BY AGENCY: November 25, 2019

FILED WITH LRC: December 3, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2020 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a

transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the grant application process, eligibility for grants, and award process to award grants for the implementation and operation of community corrections programs pursuant to 196.710.

(b) The necessity of this administrative regulation is: This administrative regulation is needed to establish the grant application process and its management for community corrections programs pursuant to 196.710.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement to have administrative regulations and establishes the grant application process and its management for community corrections programs pursuant to 196.710.

(2) If 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 administrative regulation is almost totally rewritten. It establishes the online application process, the requirements to apply for a grant, and the standards for review of an application.

(b) The necessity of the amendment to this administrative regulation: The amendment follows the requirements of the statutes and allows the online grant process used at the cabinet to be standardized for community corrections program grants.

(c) How the amendment conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: It clarifies the grant application process by providing directions that are more specific for grant applicants. In addition, it provides guidance on factors reviewed in the grant selection process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately fifty governments or organizations applying for or awarded grants by the commission. The Department of Corrections (DOC) provides assistance to the commission for the grant application process. Justice and Public Safety Cabinet Grants Management Division staff manage the online application platform.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 applying for grants will have to apply using the online application process, provide necessary information, and show compliance with other application requirements. DOC administrative staff for the commission notifies eligible applicants of available funds, program requirements, application format, and submission deadlines. Once applications are submitted, administrative staff review and present the applications to the commission for the selection process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The application process does not have a fee. Community corrections board preparations prior to application may include administrative costs related to the application process. The cost to the applicants depends on the amount of time spent on preparation of the application and the cost of compensation for the applicant's staff. DOC administrative staff spends approximately eighty hours preparing notifications to eligible applicants and reviewing the applications for a cost of \$2,500.00.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The applicant may be awarded a grant to operate a community corrections program.

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

(a) Initially: Cost to the applicants depends on the amount of time dedicated by the applicant in preparing the application. DOC administrative staff dedicates approximately forty hours resulting in a cost of \$2,500.00.

(b) On a continuing basis: Changes to the software for the online application process is expected to require fifteen to twenty hours of Justice and Public Safety Cabinet Grants Management Division staff time at approximately \$900-\$1,200 at a future date.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The commission grant funds as allocated through the General Assembly will serve as the source of 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: An increase in fees or funding to implement the administrative regulation amendment is not anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased in this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This impacts approximately fifty governments or organizations applying for or awarded grants by the commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 196.035, 196.704, 196.710

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

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

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

years? Revenue is not anticipated.

(c) How much will it cost to administer this program for the first year? \$1,050,500 is anticipated for grant funds and administrative and staffing costs.

(d) How much will it cost to administer this program for subsequent years? \$1,050,500 is anticipated for grant funds and administrative and staffing costs. Grant funds may be increased by the General Assembly.

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:

JUSTICE AND PUBLIC SAFETY CABINET Kentucky State Corrections Commission (Amendment)

500 KAR 10:030. Community Corrections Board and Grant Recipient Requirements.

RELATES TO: KRS 196.700 - 196.736[196.710]

STATUTORY AUTHORITY: KRS 196.035, 196.710, 196.725[196.710]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 196.035 authorize the secretary to promulgate[This] administrative regulations[regulation-is] necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation establishes the procedures and reporting requirements for a Community Corrections Board or alternate board pursuant to KRS 196.725 and KRS 196.710(3)to provide for the makeup and duties of the Community Corrections Board enacted by the General Assembly in KRS 196.710].

Section 1. [Appointments. The appointment of members to the Community Corrections Board shall be in accordance with KRS 196.710.

Section 2]. Meetings and Duties.

(1) The board shall meet at least quarterly to review the status of:

(a) The goals stated in KRS 196.702(4);

(b) The board's grant application for Community Corrections funding;

(c) Expenditures and revenue for each awarded grant; and

(d) Operation of the community corrections plan[Meeting times and duties of the Community Corrections Board shall be in accordance with KRS 196.710].

(2) The board shall obtain the audit required by KRS 196.725.

Section 2[3]. Reporting Requirements.

(1) The board shall review and approve a report before it is submitted to the administrator or commission. The board shall submit progress reports at least quarterly detailing program and fiscal information for the period to the administrator in a format approved by the commission. The format for the report, report deadlines, and other requirements for the report shall be posted in the grant requirements on the Justice and Public Safety Cabinet website under the Grants Management Division and Kentucky State Corrections Commission grants. The report shall include the:

(a) Number of participants served during period with the type of service received;

(b) Number successfully completing the program during the period;

(c) Number of unsuccessful participants;

(d) Number of incarceration days avoided;

(e) Number of participants with new arrests or revocations;

(f) Amount expended during the period for:

1. Personnel;

2. Contract services;

3. Travel;

4. Training;

5. Operating expenses; and

6. Equipment;

(g) Total amount expended for the period;

(h) Remaining balance of the grant; and

(i) The progress toward expending the award prior to the end of the award.[submit a minimum of quarterly progress reports to the director in a format approved by the department.]

(2) A grant recipient may request a budget modification from the commission by sending the request to the administrator. A deviation [Deviations] from the approved plan or budget shall not be implemented until the commission approves the budget modification and the modification has been processed through the Justice and Public Safety Cabinet grants management system[first be approved by the director. An annual independent audit shall be completed and submitted to the director].

(3) If the audit addressed in 500 KAR 10:040 has not been completed when the submission for final disbursement of funds for the grant is made, the board shall provide with the submission a letter certifying that it has reviewed the expenditures for the grant and that they have been expended in compliance with the grant requirements.

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on September 12, 2019 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

JOHN C. TILLEY, Secretary

APPROVE BY AGENCY: November 25, 2019

FILED WITH LRC: December 3, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2020 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email 0

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures and reporting requirements for a Community Corrections Board or alternate board pursuant to KRS 196.725 and 196.710(3).

(b) The necessity of this administrative regulation is: This administrative regulation complies with the requirements of KRS 196.725 and 196.710(3).

(c) How this administrative regulation conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation establishes the procedures and reporting requirements for a Community Corrections Board or alternate board pursuant to KRS 196.725 and 196.710(3) for compliance with grant management requirements.

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

(a) How the amendment will change this existing administrative regulation: The administrative regulation is almost totally rewritten. It provides detailed meeting and reporting requirements for the board.

(b) The necessity of the amendment to this administrative regulation: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the procedures and reporting requirements for a Community Corrections Board or alternate board pursuant to KRS 196.725 and 196.710(3).

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides detailed meeting and reporting requirements for a Community Corrections Board or alternate board pursuant to KRS 196.725 and 196.710(3) for compliance with grant management requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately fifty governments or organizations applying for or awarded grants by the commission, the Justice and Public Safety Cabinet, and the Department of Corrections (DOC).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 boards will have to comply with the detailed meeting and reporting requirements for grant awards. DOC administrative staff review reports to ensure requirements have been met and collaborate with the Justice and Public Safety Cabinet Grants Management Division if a budget modification is requested by a grantee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Grantees are required to track and provide specific information each quarter. Grantee administrative duties are typically included within a grant program budget. Over the course of approximately eighty hours, DOC administrative staff reviews reporting information provided by grantees and provides it to the commission. This review process roughly equates to \$1,200. DOC administrative staff also collaborates with the Justice and Public Safety Cabinet Grants Management Division if a budget modification is requested by a grantee. Time spent in collaboration between the Department of Corrections and the Justice and Public Safety Cabinet has the potential to cost up to \$3,000, which is the approximate compensation for forty hours.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board may be eligible for continued grant funding and future grant awards.

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

(a) Initially: The cost to an applicant depends on the amount of time dedicated by the applicant. Cost to compensate administrative staff is allotted within the allocated funds. DOC administrative staff cost to assist the commission with the tasks that are part of this administrative regulation is anticipated to be approximately \$1250.

(b) On a continuing basis: Additional costs to grantees may accrue if the need for corrections or modifications arise after the review of grantee reports. It is estimated that ten to fifteen percent of the program oversight staffs' time is dedicated to tracking outcome measures and compiling reports as required by the commission.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The commission grant funds as allocated through the General Assembly will serve as the source of 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: An increase in fees or funding to implement the administrative regulation amendment is not anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased in this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This impacts approximately fifty governments or organizations applying for or awarded grants by the commission. Along with applicants, this regulation affects Department of Corrections (DOC) administrative staff. DOC administrative staff review reports to ensure requirements have been met. Additionally, Department of Corrections administrative staff will collaborate with the Justice and Public Safety Cabinet Grants Management Division if a budget modification is requested by a grantee.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 196.035, 196.704, 196.710

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

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

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

(c) How much will it cost to administer this program for the first year? \$1,050,500 includes grant money and administrative and staffing costs.

(d) How much will it cost to administer this program for subsequent years? \$1,050,500 includes grant money and administrative and staffing 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:

JUSTICE AND PUBLIC SAFETY CABINET Kentucky State Corrections Commission (Amendment)

500 KAR 10:040. [Annual] Review for compliance.

RELATES TO: KRS 196.700 - 196.736[196.710]

STATUTORY AUTHORITY: KRS 196.035, 196.710
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 196.035 authorize the Secretary to promulgate[This] administrative regulations[regulation-is] necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation provides ~~for~~to provide for the annual review of the community corrections program ~~enacted by the General Assembly~~ in KRS 196.710.

Section 1. Review Process.

(1) During each fiscal year, the administrator[director] shall inspect and examine the fiscal and program records of each grant to determine compliance with the program plan and prepare a compilation of the reports for the commission. The administrator shall provide the compilation and the grant reports each quarter to the Commission[submit a report to the commission].

(2) Each fiscal year, the administrator shall compile the grant program results into an annual report. The commission shall review this report and may adopt all or portions of it for the annual evaluation required by KRS 196.735.

Section 2. Additional Information.

(1) A grantee shall present the progress of its program and oversight by the board to the commission at its meeting upon request.

(2) The administrator shall obtain an annual independent audit of each grant recipient. The administrator shall provide a summary of the audit results to the commission.

Section 3. Compliance Issues.

(1) If the administrator[director] determines that there is [a] reasonable cause to believe that a program or facility is not in substantial compliance with current requirements of the grant, or the program plan under which it was funded, notice of such findings shall be submitted to the commission.

(2) If information concerning a compliance issue is received and the chair of the commission determines that there is a significant risk of dissipation of funds, the chair may suspend all or any portion a grant until the commission meets and considers the matter.[Thirty (30) days following such notice, the board shall determine if there is substantial compliance or satisfactory progress being made to achieve compliance.]

(3) The commission[director] may suspend all or any portion of a grant or revoke the grant if it is determined by the commission that the board is not in substantial compliance or has not made satisfactory progress in achieving substantial compliance.

(a) Suspension.

1. Notice of the suspension shall be sent in writing to the grant recipient and board.

2. The notice shall provide specific actions for the grant recipient to correct deficiencies during the suspension and address compliance with the grant requirements.

3. The grant recipient shall provide progress reports as indicated in the suspension notice to the administrator.

4. The administrator shall monitor the grant recipient's progress in correcting the deficiencies and shall provide a report to the commission of the grant recipient's progress.

5. The commission shall review the grant recipient's progress as soon as practicable, but not more than ninety (90) days, after the sending of the report by the administrator to determine whether to:

a. Continue the suspension with instructions to the grant recipient concerning correction of the deficiencies;

b. End the suspension and resume the grant funding because the grant recipient has:

i. Sufficiently corrected the deficiencies; or

ii. Put into place satisfactory steps to achieve compliance within a reasonable time; or

c. Revoke the grant recipient's funding for that fiscal year.

(b) Revocation.

If the commission decides to revoke funding:

1. a. The administrator shall provide written notice to the grant recipient and board within seven (7) days; and

b. Additional funds shall not be dispersed to the grant recipient for that fiscal year; and

2. The commission may require the return of unexpended grant monies.

(4) If the grant recipient is instructed to return the unexpended funds, the grant recipient shall provide a check made payable to the Kentucky State Treasurer as soon as practicable, but not later than thirty (30) days, after receipt of the notice.

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on September 12, 2019 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

JOHN C. TILLEY, Secretary

APPROVE BY AGENCY: November 25, 2019

FILED WITH LRC: December 3, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2020 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides for review of the community corrections programs and grant awards for compliance with KRS 196.710.

(b) The necessity of this administrative regulation is: This administrative regulation is needed to establish the review process for grants and compliance with the statutes for board actions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The commission is required to award grants for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the Secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement to have administrative regulations and establishes the review process for grants and board statutory requirements.

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

(a) How the amendment will change this existing administrative regulation: The administrative regulation is almost totally rewritten. It provides detailed instructions for the review process to insure compliance with the statutes and administrative regulations.

(b) The necessity of the amendment to this administrative regulation: It provides detailed instructions for the review process to ensure compliance with the statutes and administrative regulations.

(c) How the amendment conforms to the content of the authorizing statutes: The commission is required to award grants

for the implementation and operation of community corrections programs pursuant to 196.710. KRS 196.704(8) requires the commission to promulgate administrative regulations for the operating procedures of the commission. KRS 15A.160 and 196.035 authorize the Secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: It makes the review process more clear.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately fifty governments or organizations applying for or awarded grants by the commission, the Justice and Public Safety Cabinet, and the Department of Corrections (DOC).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 boards and grantees will have to follow the meeting and reporting requirements. The DOC administrator assigned to the commission spends approximately forty hours to review program and fiscal aspects of submitted quarterly reports to ensure grantees are in compliance. The DOC administrator also notifies grantees of non-compliance issues and compiles and presents grantee program and fiscal reports to the commission.

(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 an applicant to meet reporting requirements depends on the amount of time dedicated by the applicant. Applicant time spent collecting required documentation is unpredictable. DOC administrative staff for the commission dedicates approximately eighty hours to inspection of program and fiscal aspects of submitted quarterly reports to ensure grantees are in compliance. Further time is spent seeking corrections and additional information from grantees if reporting is not sufficient (approximately twenty hours). In total, the administrator dedicates approximately 100 hours toward the compliance of this regulation resulting in compensation cost of \$1,500.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Grant awards will be more transparent.

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

(a) Initially: Approximately two and a half grantee staff dedicate eighty hours per quarter in providing oversight for grantee compliance and report compliance. This results in costs of approximately \$3,200.00. An annual audit costs approximately \$1,800.00 and is paid from part of the allocation by the General Assembly. The majority of grantee reporting time is focused on audit requirements and gathering financial and programmatic records to compile reports. If non-compliance issues occur, the corresponding time to correct may arise over the course of two weeks resulting in a possible cost of approximately \$1,200.00. The DOC administrator for the commission dedicates approximately 100 hours toward the compliance of this regulation resulting in cost of \$1,500.00. The DOC administrator costs listed in question (4)(b) are expected to continue.

(b) On a continuing basis: Annual training of grantees is anticipated. The DOC administrator for the commission arranges the meeting, communicates with attending grantees, and compiles handouts. An estimated cost for the DOC administrator and grantee time and travel is \$1,500.00.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The commission grant funds as allocated through the General Assembly will serve as the source of 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: An increase in fees or funding is not anticipated.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased in this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This impacts approximately fifty governments or organizations applying for or awarded grants by the commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 196.035, 196.704, 196.710

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

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

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

(c) How much will it cost to administer this program for the first year? \$625,000 was awarded in grant money in FY19.

(d) How much will it cost to administer this program for subsequent years? \$625,000 was awarded in grant money in FY19 with potential increased grant allocations.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

702 KAR 5:080. Bus drivers' qualifications, responsibilities, and training.

RELATES TO: KRS 156.160, 161.011, 189.540, 49 C.F.R. Parts 380, 382 and 391[382.101-382.605]

STATUTORY AUTHORITY: KRS 156.160(1), 189.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1) requires the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the Kentucky Board of Education to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation establishes the qualifications, training, and responsibilities of the school bus driver.

Section 1. [(4)(a)]Licensing Requirement. A school bus driver shall have a current, valid Commercial Driver's License with applicable endorsements and restrictions pursuant to KRS 281A.170 to 281A.175.

Section 2. Medical Fitness. (1) A local board of education shall require an annual medical examination that complies with KRS 281A.175 for[ef] each school bus driver [or driver of a special vehicle used to transport school children to and from school and events related to the school].

(2) A person shall not drive a school bus unless physically and mentally able to operate a school bus safely and satisfactorily;

(3) If there is limitation of motion in joints, neck, back, arms, legs, or other body parts, due to injury or disease that may limit the driver's ability to safely perform the task of driving a school bus or performing other driver responsibilities, the person shall not be employed as a school bus driver;

(4) A temporarily-injured or ill bus driver may be assigned duties other than driving until the employee regains the ability to safely perform school bus driver duties.

(5) An otherwise medically and physically eligible school bus driver with diabetes mellitus, may be employed as a school bus driver, if the driver possesses a valid federal Medical Examiner's Certificate as required under 49 C.F.R. Part 391.41.

(6)[(b)] A driver taking medication either by prescription or without prescription shall report said medication to the immediate supervisor and shall not drive if that medication may affect the driver's ability to safely drive a school bus or perform other driver responsibilities.

(7)(a) To ensure student safety, a district may require a school bus driver to pass a [routine] medical examination or a special type medical examination more often than annually at the district's expense;

(b) The medical examination shall include risk assessment and appropriate follow-through, as established in 702 KAR 1:160, Section 1, for tuberculosis upon initial employment; and

(c) The medical examination shall be documented on the same form required by the Kentucky Department of Transportation to obtain a commercial driver's license and retained by the district. [A current Medical Examination Report, form TC94-35E and supplement (TC 94-35E and the Supplement to TC 94-35E)] for each school bus driver shall be retained by the district.

(2) The medical examination shall include tests for:

(a) Hearing and vision disorders;

(b) Emotional instability; and

(c) Serious medical conditions including:

1. Diabetes;

2. Epilepsy;

3. Heart disease; and

4. Other chronic or communicable diseases if indicated in the opinion of the licensed medical examiner.

(3) The examination shall include risk assessment and appropriate follow-through, as established in 704 KAR 4:020, Section 1, for tuberculosis upon initial employment.

(4) A medical examination of a school bus driver shall be reported on the Medical Examination Report, form TC94-35E and supplement, and shall be submitted to the local superintendent or the superintendent's designee.]

Section 3.[2.] Criminal Records Check, Driving History, and Drug Testing. (1)(a) A criminal records and driving history check shall be performed by a local district on school bus drivers prior to initial employment and prior to reemployment following[after] a break in employment[service—(excluding summers)].

(b)1. Employment shall be contingent upon meeting the requirements of paragraph (a) of this subsection.

2. A local board of education shall adopt policies outlining employment qualifications for school bus drivers as related to these criminal records and driving history checks.

(c) A school bus driver shall immediately report to the local superintendent or the superintendent's designee a:

1. Revocation of the driver's license;

2. Conviction for driving under the influence (DUI) or driving while intoxicated (DWI)[DUI or DWI];

3. Conviction for reckless driving; or

4. Citation for a moving motor vehicle violation, including:
a. Driving under the influence (DUI) or driving while intoxicated (DWI)[DUI or DWI];

b. Reckless driving; or

c. A violation of state or local law governing motor vehicle traffic control, other than a parking violation.

(2)(a) Controlled substance and alcohol use testing shall be a condition of employment for anyone in a safety sensitive pupil transportation position, including:

1. School bus drivers;

2. School bus mechanics; and

3. Other safety-sensitive jobs requiring a Commercial Drivers License (CDL)[CDL] license.

(b) The controlled substance and alcohol use testing program shall include the following tests:

1. Preemployment testing (controlled substance only);

2. Postaccident testing;

3. Random testing; and

4. Reasonable suspicion testing.

(c) Prospective employees who have tested positive for a controlled substance within the last five (5) years shall not be considered for employment to drive a school bus or the performance of safety-sensitive services related to pupil transportation.

(d) A school bus driver, school bus mechanic, or anyone performing safety-sensitive pupil transportation duties having a confirmed positive test for a controlled substance shall be relieved of those duties immediately and not be eligible for reemployment for five (5) years.

(e) A school bus driver, school bus mechanic, or anyone performing safety-sensitive pupil transportation duties who tests at 0.02 percent or higher on the confirmation alcohol test immediately before, during, or immediately following the performance of these duties shall be relieved of these duties immediately and not be eligible for reemployment in a safety-sensitive pupil transportation position for five (5) years.

(f) A person shall not be employed as a school bus driver if convicted within the past five (5) years of driving under the influence (DUI) or driving while intoxicated (DWI)[DUI or DWI].

[(g)1. A person shall not drive a school bus unless the person is physically or mentally able to operate a school bus safely and satisfactorily.

2. If there is limitation of motion in joints, neck, back, arms, legs, or other body parts, due to injury or disease that may limit the driver's ability to safely perform the task of driving a school bus or performing other driver responsibilities, the person shall not be employed as a school bus driver.

3. Pursuant to KRS 161.011, a temporarily-injured or ill bus driver may be assigned duties other than driving until the employee regains the ability to safely perform school bus driver duties.]

(h) A driver taking medication either by prescription or without prescription shall report to the immediate supervisor and shall not drive if that medication may affect the driver's ability to safely drive a school bus or perform other driver responsibilities.

Section 3. (1) A person shall not drive a school bus unless the person has:

(a) Visual acuity of at least 20/40 (Snellen) in each eye either without corrective lenses or by correction with corrective lenses;

(b) Form field vision of not less than a total of 140 degrees; and

(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) A driver requiring correction by corrective lenses shall wear properly prescribed corrective lenses at all times while driving.

Section 4. (1) A person shall not drive a school bus if the person's hearing is less than 7/15 in the better ear, or if hearing loss is greater than forty (40) decibels if an audiogram is used, for conversational tones, with or without a hearing aid.

~~(2) A driver requiring a hearing aid shall wear properly operating aids at all times while driving.~~

Section 5. A school bus driver shall be at least twenty-one (21) years of age.

Section 6. (1) A school bus driver shall have a current, valid ~~Commercial Driver's License with applicable endorsements and restrictions.~~

~~(2)(a) Prior to acceptance into the school bus driver training program, a driver applicant shall be required to demonstrate driving skills judged by a certified driver training instructor to meet acceptable performance standards as outlined in Preemployment Road Test found in the School Bus Drivers Curriculum Instructor's Manual.~~

~~(b) The Preemployment Road Test Score Sheet supplied by the Department of Education shall become a part of the driver's training record.~~

~~(c) A driver shall demonstrate the following skill levels:~~

~~1. Vehicle knowledge; and~~

~~2. Driver ability to~~

~~A. Perform steering, maneuvering, and braking;~~

~~b. Use mirrors;~~

~~c. Demonstrate~~

~~(i) Ninety (90) degree left hand turns steering technique;~~

~~(ii) Ninety (90) degree right hand turns steering technique;~~

~~(iii) Correct operating posture;~~

~~(iv) Visual awareness;~~

~~(v) Backing ability using mirrors only; and~~

~~(vi) Demonstration of spatial awareness.]~~

Section 4.~~[7.-(4)]~~ Training Requirements. (1)(a) Minimum training requirements to become a school bus driver shall consist of the successful completion of the twenty-one (21) hour initial training course and follow-up reviews as set forth in the Kentucky School Bus Driver Trainer Manual[training course developed by the Kentucky Department of Education and three (3) driver review, evaluation, and instruction components].

(b) Prior to the beginning of each school year, a bus driver shall successfully complete a district specific eight (8) hour update training.

(c) Each district shall annually provide the eight (8) hour update training, which shall be aligned with the Kentucky School Bus Driver Trainer Manual, address the needs of the district's school bus drivers, and be conducted by a driver trainer certified in accordance with subsection two (2) of this Section.

(d) The eight (8) hour update training shall be provided after the district's last student attendance day of the school year, but prior to opening day of the proceeding school year.

(e) In the event a district employs a school bus driver, after the eight (8) hour annual update training was provided to bus drivers, the district shall provide the driver with the update training prior to allowing the driver to transport students.

(f) If a school bus driver leaves the employment of a school district as a bus driver, and is subsequently reemployed in the district as a driver, the driver shall complete the eight (8) hour update training within twelve (12) months following the driver's last date of employment in the district as a bus driver.

(g) A driver who does not timely complete the annual eight (8) hour update training and recertification pursuant to this section shall be required to complete the twenty-one (21) hour initial training course.

(2)(a) A driver trainer shall satisfactorily complete the thirty-three (33) hour classroom and driving curriculum developed by the Department and delivered by a state approved driver trainer instructor.[person shall not be certified to teach the school bus driver training curriculum until that person has:

(a) Satisfactorily completed a minimum of thirty-three (33) of hours classroom and driving instruction conducted by the Department of Education and relevant to the driver training curriculum; and

(b) Been issued an instructor's certificate by the

commissioner of education.]

(b)(3) Driver trainers shall annually complete a minimum of six (6) hours of training developed by the Department and delivered by a state approved driver trainer. [Instructors shall be required to renew their certificates annually by completing six (6) hours of update training conducted by the Department of Education.

(4) The School Bus Driver Training Course core curriculum shall consist of the following instructional units and minimum instructional times:

(a) Laws and regulations, which shall include at least two (2) hours of instructional time;

(b) Driving fundamentals, which shall include at least two (2) hours of instructional time;

(c) Care and maintenance, which shall include at least two (2) hours of instructional time;

(d) Critical situations one, which shall include at least one (1) hours of instructional time;

(e) Incidents and emergency procedures, which shall include at least two (2) hours of instructional time;

(f) Pupil management, which shall include at least two (2) hours of instructional time;

(g) First aid, which shall include at least one (1) hours of instructional time;

(h) Special education transportation, which shall include at least one (1) hours of instructional time;

(i) Extracurricular trips, which shall include at least one (1) hours of instructional time;

(j) Vehicle operations, which shall include at least three (3) hours of instructional time;

(k) Vehicle control at speed, which shall include at least one (1) hours of instructional time; and

(l) Bus route identification, driver review and instruction, which shall include at least two (2) hours of instructional time.

(5) Upon successful completion of the core curriculum, the school bus driver applicant shall complete the following:

(a) Driver review I, evaluation and instruction, which shall include at least two (2) hours of instructional time within the first five (5) days of driving;

(b) Driver review II, evaluation and instruction, which shall include at least two (2) hours of instructional time after not less than twenty (20) days and not more than thirty (30) days of driving; and

(c) 1. Driver review III evaluation and instruction, which shall include at least one (1) hour of instructional time within three (3) to six (6) months of completion of driver review II.

2. Driver review III shall be done with students on the bus.

Section 8. (1)(a) Prior to the beginning of each school year, a certified driver shall complete an eight (8) hour training update relevant to the curriculum.

(b) Each district shall be responsible for planning and conducting its own update based on the needs of its drivers and to ensure student safety. A district unable to administer its own eight (8) hour update shall receive prior written approval from the Department of Education before sending a driver to receive the training from another district.

(2) Discontinuance of driver employment and subsequent reemployment shall require the driver to become requalified by a training update within the twelve (12) month period following the driver's certification termination date.

(3) A driver who does not complete the training update and recertification as required by subsection (2) of this section shall be required to complete the beginning training program.]

Section 5.[9.] First Aid and Cardiopulmonary Resuscitation (CPR). All school bus drivers, pupil transportation technicians, and employees that transport students shall, at a minimum, receive basic first aid and CPR training by a person with a valid certificate in first-aid training, including CPR, from the American Red Cross, or equivalent training that can be verified by documentary evidence.

Section 6. Emergency Operation. (1) If an emergency makes it necessary for the driver to leave the bus while pupils are on board, the driver shall follow local board policy.[:

(1) Move the bus to a safe location if possible;

(2) Stop the engine;

(3) Shift the bus to low gear or place in neutral if automatic equipped;

(4) Set the parking brake;

(5) Remove the ignition key; and

(6) Place one (1) of the older responsible pupils in charge during the driver's absence if appropriate.

Section 10.]

(2) A driver shall not permit a pupil to operate the entrance handle or any other bus control except in case of an emergency[school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances].

Section 7.[14.] Transport of Items on School Bus. (1)(a) A local board of education shall develop a policy regarding the transport of persons and items on a school bus.

(b) To ensure student safety, the policy shall include:

1. A prohibition on firearms or weapons, either operative or ceremonial; however, the policy may permit archery bows, used in connection with a school archery team, to be transported inside the passenger compartment and arrows transported in the underneath storage compartment;

2. A prohibition on fireworks or other explosive materials of any type;

3. A prohibition on live animals, except for a service animal necessary for the student to attend school [as documented by a pupil's Individual Education Program];

4. A prohibition on glass objects or helium balloons; and

5. A prohibition on any object that may block the bus aisle or exits or otherwise impede exiting the bus;

(c) The policy may additionally address issues related to the safe transport of students, including but not limited to eating and drinking on the school bus.

Section 8. Student Assignment. (1) A driver shall transport only those pupils officially assigned to a bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or designee.

(2) A driver shall not permit an assigned pupil to leave the bus at a stop other than the pupil's regular stop unless presented with written permission signed by the principal or a designee.

(3) A driver shall not transport a person who is not a student, including adult employees of the board, unless provided with written permission from the district superintendent or a designee.

Section 9. Student Seating. (1) A driver shall supervise the seating of the pupils on the bus and may assign a pupil to a specific seat on the bus.

(2)(a) The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

(b) A driver shall not permit pupils to stand:

1. In the stepwell or landing area;

2. If the pupil would likely fall out of the bus if the emergency door were opened; or

3. If the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

(3) A driver shall report to the superintendent or a designee an overcrowded condition on the bus.

Section 12. (1) A driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip

that has been signed by the school principal or a designee.

(2) Except as provided in Section 18(2)(c) and (d) of this administrative regulation, a driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or a designee.

Section 13. A driver shall not transport a person who is not a student, including adult employees of the board, unless provided with written permission from the district superintendent or a designee.

Section 14. A board of education shall develop a policy regarding what may or shall not be transported on a school bus. The policy shall include the following:

(1)(a) A driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus.

(b) The driver shall not knowingly permit fireworks or other explosive materials of any type to be transported on the bus;

(2) A driver shall not permit to be transported on the bus:

(a) live animals, except for an animal that is:

1. To enable a person to safely utilize the bus transportation as documented by:

a. Adequate medical evidence; or

b. A student's Individual Education Plan; and

2. Not a risk to other bus riders;

(b) A preserved specimen that would likely frighten a pupil or cause a commotion on the bus; or

(c) Glass objects or helium balloons; and

(3) A driver shall not permit the transportation of an object that may block the bus aisle or exits.

Section 15. A driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 10.[16:] Loading and Unloading. (1) A driver shall activate the flashing amber signal lights at least 200[150] feet, if available, or a sufficient distance from a bus stop to warn motorists of the intended stop.

(2) Once the bus comes to a complete stop, the driver shall follow the loading and unloading procedure outlined in the Kentucky School Bus Driver Trainer Manual [Chapter 7 of the School Bus Drivers Curriculum Instructor's Manual].

(3) A stop signal arm and flashing warning lights shall be in operation anytime pupils are boarding or leaving the bus, including on school property.

(4) A driver shall signal pupils to board or exit only after determining that any visible approaching traffic has come to a complete stop and is not beginning to move or attempting to pass the bus.

(5) A driver of a school bus shall be on the bus at all times students are loading or unloading.

Section 11.[17:] Fueling. For safety reasons, a driver shall not permit fueling of the bus while pupils are on board the bus.

Section 12.[18:] Student Conduct. (1) Local boards of education shall adopt policies related to student conduct on school buses.

(2) If a pupil's conduct on the bus makes it unsafe for the bus to continue on its route, the driver shall follow local district policy:

(1) Make a determination as to the potential danger to other students on the bus; and

(2) Take action against the student by:

(a) Requesting that the student stop engaging in the prohibited conduct;

(b) If feasible, sending for assistance if the student fails to comply with the driver's order or request;

(c) Ordering the student to leave the bus; or

(d) Ejecting the pupil from the bus.

(3)(a)[1:] Ejecting a pupil from the bus shall be done only in the most extreme circumstances; and[-]

(b)[2:] If a student has been ejected from a bus [as the result of conduct specified in subsection (1) of this section], the driver shall notify the immediate supervisor who shall notify the appropriate district authorities, who shall subsequently notify the student's parent or legal guardian according to local board policy.

Section 13.[19:] Railroad. A school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The stop shall be made not less than fifteen (15) feet and not more than fifty (50) feet from the nearest track.

(1) After making the stop, the driver shall:

(a) Set the parking brake;

(b) Shift to neutral;

(c) Activate the noise abatement switch;

(d) Open the service door and driver side window; and

(e) Carefully look in each direction and listen for approaching trains before proceeding.

(2) If visibility is impaired at a crossing, after stopping the driver may allow the vehicle to roll forward to gain required visibility before proceeding.

(3) When a driver has ascertained that it is safe for the bus to cross the railroad tracks or tracks at the grade level, the driver shall:

(a) Close the bus entrance door;

(b) Shift the bus into the lowest gear;

(c) Release the parking brake;

(d) Proceed immediately to cross the railroad tracks or tracks at the grade level; and

(e) Turn the noise abatement switch off when safe to do so.

Section 14.[20:] Driver Inspection. (1) A driver shall perform and document a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

(2)[Section 21.-(1)] A school bus driver shall inspect the school bus at the completion of each bus run to ensure that no students remain in the bus.

Section 15. Road Conditions. [not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels.

(2) A driver shall not drive the school bus on any roadway [at any time at a speed] if the conditions of the roadway, weather conditions, or other extenuating circumstances may make it unsafe.

Section 16. Driver Seat Belt. [Section 22.] A driver shall wear the driver's seat belt at all times that the bus is operated.

Section 17. Tobacco. [Section 23. A stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 24.] A driver shall not use tobacco products on the school bus and shall not permit pupils to use tobacco products on the school bus.

[Section 25. A driver shall signal pupils to board or leave the bus when the driver has determined that any visible approaching traffic has come to a complete stop and is not attempting to start up or pass the bus.

Section 26. (1) A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug.

(2) A driver found under the influence of alcohol or any illegal drug while on duty or with remaining driving responsibilities that same day shall be dismissed from employment.

VOLUME 46, NUMBER 7– JANUARY 1, 2020

~~Section 27. A driver of a school bus shall be on the bus at all times students are loading or unloading.~~

~~Section 28. A driver shall inspect the school bus at the completion of each bus run to ensure that students do not remain on the bus.~~

~~Section 29.] Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Kentucky School Bus Driver Trainer Manual; Kentucky School Bus Drivers Curriculum", October 2019["Medical Examination Report", Form TC 94-35E and Supplement to TC 94-35E, October 2007;~~

~~(b) "Preemployment Road Test", Score Sheet January 2002; and~~

~~(c) "School Bus Drivers Curriculum Instructor's Manual", October 2007].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Pupil Transportation Branch, Department of Education, 300 Sower Boulevard, Frankfort, Kentucky 40601[15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601], Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: December 13, 2019

FILED WITH LRC: December 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall be held on February 24, 2020, 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 hearing 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 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 February 29, 2020. 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: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: The amendment revises KDE's school bus driver training requirements and brings them into alignment with recent changes to Federal Motor Carrier Safety Administration federal regulations (49 C.F.R. part 380) related to entry-level driver training. Additionally, the amendment reorganizes and streamlines the existing regulation to clearly communicate policies and procedures for the safe operation of school buses and transportation of students.

(b) The necessity of this administrative regulation: This regulation has not been amended since 2007. Recent changes to federal regulations related to commercial vehicle entry-level driver training (49 C.F.R. part 380), applicable to school bus drivers, require changes to KDE's driver training curriculum. Additional

changes to the regulation include a reorganization of existing sections to better communicate best practices for safe school bus operation and safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160(1) requires the KBE to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the Kentucky Board of Education to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation establishes the qualifications, training, and responsibilities of the school bus driver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 189.540 requires the KBE to promulgate administrative regulations governing the design and operation of school buses. The proposed amendment will align Kentucky's training requirements for school bus drivers with recent changes to federal rules (49 C.F.R. part 380) for entry-level driver training. The federal regulations are applicable to school bus drivers.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the training requirements for Kentucky school bus drivers to comply with recent federal rule changes (49 C.F.R. part 380). Additionally, the amendment reorganizes and streamlines the regulation to provide for the safe operation of school buses and transportation of school children.

(b) The necessity of the amendment to this administrative regulation: This regulation has not been amended since 2007. Recent changes to federal regulations related to commercial vehicle entry-level driver training (49 C.F.R. part 380), applicable to school bus drivers, require changes to KDE's driver training curriculum. Additional changes to the regulation include a reorganization of existing sections to better communicate best practices for safe school bus operation and safety.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.160(1) requires the KBE to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the Kentucky Board of Education to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation establishes the qualifications, training, and responsibilities of the school bus driver.

(d) How the amendment will assist in the effective administration of the statutes: KRS 189.540 requires the KBE to promulgate administrative regulations governing the design and operation of school buses. The proposed amendment will align Kentucky's training requirements for school bus drivers with recent changes to federal rules (49 C.F.R. part 380) for entry-level driver training. The federal regulations are applicable to school bus drivers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulation will impact all 172 Kentucky school districts. All new bus drivers, after the effective date of the amendment, will be subject to the new training requirements. The amendments to the school bus driver training regime is required by federal regulation effective February 2020. (49 C.F.R. part 380).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 amended training curriculum will replace the existing training. After the effective date of the regulation, all new bus drivers will receive the new training

and updates. The changes to the entry-level driver training is required by 49 C.F.R. part 380, effective February 2020.

(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 additional cost to providing the new training.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The new training requirements complies with the recent changes to 49 C.F.R. part 380. The changes to entry level driver training are required for all commercial vehicle drivers including school bus drivers.

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

(a) Initially: There is no additional cost to school districts or new school bus drivers.

(b) On a continuing basis: There is no additional cost to school districts or new school bus drivers.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not applied. There are no fees associated with the proposed regulation amendment.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local 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(1) requires the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children.

KRS 189.540 requires the Kentucky Board of Education to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation establishes the qualifications, training, and responsibilities of the school bus driver.

49 C.F.R. part 380 provides requirements for entry-level driver training of commercial vehicles, including school buses.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional fiscal impact is anticipated. The amendment, when effective, replaces the existing training requirements.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The proposed amendment is not expected to generate revenue.

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

(c) How much will it cost to administer this program for the first year? Administration of the proposed amendment is not expected to exceed current expenditures in the first year.

(d) How much will it cost to administer this program for subsequent years? Administration of the proposed amendment is

not expected to exceed current expenditures 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 (+/-): Minimal to none.

Other Explanation: The intent of the proposed amendment is to update Kentucky's school bus driver training requirements to conform with the federal requirements of 49 C.F.R. part 380, effective February 2020. Additionally, the amendment reorganizes and streamlines the regulation to clearly communicate the proper policies and procedures for the safe operation of school buses and transportation of students.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. Daily Attendance. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a pupil entry and exit log at each school.

(2) Daily attendance of pupils in middle and high schools shall be determined by taking attendance by class period and maintaining a pupil entry and exit log at each school.

(3) The pupil entry and exit log shall include the date, pupil name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), and other information required by the local board of education. For elementary pupils who are signed out, the pupil entry and exit log shall also include a signature of:

(a) A parent;

(b) A legal guardian; or

(c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A pupil may be counted in attendance for a virtual high school class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section ~~7(5)(2)(b) or (3)~~;

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the

home/hospital program shall receive, at a minimum, the instruction required pursuant to KRS 157.270[~~a minimum of one (1) hour of instruction two (2) times per five (5) instructional days~~];

(e) The pupil has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive at a minimum, the instruction required pursuant to subsection (d) of this Section~~a minimum of one (1) hour of instruction two (2) times per five (5) instructional days~~;

(f) The pupil has an individual education program~~plan~~ (IEP) that requires less than full-time instructional services;

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 7[5(2)(b)] and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305[~~Section 2~~]. A pupil may be counted in attendance for performance-based credit for a class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7[5(3)]; or

(h) The pupil participates in a school that is authorized by the commissioner to design and deliver an educational program so that all graduation requirements are based on pupil proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 7[5].

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 2. Calculation of Attendance. The guidelines in this section shall be used to calculate pupil attendance for state funding purposes.

(1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent thirty-five (35) percent or less of the regularly-scheduled school day for the pupil's grade level.

(3) A half day absence shall be recorded for a pupil who is absent thirty-six (36) percent to eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent more than eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

Section 3. Shortened School Day. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060, or local board of education policy. The time a pupil is in attendance shall be included in calculating the district's average daily attendance.

Section 4. Dual Enrollment. A local board of education may permit an arrangement in which a pupil pursues part of the pupil's education under the direction and control of one (1) public school and part of the pupil's education under the direction and control of another public or nonpublic school. The time a pupil is served by each public school shall be included when calculating the district's average daily attendance.

Section 5. Private School Placement. If a local school district, under the provisions of KRS 157.360(7), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 6. Age of Pupil. ~~(1) If (1) Prior to the 2017-18 school year, if a local school district enrolls in the entry level program a~~

~~pupil who will not be five (5) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance. Beginning with the 2017-18 school year, if a local school district enrolls in the entry level program a pupil who will not be five (5) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.~~

~~(2) If [Prior to the 2017-18 school year, if a local school district enrolls in the second level of the primary program a pupil who will not be six (6) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in this subsection. Beginning with the 2017-18 school year, if a local school district enrolls in the second level of the primary program a pupil who will not be six (6) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in this subsection (3) of this section.~~

~~(3)(a) The local board of education shall have determined that the pupil is eligible for enrollment in the appropriate[second] level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:~~

- ~~1. Anecdotal records;~~
- ~~2. A variety of pupil work samples, including evidence of pupil self-reflection; and~~
- ~~3. Standardized test results.~~

~~(b) The team shall be comprised of three (3) members who have knowledge of the pupil's developmental skills and abilities. Team members shall be chosen from these categories:~~

- ~~1. Teachers;~~
- ~~2. Parents;~~
- ~~3. Psychologists;~~
- ~~4. Principals; or~~
- ~~5. District specialists.~~

~~(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices.~~

~~(d) If a pupil is recommended by the local board of education for accelerated placement into the entry or second level of the primary program, the district shall forward that recommendation to the department for approval with:~~

- ~~1. A list of data sources used in making the decision;~~
- ~~2. A list of all individuals who submitted the data sources;~~
- ~~3. A list of team members; and~~
- ~~4. The data needed to create a pupil attendance record.~~

~~(3) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years who wishes to enroll. The days attended after the pupil's 21st birthday shall not be included in the calculation of the district's average daily attendance.~~

Section 7. Due Dates for Certain Reports. (1) The Growth Factor Report for the first two (2) school months of the school year created pursuant to KRS 157.360(9) shall be submitted to the department through the statewide student information system within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

(2) Pursuant to KRS 157.360(2), the Superintendents Annual Attendance Report (SAAR) for the school year shall be submitted to the department through the statewide student information system by June 30 of each year.

Section 8. Nonresident Pupils. (1)(a) A written agreement executed by local boards of education for enrollment of nonresident pupils as provided by KRS 157.350(4)(a) shall be filed

in both the attending district and the resident district no later than ~~October~~February 1 of the ~~school~~ year prior to the school year to which it will apply.

(b) The written agreement shall include the specific terms to which the districts have agreed.

(c) A list of the names of all nonresident pupils enrolled in the attending district covered by the agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year covered by the agreement.

(d) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be filed in both the attending district and the resident district no later than June 30 of each year.

(2) A list of the names of all nonresident pupils whose parent is an employee of the district as provided by KRS 157.350(4)(b) and who are not covered by the nonresident agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year.

(3)(a) If an agreement cannot be reached for the enrollment of nonresident pupils as provided in KRS 157.350(4)(a), a local board of education may file an appeal to the commissioner no later than October 15 of the school year prior to the school year to which an agreement would apply.

(b) A local board of education shall file its appeal to the commissioner in person or by mail at the following address: Commissioner of Education; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601. A local board of education filing an appeal to the commissioner shall include written arguments and documents in support of its position.

(c) Upon receipt of an appeal pursuant to KRS 157.350(4)(a), the commissioner shall notify the local boards of education involved in the dispute and provide a deadline not to exceed twenty (20) calendar days for the responding local board of education to file written arguments and documents supporting its position. The commissioner shall issue a written decision settling the dispute within thirty (30) calendar days following the deadline for the responding local board of education to file written arguments and documents supporting its position.

(4)(a) A local board of education may appeal the commissioner's written decision to the state board of education by filing a notice of appeal and request for hearing no later than fifteen (15) calendar days following issuance of the commissioner's written decision.

(b) A notice of appeal and request for hearing from a local board of education shall include:

1. the name of the school district filing the notice of appeal and request for hearing;

2. the case number, if any, assigned to the commissioner's written decision;

3. the date of the commissioner's written decision;

4. a statement of the issues which form a basis for the notice of appeal and request for hearing; and

5. the signature of the local board of education chair or counsel authorized to act on behalf of the local board of education.

(c) A local board of education shall file its notice of appeal and request for hearing in person or by mail at the following address: Kentucky Board of Education; General Counsel; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601.

(5)(a) Upon receipt of a notice of appeal and request for hearing, a notice of hearing pursuant to KRS 13B.050 shall be issued and a hearing officer shall be assigned pursuant to KRS 13B.030.

(b) Following issuance of a notice of hearing and assignment of a hearing officer as set forth in subsection (5)(a) of this Section, the hearing officer shall preside over the matter and schedule an administrative hearing pursuant to KRS Chapter 13B to conclude no later than sixty (60) calendar days following the notice of hearing described in subsection (5)(a) of this Section.

(c) Following conclusion of administrative hearings not conducted before a quorum of the state board, the hearing officer shall issue a recommended order to the state board of education

pursuant to KRS 13B.110.

(d) Parties may file exceptions to the hearing officer's recommended order pursuant to KRS 13B.110.

(e) Following receipt of the hearing officer's recommended order and any exceptions filed by the parties, or following conclusion of the administrative hearing if conducted before a quorum of the state board of education, the state board of education shall issue a final order pursuant to KRS 13B.120.

Section 9. Weather-related Low Attendance Days. (1) The SAAR ~~may~~shall be considered:

(a) ~~Substitute the~~[The request to substitute] prior year's average daily attendance for up to ten (10) designated weather-related low attendance days; and

(b) Shall constitute certification [Certification] that the low attendance was due to inclement weather, in accordance with KRS 157.320(17).

(2) Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 10. Nontraditional Instruction Program Health and Safety Closings. (1) The SAAR ~~may~~shall be considered:

(a) ~~Substitute the~~[The request to substitute] prior year's average daily attendance for up to ten (10) designated instructional days, in accordance with KRS 158.070(10); and

(b) Shall constitute certification [Certification] that the low attendance was due to health and safety reasons.

(2) Documentation that the low attendance was due to health and safety reasons shall be retained at the central office.

(3) Days granted in this section shall be in addition to any days granted under Section 9 of this administrative regulation.

Section 11. Original Source of Attendance Data. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, pupil entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and pupil entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 12. Enrollment Codes. The following entry, reentry, and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew ~~[as a W06, W07, W13, W16, or W18 during the 2004-2005 school year or]~~ as a W07, W24 or W25 for previous school years;

(4) R01 - A pupil received from another grade or grade level in the same school year, or having a change in schedule structure or enrollment service type;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R06 - A pupil reentering the school after dropping out, discharge, or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;

(9) W01 - A pupil transferred to another grade in the same school or with grade level changes in the same school mid-year, or with a change in schedule structure or enrollment service type. The reentry code to use with W01 shall be R01;

(10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(11) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 2(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the pupil is too ill to participate in regular school attendance, or local homebound instructional services or hospital setting instructional services, or if the pupil has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(12) W08 - A pupil withdrawn due to death;

(13) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(14) W17 - An entry level pupil in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060;

(15) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;

(16) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(17) W22 - A pupil who has transferred to another Kentucky public school district and for whom a request for pupil records has been received or enrollment has been substantiated;

(18) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(19) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated or failed to attend on the first day of school in a district but thereafter enrolled in the district;

(20) W25 - ~~[Prior to the 2017-18 school year, a pupil who is at least the local board policy's minimum age for withdrawal and has withdrawn from public school; beginning with the 2017-18 school year, a]~~ A pupil who is at least eighteen (18) years of age and has withdrawn from public school;

(21) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;

(22) W27 - A pupil who has withdrawn from school and subsequently received a GED;

(23) W28 - A pupil who has reached the maximum age for education services without receiving a diploma or an alternative high school diploma;

(24) W29 - A pupil who has moved out of state or out of the United States;

(25) W30 - A pupil with an IEP enrolled in Grade 14 who has previously received an alternative high school diploma, re-enrolled, and withdrew in the middle of the reporting school year;

(26) C01 - A pupil who completes the school year in the school of the most current enrollment;

(27) G01 - A pupil who graduates in less than four (4) years;

(28) G02 - A pupil who graduates in four (4) years;

(29) G03 - A pupil who graduates in five (5) or more years;

(30) G04 - A pupil who graduates in six (6) or more years; and

(31) NS - A pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated.

Section 13. Suspension. (1) For a pupil who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

Section 14. Ethnicity. The ethnicity of each pupil shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be "Hispanic/Latino" if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race. The term "Spanish origin" may be used in addition to "Hispanic/Latino".

Section 15. Racial Category Codes. One (1) or more of the following racial codes shall be used to indicate the racial category of pupils:

(1) White - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;

(2) Black or African American - A person having origins in any of the black racial groups of Africa;

(3) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam;

(4) American Indian or Alaskan Native - A person, having origins in any of the original peoples of North America and South America (including Central America), who maintains cultural identification through tribal affiliation or community attachment; and

(5) Native Hawaiian or other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16. Withdrawal and Transfer Records. (1) ~~[The Student Dropout Questionnaire shall be completed during the one (1)-hour counseling session mandated in accordance with KRS 159.010.~~

(2) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his or her designee pursuant to KRS 159.170, and shall be maintained in the pupil's permanent file.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Home/Hospital Program Form", ~~October 2019~~ November 2013;

(b) "Student Dropout Questionnaire", November 2013;

(c) "Growth Factor Report", November 2013; and

(d) "Superintendent's Annual Attendance Report (SAAR)", November 2013].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard, 5th Floor ~~15th Floor, Capital Plaza Tower, 500 Mero Street~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D., Commissioner

HAL HEINER, Chairperson

APPROVED BY AGENCY: December 9, 2019

FILED WITH LRC: December 9, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2020, 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 hearing 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 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 February 29, 2020. 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: 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 defines average daily attendance for pupils for funding purposes in the Support Education Excellence in Kentucky (SEEK) program through a uniform method of recording pupil attendance.

(b) The necessity of this administrative regulation: KRS 157.320 defines average daily attendance of pupils for funding purposes under the SEEK program. KRS 157.360 bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.030 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation establishes a uniform method of recording pupil attendance.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the required guidelines for the uniform recording of and accounting for pupil attendance.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the administrative regulation to update statutory references, remove phased implementation dates that have passed, provide details regarding nonresident student disputes pursuant to KRS 157.350(4), and removes certain documents incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment eliminates confusion by updating statutory references and phased implementation dates which have passed. The amendment also provides needed clarification and details for the handling of nonresident student disputes pursuant to KRS 157.350(4).

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to KRS 156.035 and 156.070 that require the KBE to promulgate administrative regulations to ensure the proper accounting of pupil attendance for school district budgeting purposes. The amendment further conforms to KRS 157.350 which provides for appeal of nonresident student disputes to the Commissioner and KBE.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the statute to provide greater clarity regarding the nonresident student dispute appeal process, and eliminate confusion of outdated statutory references.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff in the Kentucky Department of Education.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: The amendment to this administrative regulation will impact all schools and districts by providing them with

greater clarity and understanding of accounting for pupil attendance and how to resolve nonresident student disputes.

(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: School districts should notify appropriate staff of changes to the regulation. School districts seeking settlement of nonresident student disputes will be required to follow the steps outlined in the amended 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 to current operations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): SEEK funding is tied directly to pupil attendance. School districts must record attendance accurately to receive the appropriate share of SEEK funding.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Additional costs are not anticipated. General funds for current and ongoing costs.

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

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

(9) TIERING: Is tiering applied? While the administrative regulation applies equally to all school districts, tiering is applied in SEEK distribution (pursuant to state law) to equalize funding for poorer school districts with lower tax bases and/or higher numbers of students who qualify for free or reduced price lunch.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All Kentucky 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 157.320, 157.360, 158.030, 158.070, 158.100, 158.240, 159.030, 159.035, 161.200.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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. This administrative regulation provides the means to determine the average daily attendance (ADA) for calculating each district's annual SEEK allocation. To the extent that this administrative regulation allows for tracking student attendance, any change in student ADA will directly impact the SEEK calculation.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

703 KAR 5:140. Requirements for school and district report cards.

RELATES TO: KRS 158.031, 158.6453 (17) [(20)]
 STATUTORY AUTHORITY: KRS 158.6453 (17) [(20)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 (17) [(20)] requires the Kentucky Board of Education to promulgate an administrative regulation to define the implementation and the components of a school and district report card that clearly communicates with parents and the public about school and district performance. This administrative regulation establishes the standards for a school and district report card.

Section 1. Definitions. (1) "Average student/teacher ratio" means the total enrollment of the school (end of year membership) divided by the number of teachers on a full-time equivalent (FTE) basis, not including administrators, guidance counselors, or media specialists.

(2) "Average years of experience" means the average number of years of professional experience of classroom teachers excluding certified staff such as administrators, guidance counselors, or media specialists.

(3) "Base year" means the academic year immediately preceding the publication of the school report card components.

[(4)] "Core academic subject" means English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, or geography.]

(4) [(5)] "District report card" means the summary of district and school information that shall [may] be published [in the newspaper with the largest paid circulation in the county in which the district resides] pursuant to KRS 160.463.

(5) "Membership" means the number of kindergarten through grade twelve (12) students enrolled in a school or district as reported by the local superintendent at the close of the school year.

(6) "Parent" shall have the same meaning as defined in KRS 160.345(1)(d).

(7) "Prominent location" means a school entryway or common area where community members, parents, students and other educational stakeholders visit in the school.

(8) [(6)] "School" means an institution as defined in KRS 160.345(1)(b).

(9) [(7)] "School report card" means the public reporting mechanism established pursuant to 20 U.S.C. 6311(h) and KRS 158.6453 (17)(a). [compilation of school information to be published on the Kentucky Department of Education Web site and linked to school Web sites or in a printed copy if requested.]

(10) [(8)] "School safety data" means a list of components as established in Section 2 of this administrative regulation, critical to providing for a safe school environment for students and school staff.

(11) [(9)] "Spending per student - district" means the current expenditures made divided by the [total primary through grade twelve (12)] membership [end-of-year average daily attendance] in the district.

(12) [(10)] "Spending per student - school" means the current expenditures made divided by the membership [end-of-year average daily attendance] in the school.

(13) [(11)] "Spending per student - state" means the current expenditures made divided by the [total primary through grade twelve (12)] membership [end-of-year average daily attendance] in the state.

[(12)] "Total enrollment" means the number of primary through grade twelve (12) students enrolled in a school or district as reported by the local superintendent at the close of the year.]

Section 2. School Report Card. In addition to the requirements of 20 U.S.C. 6311(h) and KRS 158.6453(17)(a), a [A] school report card shall include the following information:

(1) The name and address of the school, the name of its principal, [and] telephone, [fax] and email contact information, all of which shall be current at the time the card is published;

(2) The membership [total enrollment] of the school;

(3) The school level results of all components of Kentucky's accountability system to classify schools and districts, which is established in 703 KAR 5:270, Section 2;:

(a) Established in 703 KAR 5:200, Section 2; and

(b) Also known as the Unbridled Learning: College/Career-Ready for All Accountability System;]

(4) Teacher qualification information, including:

(a) Average years of teaching experience;

(b) [Percentage of teachers with emergency or provisional certification;

(c) Percentage of core academic subject classes not taught by highly qualified teachers;]

(d) The number of teachers certified by the National Board for Professional Standards; and

(c) [(e)] The professional qualifications of all teachers expressed as percentages, including bachelors, masters, Rank I, specialist, and Ph.D. or Ed.D. degrees;

(5) School safety data including:

(a) Whether visitors are required to sign in;

(b) Whether all parents receive the district discipline code;

(c) The percentage of classrooms with telephones able to access outside lines; and

(d) Data detailing school safety incidents [violations] reported pursuant to 20 U.S.C. 6311(h) and KRS 158.444 as well as additional safety violations required to be reported as part of the Civil Rights Data Collection or another reporting mechanism mandated by state or federal law. [of 1st Degree assault (with intent to cause injury), drug abuse, and weapons. The safety data shall include:

1. The number of incidents; and

2. The number of students suspended or expelled for that kind of incident;]

(6) Student resource data including:

(a) Spending per student at the school, district and state level;

(b) Average student to teacher ratios at the school, district, and state level; and

(c) Student to internet connected instructional computer ratios, [at the school, district and state level;

(d) Percentage of computers meeting the minimum standards for acceptable computers in Kentucky schools and districts pursuant to the master plan for education technology required by KRS 156.670;]

(7) Measures of parental [Parental] involvement pursuant to KRS 158.6453 (17)(a) [information] including:

(a) Number of students whose parent or guardian had at least one (1) teacher conference;

(b) Number of parents and guardians voting in school based decision making council elections; and

(c) Number of parents and guardians serving on the school based decision making council, [or its committees; and

(d) Number of school-related volunteer hours;]

(8) The names of school based decision making council members at the end of the base [current] year, [school council with contact information, including telephone numbers or e-mail addresses where the members can be reached for questions or comments.

Section 3. As accurate, reliable data become available from student information systems, the Kentucky Department of Education shall link school, district, and state data to the school and district report cards, including existing reports, participation, and performance in Advanced Placement (AP) tests and courses, disaggregated to the extent permitted under KRS 160.700-160.730, which protects the confidentiality of an individual student's educational records.]

Section 3[4]. District Report Card. In addition to the requirements of 20 U.S.C. 6311(h) and KRS 158.6453(17)(a), a district report card shall include the following information:

(1) A [district report card shall include a] district level summary of all school data required on the school report card and shall be the aggregation of the school report cards by [grade] level (elementary, middle and high);[-]

(2) The [district report card shall include the] name[s] and email address [appropriate addresses] of the current [district] superintendent at the time the card is published;

(3) [and] The names of the members of the local board of education at the end of the base year; and [-]

(4) [(3)] The [district report card shall contain data and information that complies with the federal No Child Left Behind Act of 2001, and the waiver provisions of that act, as may be applicable to the Department, 20 U.S.C. secs. 6301 et seq., or its successor and the] professional qualifications of teachers [percentage of core academic subject classes not taught by highly qualified teachers] shall be aggregated. [and disaggregated high poverty compared to low poverty schools (schools in the top quartile of poverty and the bottom quartile of poverty in the state).

(4) The district report card shall include a list of district schools with primary programs and the number of students in each school requiring five (5) years to complete the primary program.]

Section 4.[5.] Data Verification and Publication[Reporting Requirements; Timelines]. (1) Prior to publication the principal and the superintendent or a designee shall review and approve the [text and] data included in [provided for] the school and district report cards. Each school report card and district report card shall be published on the Kentucky Department of Education Web site and the applicable school and district Web sites, [and shall be supplied by the school and districts in printed format if requested.

Section 6. Verification; Audits. (1) The Department of Education shall conduct an audit of school and district report cards for compliance with the provisions of this administrative regulation. School and district report card components generated at the school and district shall be delivered to the Department of Education upon request.]

(2) If a school or district [alters data without authorization,] falsifies data[;] or publishes incorrect information in a component of the report card, it shall supply corrected information to the Department of Education in accordance with timelines set for publication of the School Report Card.

Section 5. Communication on federal and state school accountability classifications.

(1) (a) Each public elementary and secondary school shall display the school's current federal and state accountability classification in a prominent location in the school; or

(b) The principal in collaboration with the school based decision making council shall hold an advertised public meeting that includes both parents and community members to discuss the school's current federal and state accountability classification and plan for sustainability or improvement.

(c) The superintendent of the local education agency shall determine whether each public elementary and secondary school shall display the school's current federal and state accountability classification in a prominent location or conduct an advertised public meeting to discuss the school's current federal and state accountability classification and plan for sustainability or improvement.

(2) Each school shall provide written or an electronic form of notification within 30 days of public release of data to the parent or legal guardian of any student who attends that school. The written or an electronic form of notification shall include the current federal and state accountability school classification which includes a graphic of the star ratings, include the link to the school report card and may include additional information such as school programs.

(3) In case of a change to the school's federal and state accountability classification, schools shall update the display or

conduct an advertised public meeting and provide written or an electronic form of notification to the parent or legal guardian. [audience that received the incorrect information, using the same medium by which it conveyed the original information.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: December 13, 2019

FILED WITH LRC: December 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on February 24, 2020, 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 February 29, 2020. 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 standards for a school and district report card.

(b) The necessity of this administrative regulation: KRS 158.6453 (17) requires the Kentucky Board of Education to promulgate an administrative regulation to define the implementation and the components of a school and district report card that clearly communicates with parents and the public about school and district performance.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for the state report card program. The regulation relates to the reporting requirements of KRS 158.6453, KRS 158.6455 and the requirements of 20 U.S.C. 6311(h).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides requirements for school and district report cards.

(2) If 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 align the school and district report cards to the new federal and state requirements. It also adds a new section on communication around federal and state school accountability classifications.

(b) The necessity of the amendment to this administrative regulation: The amendment aligns the school and district report card program to federal and state guidelines.

(c) How the amendment conforms to the content of the authorizing statute: The amendment provides information necessary for the report card program. The amendment relates to reporting data from requirements of KRS 158.6453, KRS

158.6455, and the Every Student Succeeds Act of 2015.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide definitions and components required in the school and district report card.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky and supporting staff at 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 regulation will impact schools and districts by providing school and district report card requirements.

(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: Schools and school districts will have to verify information and data in the report cards for accuracy. In addition, schools will have to place the accountability ratings in a prominent location in the school building, or hold an advertised public meeting to discuss the school's accountability rating, plan for sustainability or improvement. In addition, each school shall provide a written or electronic form of communication that states the accountability rating, which includes star ratings, program offered, and a link to the school report card.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Amendments to the regulation may impact school budgets. Schools may be responsible for printing and mailing costs associated with written notifications to parents and guardians, along with minimal costs associated with displaying accountability classifications in a prominent location. The Kentucky Department of Education will provide templates to districts as guidance for the letters and displays.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky schools and districts will have a clear communication tool on academic performance, educational opportunities, transition readiness, school accountability, school safety and financial transparency.

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

(a) Initially: Additional costs are not anticipated.

(b) On a continuing basis: Additional costs are not anticipated. Only costs for the KDE to continue to work with a school report card vendor.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education operating 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.

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453, KRS 158.6455, Every Student Succeeds Act of 2015, 20 U.S.C. 6311.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 additional revenue generated by this

administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? Amendments to 703 KAR 5:140 will have no impact on state funds. However, amendments to the regulation may impact school budgets. Schools may be responsible for printing and mailing costs associated with written notifications to parents and guardians, along with minimal costs associated with displaying accountability classifications in a prominent location. The Kentucky Department of Education will provide templates to districts as guidance for the letters and displays.

(d) How much will it cost to administer this program for subsequent years? Amendment adds no additional costs.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: Regulation does not generate revenue or establish fees.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Kentucky Board of Education Department of Education (Amendment)

703 KAR 5:270. Kentucky's Accountability System.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 20 U.S.C. 6311

STATUTORY AUTHORITY: KRS 158.6453, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools, and districts; complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor; and ensures accountability. KRS 158.6455 requires the Kentucky Board of Education to create an accountability system to classify schools and districts, including a process for annual summative performance evaluations and goals for improvement. This administrative regulation establishes the statewide system of accountability, and meets requirements set forth in the federal Every Student Succeeds Act of 2015 at 20 U.S.C. 6311.

Section 1. Definitions. (1) "Achievement gap" means a measure of the performance difference between student demographic groups to each other for reading and mathematics.

(2) "Comparison group" means the student demographic group being contrasted to the reference group.

(3) "English learners" in the indicators of growth and transition readiness means students currently identified on an English language proficiency exam. For all other areas, it means students currently identified and those who continue to be monitored.

(4) "Federal student group designation" means targeted support and improvement, and comprehensive support and improvement as provided in KRS 160.346.

(5) "Federally defined student demographic groups" include White, African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, free/reduced-price meal eligible, students with disabilities who have an IEP, and English learners.

(6) "Full academic year" means 100 or more instructional days of student enrollment within the school year.

(7) "Grade twelve (12) non-graduates" means all students

enrolled in grade twelve (12) at the end of the school year who do not graduate.

(8) [(7)] "Graduation rate" means the percentage of students who enter high school and receive a diploma based on their cohort in four (4) and five (5) years, adjusting for transfers in and out, émigrés, and deceased students.

(9) [(8)] "Growth" means a student's continuous improvement toward proficiency or above.

(10) [(9)] "Indicator" means a component of the accountability system that provides specific information on the school or district.

(11) [(10)] "Individual education program" or "IEP" means an individual education program as defined in 707 KAR 1:002.

(12) [(11)] "Local education agency" or "LEA" for the purposes of this administrative regulation shall mean a local school district as provided in KRS 161.010 and KRS 161.020 or a charter school board of directors as provided in KRS 161.1590.

(13) [(12)] "Practical significance" means a measure of the differences between student groups has real meaning.

(14) [(13)] "Proficiency indicator" means the measure of academic status or performance for reading and mathematics on state assessments.

(15) [(14)] "Proficient" or "proficiency" means reaching the desired level of knowledge and skills as measured on academic assessments.

(16) [(15)] "Quality of school climate and safety indicator" means the measures of school environment.

(17) [(16)] "Rating" means the process of inclusion of an indicator in the formal overall rating of the school or district.

(18) [(17)] "Reference group" means a student demographic group to which another group is contrasted to provide a benchmark for performance.

(19) [(18)] "Separate academic indicator for science, social studies, and writing" means the measure of academic status or performance for science, social studies, and writing on state assessments.

(20) [(19)] "Transition readiness" means the attainment of the necessary knowledge, skills, and dispositions to successfully transition to the next level.

(21) [(20)] "Value table" means a set of numbers that are used to attribute scores to different performance levels.

(22) [(21)] "Writing" means the content area that includes on-demand writing, and editing and mechanics.

Section 2. Kentucky's accountability system that is used to classify schools and LEAs shall include the indicators of: proficiency; separate academic indicator for science, social studies, and writing; growth; transition readiness; quality of school climate and safety; and graduation rate.

(1) The proficiency indicator shall be measured by student performance on state tests in reading and mathematics.

(2) A separate academic indicator shall be measured by student performance on state tests in science, social studies, and writing.

(3) The growth indicator shall be calculated at the elementary and middle school levels. The growth indicator shall be measured:

(a) Based on a growth value table in reading and mathematics; and

(b) Progress toward achieving English proficiency by English learners.

(4) The quality of school climate and safety indicator shall include perception data from surveys that measure insight to the school environment.

(5) The transition readiness indicator shall be measured at high school for students meeting the following criteria:

(a) Earn a regular or alternative high school diploma plus grade twelve (12) non-graduates; and

(b) Achieve academic readiness or career readiness.

1. A school shall receive credit for each student demonstrating academic readiness by:

a. Scoring at or above the benchmark score as determined by the Council on Postsecondary Education (CPE) on the college admissions examination or college placement examination; or

b. Completing six (6) hours of Kentucky Department of

Education approved dual credit and receiving a grade of C or higher in each course; or

c. Completing two (2) advanced placement (AP) courses and receiving a score of three (3) or higher on each AP assessment; or

d. Receiving a score of five (5) or higher on two (2) examinations for international baccalaureate courses; or

e. Scoring at or above the benchmark on two (2) Cambridge Advanced International examinations; or

f. Completing a combination of academic readiness indicators listed above.

g. Demonstration of academic readiness listed in paragraph 5 (b)1 of this section shall include one (1) quantitative reasoning or natural sciences and one (1) written or oral communication; or visual and performing arts; or humanities; or social and behavioral sciences learning outcomes.

2. A school shall receive credit for each student demonstrating career readiness by:

a. Scoring at or above the benchmark on industry certifications as approved by the Kentucky Workforce Innovation Board on an annual basis; or

b. Scoring at or above the benchmark on the career and technical education end-of program assessment for articulated credit; or

c. Completing six (6) hours of Kentucky Department of Education approved CTE dual credit, and receiving a grade of C or higher in each course; or

d. Completing a Kentucky Department of Education approved or labor cabinet-approved apprenticeship; or

e. Completing a Kentucky Department of Education approved alternate process to verify exceptional work experience.

3. For students who qualify as English learners in high school: Meeting criteria for English language proficiency to be English language ready.

4. Students participating in the alternate assessment program shall meet criteria based on academic or career alternate assessment requirements.

(6) The graduation rate indicator shall be measured for each high school using the four (4)- year and extended five (5)-year cohort rate. The graduation rate shall be reported for all students and student groups.

Section 3. Classification of Schools and LEAs in the State Accountability System. (1) Data shall be included in the overall rating for schools and LEAs for the following indicators:

(a) Proficiency (reading and mathematics);

(b) Separate academic indicator (science, social studies, and writing);

(c) Growth (elementary and middle school);

(d) Transition readiness (high school);

(e) Quality of school climate and safety; and

(f) Graduation rate (high school).

(2) Data from individual student performance on state assessments administered as required in KRS 158.6451 and KRS 158.6453 shall be included in the overall rating of each school and LEA. This data shall include students with disabilities with IEPs who participate in the alternate assessment program.

(3) Data in the overall rating shall be attributed to grade level spans for schools and LEA as established in this subsection.

(a) Elementary schools shall include data from: proficiency; separate academic indicator for science, social studies, and writing; growth; quality of school climate and safety; and federal student group designation.

(b) Middle schools shall include data from: proficiency; separate academic indicator for science, social studies, and writing; growth; quality of school climate and safety; and federal student group designation.

(c) High schools shall include data from: proficiency; separate academic indicator for science, social studies, and writing; transition readiness; graduation rate; quality of school climate and safety and federal student group designation.

(d) LEAs shall include data from: school proficiency; separate academic indicator for science, social studies, and writing, growth; transition readiness; graduation rate; and quality of school climate

and safety.

Section 4. Calculations for Reporting Categories. (1) Proficiency for reading and mathematics shall be rated equally in elementary, middle and high schools and LEAs by awarding points as described in paragraph 2(b) of this section.

(2) The separate academic indicator for science, social studies, and writing shall be rated in elementary, middle and high schools, and in LEAs by awarding points as described in paragraph 2(b) of this section. The highest proportion shall be attributed to science and social studies.

(a) For any content area (reading, mathematics, science, social studies, and writing) where data are not available, the data of the remaining content areas shall be redistributed proportionally across proficiency and separate academic indicator.

(b) The following chart shall be used to calculate the points for proficiency and the separate academic indicator:

Growth Value Table (Points for student performance in Year 2, given Performance in Year 1)						
	Novice		Apprentice		Proficient	Distinguished
Year 1 Student Performance	Low	High	Low	High		
Distinguished	0	0	0	0	0	50
Proficient	0	0	0	0	50	100
Apprentice High	0	0	0	50	100	150
Apprentice Low	0	0	50	100	150	200
Novice High	0	50	100	150	200	250
Novice Low	0	100	150	200	250	300

(d) The school calculation for reading shall be the sum of the total points for all students from the growth value table plus growth for English language proficiency as described in Section 4(3)(e) of this administrative regulation divided by the total number of scores.

(e) Progress toward achieving English proficiency by English learners shall be calculated as follows:

1. Individual growth shall be compared to prior year performance on an English proficiency exam.

2. The exit benchmark and English learner growth value table created involving Kentucky educators and advised by technical experts shall be utilized.

3. Points for each English learner based on the English learner growth value table shall be summed.

a. Depending on further analysis, Kentucky may modify the value table and its use to reflect factors that may impact English learners' progress toward language proficiency, including age upon entry to U.S. schools, initial English language proficiency level, and degree of interrupted schooling.

b. The values in the growth value table below shall be used in calculating growth in this subsection.

WIDA ACCESS score previous year	WIDA ACCESS score current year								
	1	1.5	2.0	2.5	3.0	3.5	4.0	4.5	
4.0	0	0	0	0	0	0	50	100	
3.5	0	0	0	0	0	50	100	150	
3.0	0	0	0	0	50	100	150	200	
2.5	0	0	0	50	100	150	200	250	
2.0	0	0	50	100	150	200	250	300	
1.5	0	50	100	150	200	250	300	300	
1.0	0	100	150	200	250	300	300	300	

4. Total points for English learners shall be added to the sum of the reading growth points for all students in reading as described in Section 4(3)(e) of this administrative regulation.

Proficiency Levels	Points Awarded for Each Percent of Students
Novice	0
Apprentice	.5
Proficient	1
Distinguished	1.25

(3) Growth shall be rated for elementary and middle schools as established in this subsection.

(a) Novice and apprentice performance levels for growth calculations shall be subdivided into novice high, novice low; and apprentice high, apprentice low.

(b) The school calculation for mathematics shall be the sum of the total points from the growth value table for all students divided by the total number of scores.

(c) The values in the growth value table below shall be used in calculating growth in this subsection.

(f) For an overall school growth score, an average of reading scores that includes growth for English learners on an English proficiency exam and mathematics growth scores shall be calculated.

(4) The quality of school climate and safety indicator shall be rated for elementary, middle, high schools, and LEAs as established in this subsection. The Kentucky Board of Education shall approve the measures of quality of school climate and safety.

(5) Transition readiness shall be calculated by dividing the number of high school graduates plus grade twelve (12) non-graduates who have met measures of transition readiness plus the number of English learners who have achieved English language proficiency by the total number of graduates plus grade twelve (12) non-graduates plus the number of graduates who have received English language services during high school. Credit for students obtaining an industry-recognized certification, licensure, or credential in specialized career pathways in state and regional high demand sectors as approved by Kentucky's Workforce Innovation Board is one and one-quarter (1.25) points. Credit for students obtaining all other readiness indicators is one (1.0) point.

(6) Graduation rate is the percentage of students completing the requirements for a Kentucky high school diploma compared to the cohort of students beginning in grade nine. The accountability system shall include a four (4) year cohort rate and an extended five (5) year cohort rate. Each rate shall be weighted equally.

(7) The overall rating shall be assigned as follows:

(a) The indicators for each school and LEA as identified in Section 3 of this administrative regulation shall contribute to the overall rating of schools and LEAs.

(b) Indicators identified in Section 3 shall have a rating of very low, low, medium, high, or very high by school and LEA level.

(c) A standard setting process shall be conducted involving Kentucky educators and advised by technical experts to determine very low to very high performance levels for each indicator including proficiency, separate academic indicator, growth, transition readiness, graduation rate, and quality of school climate and safety.

(8) An overall star rating for elementary, middle, and high schools shall be reported using a five (5) star rating system to communicate performance of schools, with one (1) star being the

VOLUME 46, NUMBER 7– JANUARY 1, 2020

lowest rating and five (5) stars being the highest rating. Performance of schools, LEAs, and state will be reported by level (elementary, middle, and high) as applicable. The School Report Card shall display the star ratings earned for each school, LEA,

and state (by level) and the total five (5) stars available.

Overall Accountability Weights						
	Proficiency (Reading and Mathematics)	Separate Academic Indicator (Science, Social Studies, and Writing)	Growth (including English Language Learners)	Quality of School Climate and Safety	Transition Readiness (High school includes English language learners)	Graduation Rate (4 and 5 year cohort)
Elementary/ Middle Schools	35	26	35	4	--	---
High Schools	45	15	---	4	30	6

(b) The performance on indicators that contribute to the overall star ratings shall be determined by a standards setting process involving Kentucky educators.

(c) If achievement gaps are found in schools and LEAs earning a four (4) or five (5) star rating, the star rating will be reduced by one (1) star.

1. Achievement gap shall be calculated between student demographic comparison groups and reference groups for reading and mathematics combined by:

a. Determining the student demographic groups to be included in this subsection, which shall include the following student demographic groups that have at least ten (10) students: African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White.

(i) Comparing African American, Hispanic, Asian, Native Hawaiian or other Pacific Islander, American Indian or Alaska Native, two (2) or more races, and White to a reference group. The reference group shall be the highest performing racial and ethnic student group that has at least ten (10) students and constitutes at least ten (10) percent of the students enrolled in the school; (ii) Free and reduced price meal eligible students compared to non-free and reduced price meal eligible students;

(iii) Students with disabilities who have an IEP compared to students without IEPs; and

(iv) English learners compared to non-English learner students.

b. Using a statistical analysis for each pair of comparison and reference groups, the department shall determine if a gap between the comparison group and reference group is both statistically and practically significant.

(d) Kentucky will identify schools to determine bottom five (5) percent and ten (10) percent based on the indicators of the (five) 5-star system.

(e) If data cannot be calculated for an indicator, the weights shall be redistributed proportionally to remaining indicators that shall be reported for the school or LEA.

(9) School accountability indicators shall be assigned as follows:

(a) Students enrolled for a full academic year shall be included in the calculations for proficiency, a separate academic indicator for science, social studies, and writing, growth, quality of school climate and safety, and transition readiness for a school and LEA.

(b) Graduation rate calculations shall be based on the students' final enrollment.

(c) Student demographic groups shall have a minimum of ten (10) students to be included in school rating calculations.

(d) In accordance with KRS 158.6455, schools and districts shall be placed into one (1) of five (5) star ratings established by a standards-setting process utilizing results from the first operational administration of assessments in 2018-19. The process shall:

1. Be advised by the National Technical Advisory Panel on Assessment and Accountability; the School Curriculum, Assessment and Accountability Council; and the Office of Education Accountability; and

2. Use accepted technical procedures and involve Kentucky school and district administrators and teachers.

Section 5. Public Reporting Requirements. (1) The Kentucky Department of Education shall report disaggregated data for each indicator of the state assessment and accountability system.

(2) Progress on long-term and interim goals shall be reported publicly as required by the federal Every Student Succeeds Act. Goals shall be developed for every student group, including all students, for academic achievement in each content area of reading, mathematics, science, social studies, and writing, and the content areas combined; graduation rate based on four (4) year and five (5) year adjusted cohorts; and progress on English proficiency for English learners.

(3) The goal for academic achievement operationalizes both the improvement of proficient and distinguished performance for all students and each student group and the reduction of gaps in student group performance by fifty (50) percent by 2030. Each student group of ten (10) or more students shall be compared to the reference group of the highest performing student group that is at least ten (10) percent of the student population.

(4) Goals for graduation rate shall be generated for a four (4) year adjusted cohort to ninety-five (95) percent for all students and an extended five (5) year cohort to ninety-six (96) percent for all students. The goal for progress on English language proficiency shall be based on the percent of students making progress toward attainment of the English language.

(5) Performance levels of each indicator (proficiency for reading and mathematics, a separate academic indicator for science, social studies, and writing, growth, transition readiness, quality of school climate and safety, and graduation rate) from very low to very high on each indicator will be determined by Kentucky educators with a standards setting process.

(6) Federal designations and statistically and practically significant achievement gaps will be reported for each school, LEA, and state.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D., Commissioner

HAL HEINER, Chairperson

APPROVED BY AGENCY: December 9, 2019

FILED WITH LRC: December 9, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on February 24, 2020 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 February 29, 2020. 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 state accountability requirements for Kentucky's public local education agencies (LEAs) and schools.

(b) The necessity of this administrative regulation: KRS 158.6453 requires the Kentucky Board of Education to create and implement a balanced statewide assessment program that measures the achievement of students, schools and districts, complies with the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: proficiency (reading and mathematics), separate academic indicator (science, social studies and writing), growth (elementary and middle schools only), graduation rate (high school only), transition readiness (high school only), and quality of school climate and safety. The multiple indicators incorporate the student test results and school quality measures. The regulation complies with state statute and the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation establishes state accountability requirements for Kentucky's public local education agencies (LEAs) and schools. The amendments to this regulation will change the Transition Readiness calculation to include all grade 12 non-graduates as required federally.

(b) The necessity of the amendment to this administrative regulation: After feedback from the United States Department of Education (USED), regulatory changes are required to have Kentucky's Consolidated State Plan approved.

(c) How the amendment conforms to the content of the authorizing statute: This administrative regulation provides specific details for establishing the indicators and measures of the state-required accountability system for Kentucky public LEAs and schools.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides specific details for establishing the statewide accountability program that rates LEAs and schools based on performance of multiple indicators: proficiency (reading and mathematics), separate academic indicator (science, social studies and writing), growth (elementary and middle schools only), graduation rate (high school only), transition readiness (high school only), and quality of school climate and safety. The multiple indicators incorporate the student test results and school quality measures. The regulations amendments complies with state statute and the federal Every Student Succeeds Act of 2015, 20 U.S.C. secs. 6301 et seq., or its successor, and ensures accountability.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public LEAs and schools in Kentucky with schools grade 3 or higher and supporting staff in the Kentucky Department of Education (KDE).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: KDE, LEAs and schools shall implement the specific details of the assessment and accountability system. The regulation defines the indicators and measures to be included in the accountability system used to evaluate and rate the performance of Kentucky's public LEAs and schools. The system is a multi-dimensional model that uses student- and school-based data to differentiate performance. The Kentucky Department of Education implements and manages the accountability system, as established and promulgated in regulation by the Kentucky Board of Education. LEAs and schools implement the required assessments and processes that generate data reported annually in the accountability system. The data reported help schools and districts improve student achievement and growth, close the achievement gap among groups, ensure students are ready to transition to the next step of education or life, and provide quality school climate and safety for students.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The accountability system requires no additional direct costs to the LEAs and schools. LEA's and schools may choose to implement new programs or services in response to the new accountability system that may result in additional costs for LEA's and schools, however, this would be a locally determined decision.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The accountability system has several key goals: promote higher levels of student learning and achievement, reduce achievement gaps and ensure equity, establish opportunity and access for students to receive a quality education, build a culture of high expectation and continuous improvement, and communicate a clear and honest understanding of strengths and opportunities for improvement in LEAs and schools.

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

(a) Initially: The transition to the new accountability system required KDE to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 175 (2019 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(b) On a continuing basis: Senate Bill 175 (2019) requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general and federal funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increased fees or funding are anticipated as a result of this regulation, however activities related to this regulation as required by SB 175 (2019) may require additional funding as described above.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

Regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and LEAs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Public Local Education Agencies (LEAs) and schools.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.6453; KRS 156.6455; 20 U.S.C. secs. 6301 et seq.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The transition to the accountability system required the Kentucky Department of Education (KDE) to implement activities such as standard setting, additional staff time, and the support of experts, each with associated costs. The accountability system requires no additional cost to the LEAs and schools. KDE anticipates additional costs to implement new assessments and reporting requirements codified in Senate Bill 175 (2019 Kentucky General Assembly). The results of these assessments are used to rate schools in the accountability system established by this regulation.

(d) How much will it cost to administer this program for subsequent years? Senate Bill 175 (2019) requires continual reviews of standards and assessments. There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

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

Revenues (+/-): N/A

Expenditures (+/-): There will be ongoing costs to implement new assessments and meet reporting requirements, particularly the release of some assessment items annually. These activities directly support the accountability system established in this regulation.

Other Explanation: N/A

EDUCATION AND WORKFORCE DEVELOPMENT CABINET KENTUCKY BOARD OF EDUCATION (Amendment)

704 KAR 3:370. Kentucky Framework for Personnel Evaluation.

RELATES TO: KRS 156.557, 156.800(7), 161.740

STATUTORY AUTHORITY: KRS 156.070, 156.557(2), (5)(c), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.557(2) and (5)(c), and (7) require the Kentucky Board of Education to promulgate administrative regulations to establish a statewide framework for the purposes of supporting and improving the performance of all certified school personnel, to develop written guidelines for local school districts to follow in implementing a

system of evaluation for certified school personnel, and to establish an appeals procedure for certified school personnel. This administrative regulation establishes a statewide framework to support and improve the performance of all certified school personnel as well as an appeals procedure for certified school personnel.

Section 1. Definitions. (1) "Assistant principal" means a certified school personnel who devotes the majority of employed time in the role of assistant principal, for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3.

(2) "Certified administrator" means a certified school personnel, other than principal or assistant principal, who devotes the majority of employed time in a position for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3.

(3) "Certified evaluation plan" means the procedures and forms for evaluation of certified school personnel below the level of superintendent developed by an evaluation committee and meeting all requirements of the Kentucky Framework for Personnel Evaluation.

(4) "Certified school personnel" means a certified school employee, below the level of superintendent, who devotes the majority of employed time in a position in a district for which certification is required by the Education Professional Standards Board pursuant to Title 16 KAR and includes certified administrators, assistant principals, principals, other professionals, and teachers.

(5) "Conference" means a meeting between the evaluator and the evaluatee for the purposes of providing feedback, analyzing the results of an observation or observations, reviewing other evidence to determine the evaluatee's accomplishments and areas for growth, and leading to the establishment or revision of a professional growth plan.

(6) "Evaluatee" means the certified school personnel who is being evaluated.

(7) "Evaluation committee" means a group, consisting of an equal number of teachers and administrators, who develop personnel evaluation procedures and forms for a local school district pursuant to KRS 156.557(5)(c)(1).

(8) "Evaluator" means the primary evaluator pursuant to KRS 156.557(5)(c)2.

(9) "Evaluator certification" means successful completion of certified evaluation training to ensure that certified school personnel who serve as observers of evaluatees demonstrate proficiency in rating teachers and other professionals for the purposes of evaluation and feedback.

(10) "Formative evaluation" is defined by KRS 156.557(1)(a).

(11) "Job category" means a group or class of certified school personnel positions with closely related functions.

(12) "Kentucky Framework for Personnel Evaluation" means the statewide framework a school district uses to develop a local certified school personnel evaluation system.

(13) "Observation" means a data collection process conducted by a certified evaluator, in person or through video, for the purpose of evaluation, including notes, professional judgments, and examination of the data collected during one (1) or more classroom or worksite visits of any duration.

(14) "Other professionals" means certified school personnel, except for teachers, administrators, assistant principals, or principals for which certification is required by the Education Professional Standards Board pursuant to Title 16 KAR.

(15) "Peer observation" means observation and documentation by certified school personnel below the level of principal or assistant principal and trained to perform such observations.

(16) "Performance criteria" means the areas, skills, or outcomes on which certified school personnel are evaluated as described in KRS 156.557(4).

(17) "Performance measure" means one (1) of four (4) measures defined in the Kentucky Framework for Personnel Evaluation. Measures include planning, environment, instruction, and professionalism.

(18) "Performance rating" means the rating for each performance measure for a teacher, other professional, principal, or assistant principal as determined by the local district certified evaluation plan aligned to the Kentucky Framework for Personnel Evaluation. Ratings shall be exemplary, accomplished, developing, and ineffective.

(19) "Personnel Evaluation System" or "system" means an evaluation system to support and improve the performance of certified school personnel that meets the requirements of KRS 156.557 and that uses clear and timely formative feedback to guide professional growth.

(20) "Principal" means a certified school personnel who devotes the majority of employed time in the role of principal, for which administrative certification is required by the Education Professional Standards Board pursuant to Title 16 KAR.

(21) "Sources of evidence" or "source of evidence" means the district-approved evidence aligned to the performance measure and used by evaluators to inform performance measure ratings listed in Section 8 of this administrative regulation.

(22) "Summative evaluation" is defined by KRS 156.557(1)(d).

(23) "Summative rating" means the overall rating for certified school personnel below the level of superintendent as determined by the district certified evaluation plan aligned to the Kentucky Framework for Personnel Evaluation.

(24) "Teacher" means a certified school personnel who has been assigned the responsibility for student learning in a classroom, grade level, subject, or course and holds a teaching certificate pursuant to Title 16 KAR.

Section 2. District Evaluation Procedures and Forms. (1) An evaluation committee, as defined in this administrative regulation, shall develop the certified evaluation plan for the evaluation of certified school personnel below the level of superintendent. The evaluation committee shall submit the certified evaluation plan to the local board of education for review and approval.

(2) The local board of education shall review and approve the certified evaluation plan that meets the requirements of KRS 156.557 (5)(c) and this administrative regulation.

(a) The district certified evaluation plan may require the use of additional trained administrative personnel to observe and provide information to the evaluator.

(b) Peer observations may be used as a source of evidence to inform a summative rating only if requested by the teacher or other professional being evaluated.

(c) The district certified evaluation plan shall establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation. The district certified evaluation plan shall require a conference between the evaluator and the evaluatee within five (5) working days following each observation.

(d) The district certified evaluation plan shall require the summative evaluation to include all applicable system data and be held at the end of the evaluation cycle pursuant to KRS 156.557.

(e) The district certified evaluation plan shall require a summative evaluation to occur annually for each certified school personnel below the level of superintendent who has not attained continuing service status pursuant to KRS 161.740 or continuing status pursuant to KRS 156.800(7) and shall incorporate the formative data collected during the Kentucky Teacher Internship Program, pursuant to 16 KAR 7:010, in the summative evaluation of a teacher intern.

(f) The district certified evaluation plan shall require a summative evaluation at least once every three (3) years for a teacher, other professional, principal, or assistant principal who has attained continuing service status pursuant to KRS 161.740 or continuing status pursuant to KRS 156.800(7).

(g) The evaluation criteria and process used to evaluate certified school personnel shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year.

(h) The district certified evaluation plan shall require a summative evaluation of certified school personnel to be documented in writing and to be included in the evaluatee's official

personnel record.

(i) All evidence used to produce certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(j) The district certified evaluation plan shall provide an opportunity for the evaluatee to submit a written statement in response to the summative rating and require the response to be included in the official personnel record.

Section 3. District Personnel Evaluation Policies. (1) Each local school district shall establish a written policy for implementing the certified evaluation plan for all certified school personnel below the level of superintendent in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy and procedure for evaluation of the district superintendent.

Section 4. Department Approval of District Personnel Evaluation Plan. The department shall review each local school district's certified evaluation plan and approve a certified evaluation plan that is consistent with the requirements of KRS 156.557 and this administrative regulation.

Section 5. Revisions to Previously Approved District Evaluation Plan. (1) The local board of education shall review, as needed, the district's certified evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation.

(2) If a source of evidence is added or removed from the certified evaluation plan or if a decision rule or calculation is changed in the summative rating formula, the revised certified evaluation plan shall be reviewed and approved by the local board of education. If the local board of education determines the changes do not meet the requirements of KRS 156.557, the certified evaluation plan shall be returned to the certified evaluation committee for revision.

Section 6. Training and Testing of Evaluators. (1) The district shall include evaluator certification and observation training in the district's certified evaluation plan submitted to the department for approval pursuant to Section 3 of this administrative regulation.

(2) The district shall ensure an evaluator meets the requirements in the district's evaluation plan prior to conducting a formative or summative evaluation.

(3) An evaluator shall be trained, tested, and approved according to this administrative regulation and the district's certified evaluation plan.

(4) Evaluator training shall include:

(a) Initial certified evaluation training and testing provided by the Kentucky Department of Education or a provider approved by the department;

(b) Training on KRS 156.557 and the requirements of this administrative regulation;

(c) Training in effective observation and conferencing techniques, in providing clear and timely feedback, in establishing and assisting with a professional growth plan, and in summative decision techniques; and

(d) A minimum of six (6) hours annually of personnel evaluation system training approved by the Effective Instructional Leadership Act established in 704 KAR 3:325.

Section 7. Training of Peer Observers. (1) The district shall require peer observations be performed by individuals who are trained in peer observation techniques and responsibilities prior to the first peer observation.

(2) Peer observation training shall include training in effective observation and conferencing techniques and the roles and responsibilities of peer observers, evaluatees, and certified school personnel.

Section 8. Performance Measure. (1) The district's certified evaluation plan shall utilize the Kentucky Framework for Personnel Evaluation pursuant to KRS 156.557 and the requirements of this

administrative regulation and shall include the following performance measures:

- (a) Planning;
- (b) Environment;
- (c) Instruction; and
- (d) Professionalism.

(2) The district's certified evaluation plan shall define criteria for each performance measure from the Kentucky Framework for Teaching, the Kentucky Framework for Teaching: Specialist Frameworks, and the Professional Standards for Educational Leaders [Principal and Assistant Principal Performance Standards] that characterize effective practice and apply to the evaluatee.

(3) The evaluator shall use sources of evidence, in combination with professional judgment, to inform the teacher's or other professional's rating on each of the four (4) performance measures listed in subsection (1) of this section.

(a) The evaluator shall use the following ratings:

- 1. "Exemplary" shall be the rating for performance that consistently exceeds expectations for effective performance;
- 2. "Accomplished" shall be the rating for performance that consistently meets expectations for effective performance;
- 3. "Developing" shall be the rating for performance that inconsistently meets expectations for effective performance; and
- 4. "Ineffective" shall be the rating for performance that consistently fails to meet expectations for effective performance. Because individual education program (IEP) goals are student-specific, IEP goals may inform, but shall not be used as a single source of evidence for any performance measure.

Section 9. Summative Rating of Teachers, Other Professionals, Principals, and Assistant Principals. (1) The overall performance category for teachers or other professionals, principals, and assistant principals shall be a district-determined rating by combining the four (4) performance measures provided in Section 8.

Section 10. Evaluation of Certified School Personnel Assigned to the District Level for Purposes of Evaluation. (1) The district's certified evaluation plan for certified school personnel assigned to the district level for purposes of evaluation shall:

- (a) Utilize the performance criteria established in KRS 156.557(4), comply with KRS 156.557 and the requirements of this administrative regulation; and
- (b) List the performance criteria applicable to the evaluatee that characterizes professional effectiveness.

(2) The district certified evaluation plan for certified personnel assigned to the district level for purposes of evaluation shall be specific to the evaluatee's job category.

Section 11. District Evaluation Appeals Panel. The district shall provide the following in its system plan for an appeal to the district evaluation appeals panel:

- (1) A right to a hearing as to every appeal;
- (2) An opportunity, five (5) days in advance of the hearing, for the evaluator and evaluatee to adequately review all documents that are to be presented to the district evaluation appeals panel; and
- (3) A right to have the evaluatee's chosen representative present at the hearing.

Section 12. State Evaluation Appeals Panel. (1) A certified school personnel who believes that the local district is not properly implementing the district certified evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education.

(2) The appeal procedures shall be as established in this subsection.

(a) The Kentucky Board of Education shall appoint a committee of three (3) state board members to serve on the state evaluation appeals panel (SEAP). The SEAP's jurisdiction shall be limited to procedural matters already addressed by the local appeals panel related to the district's alleged failure to implement an evaluation plan as approved by the department. The SEAP

shall not have jurisdiction of a complaint involving the professional judgment conclusion of an evaluation, and the SEAP's review shall be limited to the record of proceedings and documents therein, or lack thereof, at the local district level.

(b) No later than thirty (30) calendar days after the final action or decision at the local district level, a certified school personnel may submit a written request to the chief state school officer for a review before the SEAP. If a certified school personnel does not appeal within the time frame listed in this paragraph, the request shall not be considered. A specific description of the complaint and grounds for appeal shall be submitted with the request.

(c) A brief, written statement or other document that a party wishes to submit for consideration by the SEAP shall be filed with the panel and served on the opposing party at least twenty (20) days prior to the scheduled review.

(d) A decision of the SEAP shall be rendered within fifteen (15) working days after the review.

(e) A determination of district noncompliance with the district evaluation plan or absence of a district local evaluation plan shall render the evaluation void.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Kentucky Framework for Teaching", February 2014;
- (b) "Kentucky Framework for Teaching with Specialist Frameworks for Other Professionals", June 2015; and
- (c) "Professional Standards for Educational Leaders" 2015 [~~"Principal and Assistant Principal Performance Standards", May 2014.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, [Office of Teaching and Learning,] 300 Sower Blvd, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: December 13, 2019

FILED WITH LRC: December 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 24, 2020, 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 February 29, 2020. 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: Amends administrative regulation 704 KAR 3:370 by replacing the Principal

and Assistant Principal Performance Standards with the Professional Standards for Educational Leaders. The regulation aligns with KRS 156.557, a statute requiring the Kentucky Department of Education (KDE) to develop a statewide framework for teaching that promotes the continuous professional growth and development of skills necessary to become a highly effective teacher or a highly effective administrator in a school or district. Development of the framework occurs in consultation with Kentucky's teacher and principal steering committees and other groups identified by the commissioner of education.

(b) The necessity of this administrative regulation: This regulation amends 704 KAR 3:370 related to principal and assistant principal evaluation. The amendment ensures the development of a framework to provide multiple measures for the evaluation process of all principals and assistant principals.

(c) How this administrative regulation conforms to the content of the authorizing statute: 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 156.557(2) and (5)(c), authorizes the Kentucky Board of Education to promulgate administrative regulations to establish a statewide framework for the purposes of supporting and improving the performance of all certified school personnel and to develop written guidelines for local school districts to follow in implementing a system of evaluation for certified school personnel. The amendment updates the standards used for principal and assistant principal evaluations to the national Professional Standards for Educational Leaders.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation sets a statewide framework and promotes the continuous professional growth and development of skills needed to be a highly effective teacher or administrator.

(2) If 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 replaces the Principal and Assistant Principal Performance Standards with the Professional Standards for Educational Leaders to be used as the performance measures for principal and assistant principal evaluations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the current standards to the national, student-centric standards. The Professional Standards for Educational Leaders have also been adopted as the standards of preparation for principals and assistant principals in Kentucky.

(c) How the amendment conforms to the content of the authorizing statute: The amendment simply replaces the current standards for principal and assistant principal evaluations with the updated national standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides a statewide framework with multiple measures for principal and assistant principal evaluations that reflect the national standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this amendment are: all local school districts, schools, principals and assistant principals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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: Districts will have to update their certified evaluation plans to align with the Professional Standards for Educational Leaders for principal and assistant principal evaluations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No fees are associated with complying with this amendment; however, district staff time will be needed to update the certified evaluation plan for principal and assistant principal evaluations.

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

entities identified in question (3): Principals and assistant principals will be evaluated based on national, student-centric standards that are also the standards for the preparation of principals and assistant principals.

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

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All school districts will need to update their certified evaluation plans to reflect the Professional Standards for Educational Leaders for principals and assistant principal evaluations.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 156.557.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? No cost associated with the amendment.

(d) How much will it cost to administer this program for subsequent years? No cost associated with the 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)

704 KAR 7:090. Homeless Children and Youth Education Program and Ensuring Educational Stability of Children in Foster Care.

RELATES TO: KRS 156.029, 156.035, [156.029,] 156.160, 20 U.S.C 6311(g)(1)(E), 20 U.S.C. 6312(c)(5)(B), 42 U.S.C. 11431 et seq. [11432]

STATUTORY AUTHORITY: KRS 156.070, 156.160[, 156.070]

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), as amended under the Every Student Succeeds Act of 2015 (ESSA), the Kentucky Department of Education

(department), when applying to the U.S. Department of Education for participation in programs for homeless children and unaccompanied youth under the McKinney-Vento Act, shall submit an approvable plan and satisfactory assurances that all requirements of the law set forth in 42 U.S.C. Section 11432 shall be met. This administrative regulation [implements] aligns with the Kentucky Board of Education's duties, pursuant to KRS 156.029 and 156.035, to develop [education policy, to] administrative regulations governing activities within the department and implement [acts of Congress] Congressional action appropriating [and apportioning] funds to the state [and to provide for the proper implementation of federal law] in accordance with state and federal law and Kentucky's consolidated State plan under ESSA [the state's current plan]. Specifically, this [This] administrative regulation establishes criteria regarding residency policies[, the provision of] and provides for a free, appropriate public education [to] for homeless children and unaccompanied youth[; provides] informal procedures for resolving [resolution of] disputes regarding the educational placement of homeless children and unaccompanied youth[; provides] grants to local educational agencies (LEAs) for the enrollment, retention, and educational success of homeless children and unaccompanied youth[; and, [provides for] an annual count of homeless children and unaccompanied youth. Additionally, this administrative regulation requires LEAs to have procedures for awarding credit, including partial credit, for coursework satisfactorily completed by homeless children and unaccompanied youth in another school as well as for conferring high school diplomas to homeless children and unaccompanied youth in accordance with KRS 156.160. Consistent with 20 U.S.C. 6311(g)(1)(E) and 20 U.S.C. 6312(c)(5)(B), this administrative regulation also promotes the educational stability of children in foster care through the implementation of the foster care liaison within each LEA.

Section 1. Definitions. (1) "Foster care" shall have the same meaning as defined in KRS 620.020. ["Homeless child", "homeless children", and "homeless student" means a child or children who are between the ages of birth and twenty-one (21) years inclusive and who lack a fixed, regular, and adequate nighttime residence. The term includes children and youth who are:

- (a) ~~Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;~~
- (b) ~~Are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;~~
- (c) ~~Are living in emergency or transitional shelters;~~
- (d) ~~Are abandoned in hospitals;~~
- (e) ~~Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;~~
- (f) ~~Are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and~~
- (g) ~~Migratory children who qualify as homeless because they are living in circumstances described above.]~~

(2) "Free, appropriate public education" means the educational programs and services [that are] provided to the children of a resident of a state[, and that are] consistent with state school attendance laws. These educational programs and services, for which the child meets the eligibility criteria, may include:

- (a) Magnet schools;
- (b) Charter schools;
- (c) Compensatory education programs for the disadvantaged;
- (d) Educational programs for the handicapped and students with limited English proficiency;
- (e) Programs in vocational education;
- (f) Programs for the gifted and talented;
- (g) School meals programs;
- (h) Extended school programs;
- (i) Preschool programs; and
- (j) Programs developed by the family resource and youth services centers.

(3) "Homeless child," "homeless children," and "homeless student" mean a child or children who are between the ages of

birth and twenty-one (21) years, inclusive, and who lack a fixed, regular, and adequate nighttime residence. This definition includes children and youth who:

- (a) Are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- (b) Are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
- (c) Are living in emergency or transitional shelters;
- (d) Are abandoned in hospitals;
- (e) Have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
- (f) Are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- (g) Are migratory children who qualify as homeless because they are living in circumstances described above.

(4) "School of origin" means the school that the homeless child or youth attended when permanently housed[, or] the school in which the homeless child or youth was last enrolled. [Consistent with McKinney-Vento as reauthorized by ESSA,] This [this] shall include preschool and designated receiving schools at the grade level for all feeder schools when a student completes the final grade level served by the school of origin.

(5) "Student attendance day" shall have the same meaning as defined in KRS 158.070.

(6) [(4)] "Unaccompanied youth" means a youth not in the physical custody of a parent or guardian [means a youth that meets the definitions of unaccompanied youth and homeless included in the McKinney-Vento Homeless Assistance Act].

Section 2. Criteria for Homeless Children and Youth Education Program Implementation. (1) Homeless children and [or] unaccompanied youth who reside within the boundaries of an LEA [a local school district] shall be provided a free, appropriate public education. [Programs for homeless children and unaccompanied youth shall be provided in a timely fashion and shall be ensured by the following actions:]

(2) [(4)] Each LEA [local district] shall designate a person [in the district] to be a homeless child education liaison [liaison], [shall] submit the name of the person acting as liaison to the department [Kentucky Department of Education], and [shall] allocate sufficient time to the homeless child education liaison to perform the required responsibilities.

(3) The homeless child education liaison[liaison's] shall be responsible for [responsibilities shall be to]:

(a) Obtaining[Obtain] all necessary records, including birth certificates and immunization records, of each homeless student and unaccompanied youth identified as living within the boundaries of the LEA [school district] and immediately placing [place the] each homeless student and unaccompanied youth in appropriate programs. [In cases where] Where educational records are not readily available, the liaison shall make personal, direct contact to the LEA(s) [school district(s)] or schools of last attendance for verbal confirmation of essential information, including coursework that has been satisfactorily completed. The liaison shall assist the homeless student or unaccompanied youth to obtain essential records which are not in existence;

(b) Receiving [Receive] and resolving [resolve] any requests for resolution of disputes related to the educational placement of homeless students and [or] unaccompanied youth within the LEA [district]. The liaison shall provide the necessary information to the department [Department of Education] for final resolution whenever such [a request] requests cannot be [is received and is not] resolved at the local level;

(c) Assisting [Assist] the homeless student or unaccompanied youth to obtain the appropriate program and services, including transportation and referrals to medical, dental, mental health, and other appropriate programs and services;

(d) Developing [Develop] procedures to ensure that homeless student or unaccompanied youth records are readily available upon request by a new receiving LEA or school [district];

(e) Developing relationships [a relationship] with known

homeless service providers and state agencies in the community to identify and enroll homeless students or unaccompanied youth living there;

(f) Reviewing [Review] local data indicating the prevalence of homelessness in the community and assessing [assess] needs of local homeless children and unaccompanied youth with LEA administrators based on the review of data;

(g) Ensuring [Ensure] school personnel providing McKinney-Vento services receive professional development and other support related to addressing the challenges of homelessness and supporting homeless children and unaccompanied youth, including runaway youth;

(h) Ensuring [Ensure] unaccompanied youth are enrolled and receive support to accrue credits and access higher education; and

(i) Receiving [Receive] annual department-approved training to cover at least the following topic areas:

1. The rights and services provided for homeless children and unaccompanied youth;
2. Identification of homeless children and unaccompanied youth;
3. The state dispute resolution process, data utilization, monitoring, and reporting requirements under this regulation; and
4. Best practices to serve homeless children and unaccompanied youth.

(4) Consistent with KRS 156.160(1)(p), and to the extent feasible, homeless children and unaccompanied youth shall be awarded credit, including partial credit, for all coursework satisfactorily completed.

(5) To ensure credit, including partial credit, is awarded for all coursework satisfactorily completed by homeless children and unaccompanied youth, an LEA shall adopt written procedures addressing:

(a) The tool or methodology the LEA shall use to calculate credit, including partial credit, to be awarded for all coursework satisfactorily completed by homeless children and unaccompanied youth;

(b) The consolidation of partial credit, where appropriate, to provide opportunities for credit accrual that eliminate academic and nonacademic barriers for homeless children and unaccompanied youth;

(c) How the LEA shall provide students experiencing homelessness access to extracurricular and summer programs, credit transfer and electronic course services, and after-school tutoring and other extended school services available in the district to the fullest extent practicable and at nominal or no costs;

(d) The ways in which the LEA shall lessen the impact of school transfers for homeless children and unaccompanied youth, which shall include:

1. Identifying systems that are in place to ease the transition of students experiencing homelessness, particularly during the first two weeks at a new school;
2. Requiring counselors to provide timely assistance and advice to improve college and career readiness for students experiencing homelessness; and
3. Granting priority placement in classes offered by the LEA that meet state minimum graduation requirements for students who change schools at least once during a school year as a result of homelessness;

(e) How and in what circumstances the LEA shall allow a student experiencing homelessness who was previously enrolled in a course required for high school graduation to complete that course at no cost before the beginning of the next school year as required by KRS 156.160(1)(p)(2); and

(f) The required review of credit accrual and the personal graduation plan for each homeless student and unaccompanied youth that is not on track to receive a high school diploma before the fifth year of high school enrollment.

(6) To ensure credit, including partial credit, is awarded for all coursework satisfactorily completed by homeless children and youth, an LEA may adopt procedures providing for:

(a) The timely placement of a student experiencing homelessness in electives comparable to those in which the student was enrolled in or earned partial credit for the successful

completion of at the previous school(s);

(b) Engaging homeless students and unaccompanied youth by offering curricula that connect schoolwork with college and careers;

(c) Flexibility for homeless students and unaccompanied youth to complete credits, particularly those required for high school graduation, which may include flexible scheduling options, open entry and exit, extended year programming, or self-paced learning-based on competency;

(d) Small, personalized learning environments for students experiencing homelessness;

(e) Blended learning opportunities such as computer-based or digital learning options for students experiencing homelessness;

(f) Work-based learning programs, apprenticeships, or alternative education programs that allow homeless students and unaccompanied youth to recover credits or earn income while completing credits; or

(g) The integration of content standards from multiple subject areas into a single course for which students can earn simultaneous credit. Curriculum for integrated courses addresses standards across subject matters and may emphasize interdisciplinary connections from technical or academic areas.

(7) An LEA shall adopt written procedures for awarding a high school diploma to homeless children and unaccompanied youth who transfer after completion of the second year of high school and meet the requirements outlined in KRS 156.160(1)(p).

(2) Each local district shall designate a person in the district to be a foster care liaison, shall submit the name of the person to the Kentucky Department of Education, and shall allocate sufficient time to the foster care liaison to perform required responsibilities. The foster care liaison may also be the homeless education liaison. The foster care liaison's responsibilities shall be to ensure that:

(a) A child in foster care remains in his or her school of origin, unless it is determined that remaining in the school of origin is not in that child's best interest;

(b) If it is not in the child's best interest to stay in his or her school of origin, the child is immediately enrolled in the new school even if the child is unable to produce records normally required for enrollment; and

(c) That the new (enrolling) school immediately contacts the school of origin to obtain relevant academic and other records.]

Section 3. Residency and Enrollment in the Homeless Children and Youth Education Program. (1) [The school district of residence shall be the district in which the homeless student or unaccompanied youth physically resides with his or her parent or legal custodian, unless by reason of marriage, emancipation, or basic physical necessity the child resides elsewhere.] In the best interest of the homeless student or unaccompanied youth, an LEA serving a homeless student or unaccompanied youth [The school district of residence] shall ensure that:

(a) [The homeless student or unaccompanied youth is enrolled in the school attendance area in which he or she is physically located or that] The homeless student's or unaccompanied youth's education is continued in the school of origin for the duration of homelessness; [remainder of the academic year, or in any case in which the family becomes homeless between academic years, for the following academic year;]

1. In any case in which the homeless child or unaccompanied youth becomes homeless between academic years or during an academic year; and

2. For the remainder of the academic year, if the homeless child or unaccompanied youth becomes permanently housed during an academic year; or

(b) The homeless student or unaccompanied youth is enrolled [enroll the child or youth] in any school that non-homeless students who live in the attendance area in which the child or youth is actually living are eligible to attend[, whichever is in the best interest of the homeless student or unaccompanied youth].

(2) In determining the best interests of the homeless child or unaccompanied youth for purposes of making a school assignment under Section 3(1) of this administrative regulation, an LEA serving a homeless student or unaccompanied youth shall: [consideration shall be given to a request made by the parent or unaccompanied

youth regarding school selection]

(a) Presume that it is in the best interest of the homeless child or unaccompanied youth to remain in the school of origin, unless doing so is contrary to a request made by the unaccompanied youth or by the parent or guardian of the homeless child regarding school selection;

(b) Consider student-centered factors, including the impact of mobility on achievement, education, health, and safety, giving priority to a request made by the unaccompanied youth or by the parent or guardian of the homeless child regarding school selection;

(c) If, after conducting the best interest determination based on the presumption in paragraph (a) of this subsection and on the student-centered factors in paragraph (b) of this subsection, the LEA determines that it is not in the homeless child's or unaccompanied youth's best interest to attend the school of origin or the school requested by the unaccompanied youth or by the parent or guardian of the homeless child, provide a written determination explaining the reasons for the determination to the unaccompanied youth or the parent or guardian of the homeless child in a manner and form that is understandable. The written determination shall also contain information regarding the rights of the unaccompanied youth or the parent or guardian of the homeless child to dispute the determination pursuant to the procedures set forth in Section 4 of this administrative regulation; and

(d) In the case of an unaccompanied youth, ensure the homeless child education liaison assists in placement or enrollment decisions, gives priority to the views of the unaccompanied youth, and provides notice to such youth of the right to dispute his education placement pursuant to the procedures set forth in Section 4 of this administrative regulation.

(4) The school selected for purposes of making a school assignment under Section 3(1) of this administrative regulation shall immediately enroll the homeless child or unaccompanied youth, even if the student is unable to produce records normally required for enrollment, or has missed application or enrollment deadlines during any period of homelessness.

(5) [(3)] A homeless student or unaccompanied youth shall not be denied enrollment [in the school district of residence] due to the absence of a parent or a court-appointed guardian or custodian. Such a homeless student or unaccompanied youth shall be enrolled and provided educational services until such time that the LEA [school district] can substantiate that the enrollment is contrary to the best interests of the child or youth pursuant to Section 3(2) of this administrative regulation [Section 4(2) of this administrative regulation].

(6) [(4)] In the absence of a parent[,] and a court-appointed custodian or guardian, any medical, dental, and other health services may be rendered to a homeless student or unaccompanied youth who is a minor of any age when, in the judgment of the school principal or other professional, [that] the risk to the minor's health is of such a nature that treatment should be given without delay and the requirements of consent would result in delay or denial of treatment as stated in KRS 214.185(3)(4).

(7) [(5)] Homeless children or unaccompanied youth shall not include any individual imprisoned or otherwise detained by act of Congress or a state law. Nor shall a child be classified as "homeless" to circumvent state law and administrative regulations which:

(a) Prohibit the attempted enrollment of nonresident students for the express purposes of obtaining school accommodations and services without the payment of tuition to the nonresident LEA [school district] or for the purpose of obtaining specific programs not available in the school of residence; or

(b) Regulate interschool athletic recruiting by the Kentucky High School Athletic Association. (8) [(6)] LEA [School district] policy, including policies related to guardianship issues, shall not delay or deny the immediate provision of educational placement and appropriate services to the homeless student or unaccompanied youth[, including policies related to guardianship issues].

Section 4. Resolution of Disputes Arising in the Homeless Children and Youth Education Program. (1) Disputes arising between and among more than one LEA regarding the enrollment of a homeless student or unaccompanied youth shall be resolved by the state homeless education coordinator in accordance with the procedures established in Section 4(4) through (8) of this administrative regulation.

(2) All other disputes [Disputes arising between or among the school district of residency; another school district; and the parent, youth, or person in parental relationship to the homeless student or unaccompanied youth] regarding [the school district in which the child shall attend school or the educational placement] eligibility, school selection, or enrollment of [the] a homeless student or unaccompanied youth shall be received and resolved by the LEA in which enrollment is sought in accordance with the procedures established in Section 4(3) of this administrative regulation. [resolved through the following procedures:]

(3) Within thirty (30) student attendance days after notice of a dispute is received, the LEA in which enrollment is sought by a homeless child or unaccompanied youth shall resolve the dispute using the following procedures:

(a) [(+)] The [local district] homeless child education liaison in the LEA in which enrollment is sought shall ensure immediate enrollment and the provision of services to the homeless child or unaccompanied youth throughout the dispute resolution process;[-]

(b) [(2)] All concerns regarding the education of a homeless child or unaccompanied youth shall be referred to the [local district] homeless child education liaison in the LEA of enrollment. If a complaint arises regarding services or placement of a homeless child or unaccompanied youth, the [school district's] homeless child education liaison in the LEA of enrollment shall inform the homeless student or unaccompanied youth of his or her rights under the McKinney-Vento Act and state law, including this administrative regulation;[-]

(c) [(3)] The homeless child education liaison in the LEA of enrollment shall promptly and thoroughly document all communications, determinations, and evidence. All documentation shall be subject to the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g);

(d) The [local district] homeless child education liaison in the LEA of enrollment shall make a determination on the dispute within a reasonable number of days [as to the complaint. The liaison will document this and all subsequent communications, determinations, and evidence.] and provide a [A] copy of that determination [shall be presented] to the complainant;[-]

(e) If the [complaint] dispute is not resolved, the complainant shall [will] be advised by the [local district] homeless child education liaison in the LEA of enrollment of the opportunity to present a written request for mediation and, at the request of the complainant, assist the complainant with completing [-The local district liaison shall assist the representative to complete] a written request for mediation, including documenting [an indication of] the specific point at issue;[-]

(f) [(4)] The mediation, if requested by the complainant, shall be facilitated by the homeless child education liaison in the LEA of enrollment and shall be scheduled within a reasonable number of days of the written request and on a day and time reasonably calculated to be [shall be] convenient to the needs of the homeless student or unaccompanied youth. The [district liaison, the] LEA [district(s)] representative(s);[-] and the [child's] representative(s) of the homeless child or unaccompanied youth shall have the opportunity to be present at the mediation;[representative. The local district homeless liaison shall facilitate the mediation.]

(g) [(5)] During the mediation, the LEA representative(s) [school district(s)] shall discuss considerations that led to the placement decision and the specific point at [in] issue as determined previously and specified within the written request for mediation. The mediation may also include discussion of the ability of the LEA [school district] of enrollment to provide continuity in educational programs, the need of the homeless student or unaccompanied youth for special instructional programs, the amount of time and arrangements required to transport the student to the [original] school in which enrollment is sought [district], the

age of the homeless student or unaccompanied youth, ~~and~~ the school placement of siblings to the homeless student or unaccompanied youth, and the time remaining until the end of the semester or ~~the end of the school year;~~ and

~~(h) The homeless child education liaison in the LEA of enrollment shall document mediation [Documentation regarding these] proceedings and [must be] provide[d] such documentation [with any appeal] to the state homeless education coordinator with any request made pursuant to Section 4(4) of this administrative regulation.~~

~~(4) [(6) Where an agreement cannot be reached by the parties;] Any [either] party to the dispute may request review by the state homeless education coordinator. Upon written request, the state homeless education coordinator shall make a determination and communicate with the involved parties to discuss available alternatives and seek to resolve the dispute. Any party requesting review by the state homeless education coordinator must provide reasoning for the review, including specific questions of law or fact.~~

~~(5) [(7) Where such a request for the review [assistance] of the state homeless education coordinator is made, the LEA of enrollment [school district of residence] shall provide sufficient information as required by the department, including:~~

~~(a) A description of the situation that prompted the complaint and subsequent request for review by the state homeless education coordinator;~~

~~(b) The name(s) and age(s) of the homeless child or children or unaccompanied youth involved;~~

~~(c) The name(s) of the involved LEA [school district] personnel and the LEA(s) [school district or districts] involved; and~~

~~(d) Copies of any documentation that served as the basis [used up to that point including reasoning] for LEA [district] decisions; appropriate evidence to substantiate reasoning; and other documentation [evidence] the LEA deems [district sees] relevant and appropriate for consideration by the state homeless education coordinator.~~

~~[(e) All information is subject to the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g).]~~

~~(6) [(8) The state homeless education coordinator shall collect and review appropriate documentation [evidence, review such evidence,] and provide an initial decision to the parties to the complaint within twenty (20) student attendance days after a request for review is received by the department pursuant to Section 4(4) of this administrative regulation.~~

~~(7) Any party [Parties] to the complaint may request that the state homeless education coordinator's decision be reviewed by a three (3) member panel which shall be convened by the state homeless education coordinator within the department, and the [Department of Education. The] three (3) member panel shall [review the state coordinator's decision and] either adopt or reject the state homeless education coordinator's decision within a reasonable number of days after being convened [or reject it].~~

~~(8) If the three (3) member panel rejects the state homeless education coordinator's decision [rejected], the panel shall provide an alternative finding, which shall be supported with appropriate reasoning. The panel's decision is a final decision and not appealable. [A final decision will be rendered within a reasonable number of days after receiving a complaint.]~~

~~(9) [Students must be immediately enrolled in the school in which enrollment is being sought in the case of a dispute, including unaccompanied youth. Enrollment must continue until the final resolution of the dispute, including all available appeals.~~

~~(10) Unaccompanied youth as well as parents or guardians of homeless children shall [have the right to] receive [such] written notice[, as well as parents or guardians accompanying their children. Written explanation is required] of decisions made by the LEA(s), state homeless education coordinator, or the three (3) member panel described in Section 4(7) of this administrative regulation, and such written notice shall be provided [school, LEA, or SEA and must be] in an understandable form.~~

Section 5. Annual Count for the Homeless Children and Youth Education Program. The department [Department of Education] shall annually conduct a count of all homeless children and

unaccompanied youth in the state as follows:

(1) LEAs [Local school districts] shall utilize the state student information system for the collection of data regarding homeless children and unaccompanied youth; ~~and~~

(2) LEAs [Local school districts] shall report an unduplicated count by school of homeless children and unaccompanied youth via the state student information system to the department [Department of Education] according to the time lines provided; ~~and~~

(3) The department [Department of Education] shall develop procedures, as needed or required, to ensure that the homeless child count is accurate and verifiable.

Section 6. Local Education Agency Grants for the Education of Homeless Children and Unaccompanied Youth. (1) The department [Kentucky Department of Education] shall make grants to LEAs [local education agencies (LEA)] when such funds become available through a competitive application process. Grants shall be awarded to LEAs based upon the review and rating of their applications.

(2) [(4)] Not less than fifty (50) percent of amounts provided under a grant to LEAs [local districts] shall be used to provide primary services of tutoring, remedial education services, or other education services to homeless children or unaccompanied youth.

(3) [(2)] Not less than thirty-five (35) nor more than fifty (50) percent of amounts provided to LEAs [local districts] shall be used for related activities for homeless children or unaccompanied youth including expedited evaluations, professional development for school personnel, referrals for medical, dental, mental and other health services, transportation, before- and after-school care, and school supplies.

(4) [(3)] An LEA [A local district] that desires to receive a grant shall submit an application to the department [Kentucky Department of Education]. Each application shall include:

(a) The number of homeless children and unaccompanied youth enrolled in preschool, elementary and secondary school, the needs of such children, and the ability of the LEA [district] to meet these needs;

(b) A description of the services and programs for which assistance is sought and the problems sought to be addressed through the provision of such services and programs (i.e., enrollment, retention, and educational success);

(c) An assurance that assistance under the grant shall supplement and not supplant funds used before the award of the grant for purposes of providing services to homeless children and unaccompanied youth;

(d) A description of policies and procedures that the LEA [district] shall implement to ensure that activities carried out by the LEA [district] shall not isolate or stigmatize homeless children and unaccompanied youth;

(e) A description of coordination with other local and state agencies that serve homeless children and unaccompanied youth; and

(f) Other criteria the department [Kentucky Department of Education] deems appropriate.

Section 7. Ensuring Educational Stability for Children in Foster Care. (1) Each LEA shall:

(a) Designate a person to be the foster care liaison;

(b) Submit the name of the foster care liaison to the department; and

(c) Allocate sufficient time to the foster care liaison to perform required responsibilities.

(2) The foster care liaison may also be the homeless child education liaison.

(3) The foster care liaison shall ensure that:

(a) A child in foster care enrolls or remains in his school of origin, unless it is determined that remaining in the school of origin is not in the child's best interest;

(b) If it is determined that it is not in the child's best interest to remain in his school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment; and

(c) The enrolling school immediately contacts the child's school of origin to obtain relevant academic and other records.

(4) LEAs shall develop and implement clear written procedures that comply with 20 U.S.C. 6312(c)(5)(B) and govern how transportation shall be provided, arranged, and funded to maintain a child in foster care in the school of origin, unless it is determined that remaining in the school of origin is not in the child's best interest.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Jr., Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: December 9, 2019

FILED WITH LRC: December 9, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on February 24, 2020, at 10:00 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2020.

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

Regulation Number: 704 KAR 7:090

Contact Person: Deanna Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: The McKinney-Vento Homeless Assistance Act, specifically subtitle VII-B, is the primary piece of federal legislation related to the education of children and youths experiencing homelessness. Under the McKinney-Vento Education for Homeless Children and Youth (McKinney-Vento) program, state educational agencies shall ensure that homeless children and youths have equal access to the same free, appropriate public education as provided to other children and youths. To ensure homeless children and youths have equal access to public education, the Kentucky Department of Education (KDE) is required to review regulations and other practices and policies that may act as barriers to the identification, enrollment, attendance, or educational successes of homeless children and youths. This regulation provides the legal framework for Kentucky's homeless education program, including but not limited to criteria for program implementation, requirements related to residency and enrollment, and procedures for the resolution of disputes.

(b) The necessity of this administrative regulation: This regulation is necessary because it provides the legal framework for Kentucky's homeless education program, including but not limited to criteria for program implementation, requirements related to residency and enrollment, and procedures for the resolution of disputes. This amended regulation is also necessary to implement House Bill (HB) 378 (2019), which amended KRS 156.160 to require the Kentucky Board of Education (KBE) to provide through administrative regulation: (1) Procedures that ensure homeless children and youths are awarded credit, including partial credit, for all coursework satisfactorily completed while enrolled at another school; (2) Procedures for homeless children and youths who were

previously enrolled at another school in a course required for graduation to be provided the opportunity, to the extent practicable, to complete that course at no cost before the beginning of the next school year; and, (3) Authority for a homeless child or youth transferring schools after successful completion of the second year of high school and meeting the requirements outlined in KRS 156.160(1)(p) to be awarded a high school diploma.

(c) How this administrative regulation conforms to the content of the authorizing statute: In compliance with McKinney-Vento, which requires KDE to ensure that homeless children and youths have equal access to the same free, appropriate public education as provided to other children and youths, this regulation provides the legal framework for Kentucky's homeless education program, including but not limited to criteria for program implementation, requirements related to residency and enrollment, and procedures for the resolution of disputes. This amended regulation also implements changes HB 378 (2019) made to KRS 156.160, which now requires the KBE to provide through administrative regulation: (1) Procedures that ensure homeless children and youths are awarded credit, including partial credit, for all coursework satisfactorily completed while enrolled at another school; (2) Procedures for homeless children and youths who were previously enrolled at another school in a course required for graduation to be provided the opportunity, to the extent practicable, to complete that course at no cost before the beginning of the next school year; and, (3) Authority for a homeless child or youth transferring schools after successful completion of the second year of high school and meeting the requirements outlined in KRS 156.160(1)(p) to be awarded a high school diploma.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation ensures that homeless children and youths in Kentucky have equal access to the same free, appropriate public education as provided to other children and youths by providing the legal framework for our state's homeless education program, including but not limited to criteria for program implementation, requirements related to residency and enrollment, and procedures for the resolution of disputes. This amended regulation also implements changes HB 378 (2019) made to KRS 156.160 by prescribing: (1) Procedures that ensure homeless children and youths are awarded credit, including partial credit, for all coursework satisfactorily completed while enrolled at another school; (2) Procedures for homeless children and youths who were previously enrolled at another school in a course required for graduation to be provided the opportunity, to the extent practicable, to complete that course at no cost before the beginning of the next school year; and, (3) Authority for a homeless child or youth transferring schools after successful completion of the second year of high school and meeting the requirements outlined in KRS 156.160(1)(p) to be awarded a high school diploma.

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

(a) How the amendment will change this existing administrative regulation: Substantive amendments to 704 KAR 7:090 align with HB 378 (2019) and include, for example, a requirement for each Local education agency (LEA) to adopt a methodology for calculating credit, including partial credit; lessen the impact of transfers for homeless children by, among other items, granting priority placement in classes that meet state minimum graduation requirements; and, have written procedures clarifying how and what circumstances a homeless child will be able to complete before the beginning of the next school year and at no cost any course required for graduation in which he or she was previously enrolled. The regulation also provides authority for a homeless child or youth transferring schools after successful completion of the second year of high school and meeting the requirements outlined in KRS 156.160(1)(p) to be awarded a high school diploma. Additional substantive changes are related to the resolution of disputes arising in the Homeless Children and Youth Education Program, including: (1) Requiring disputes arising between two or more LEAs to be handled by the state homeless education coordinator; (2) Clarifying other disputes arising at the local level are to be resolved by the homeless liaison in the

student's LEA of enrollment; (3) Requiring the homeless liaison in the LEA of enrollment to resolve disputes within 30 student attendance days; and, (4) Requiring the state homeless education coordinator to resolve disputes within 20 student attendance days.

(b) The necessity of the amendment to this administrative regulation: Substantive amendments to 704 KAR 7:090 are necessary to implement HB 378 (2019), which amended KRS 156.160 to require the KBE to provide through administrative regulation: (1) Procedures that ensure homeless children and youths are awarded credit, including partial credit, for all coursework satisfactorily completed while enrolled at another school; (2) Procedures for homeless children and youths who were previously enrolled at another school in a course required for graduation to be provided the opportunity, to the extent practicable, to complete that course at no cost before the beginning of the next school year; and, (3) Authority for a homeless child or youth transferring schools after successful completion of the second year of high school and meeting the requirements outlined in KRS 156.160(1)(p) to be awarded a high school diploma. Additional substantive amendments are necessary to comply with McKinney-Vento, which requires KDE to ensure that homeless children and youths have equal access to the same free, appropriate public education as provided to other children and youths.

(c) How the amendment conforms to the content of the authorizing statute: Substantive amendments to 704 KAR 7:090 conform to HB 378 (2019), which revised KRS 156.160 to require the KBE to provide through administrative regulation: (1) Procedures that ensure homeless children and youths are awarded credit, including partial credit, for all coursework satisfactorily completed while enrolled at another school; (2) Procedures for homeless children and youths who were previously enrolled at another school in a course required for graduation to be provided the opportunity, to the extent practicable, to complete that course at no cost before the beginning of the next school year; and, (3) Authority for a homeless child or youth transferring schools after successful completion of the second year of high school and meeting the requirements outlined in KRS 156.160(1)(p) to be awarded a high school diploma. Additional substantive amendments conform to McKinney-Vento, which requires KDE to ensure that homeless children and youths have equal access to the same free, appropriate public education as provided to other children and youths.

(d) How the amendment will assist in the effective administration of the statutes: Substantive amendments to 704 KAR 7:090 assist in the effective administration of HB 378 (2019), which revised KRS 156.160 to require the KBE to provide through administrative regulation: (1) Procedures that ensure homeless children and youths are awarded credit, including partial credit, for all coursework satisfactorily completed while enrolled at another school; (2) Procedures for homeless children and youths who were previously enrolled at another school in a course required for graduation to be provided the opportunity, to the extent practicable, to complete that course at no cost before the beginning of the next school year; and, (3) Authority for a homeless child or youth transferring schools after successful completion of the second year of high school and meeting the requirements outlined in KRS 156.160(1)(p) to be awarded a high school diploma. Additional substantive amendments assist in the effective administration of McKinney-Vento, which requires KDE to ensure that homeless children and youths have equal access to the same free, appropriate public education as provided to other children and youths.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: LEAs, the KBE, and KDE will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: LEAs will take measures intended to

improve the education outcomes of homeless children and youths, including, for example, adopting a methodology for calculating credit, including partial credit; lessening the impact of transfers for homeless children by, among other items, granting priority placement in classes that meet state minimum graduation requirements; and, having written procedures clarifying how and what circumstances a homeless child will be able to complete before the beginning of the next school year and at no cost any course required for graduation in which he or she was previously enrolled. LEAs will also issue a high school diploma to a homeless child or youth transferring schools after successful completion of the second year of high school and meeting the requirements outlined in KRS 156.160(1)(p). Finally, LEAs will comply with the amended dispute resolution requirements, including the requirement that the homeless liaison in the LEA of enrollment resolve disputes within 30 student attendance days. The KBE and KDE will implement the amended regulation, which aligns with HB 378 (2019) as well as McKinney-Vento. KDE will also comply with the amended dispute resolution requirements, including the requirement that disputes arising between two or more LEAs to be handled by the state homeless education coordinator as well as the requirement that the state homeless education coordinator to resolve disputes within 20 student attendance days.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated budget impact related to the amendment of this administrative regulation for LEAs, the KBE, or KDE.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It is anticipated that compliance with this regulation will result in improved educational outcomes for homeless children and youths in Kentucky. Further, this amended regulation conforms to federal and state statutes, including McKinney-Vento and KRS 156.160, and conformance with authorizing statutes ensures clarity and legal compliance for the entities identified in question (3).

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

(a) Initially: McKinney-Vento, which was amended by the Every Student Succeeds Act in 2015, requires KDE to ensure that homeless children and youths have equal access to the same free, appropriate public education as provided to other children and youths. Specifically, to ensure homeless children and youths have equal access to public education, KDE is required to review regulations and other practices and policies that may act as barriers to the identification, enrollment, attendance, or educational successes of homeless children and youths. Because the KBE and KDE have already been complying with McKinney-Vento, there is no initial cost for monitoring and support.

(b) On a continuing basis: KDE incurs continuing costs as a result of the obligations in McKinney-Vento to ensure that homeless children and youths have equal access to the same free, appropriate public education as provided to other children and youths by reviewing regulations and other practices and policies that may act as barriers to the identification, enrollment, attendance, or educational successes of homeless children and youths. Kentucky receives approximately \$1,328,000 in federal funding under the McKinney-Vento program to promote educational successes for students who are experiencing homelessness.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no additional anticipated costs for the implementation and enforcement of the amendment of this administrative regulation; however, KDE incurs continuing costs as a result of the obligations in McKinney-Vento to ensure that homeless children and youths have equal access to the same free, appropriate public education as provided to other children and youths. Kentucky receives approximately \$1,328,000 in federal funding under the McKinney-Vento program to promote educational successes for students who are experiencing homelessness.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: An increase in fees or funding is not anticipated to be necessary to implement the amendment to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment to this administrative regulation applies equally to all local education agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies, the Kentucky Board of Education (KBE), and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029, 156.035, 156.160, 20 U.S.C 6311(g)(1)(E), 20 U.S.C. 6312(c)(5)(B), and 42 U.S.C. 11431 et seq.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There are no additional anticipated costs for the implementation and enforcement of the amendment of this administrative regulation; however, KDE incurs continuing costs as a result of the obligations in the McKinney-Vento Education for Homeless Children and Youth (McKinney-Vento) program to ensure that homeless children and youths have equal access to the same free, appropriate public education as provided to other children and youths. Kentucky receives approximately \$1,328,000 in federal funding under the McKinney-Vento program to promote educational successes for students who are experiencing homelessness.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? N/A

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

(c) How much will it cost to administer this program for the first year? McKinney-Vento, which was amended by the Every Student Succeeds Act in 2015, requires KDE to ensure that homeless children and youths have equal access to the same free, appropriate public education as provided to other children and youths. Specifically, to ensure homeless children and youths have equal access to public education, KDE is required to review regulations and other practices and policies that may act as barriers to the identification, enrollment, attendance, or educational successes of homeless children and youths. Because the KBE and KDE have already been complying with McKinney-Vento, there is no initial cost for monitoring and support.

(d) How much will it cost to administer this program for subsequent years? KDE incurs continuing costs as a result of the obligations in McKinney-Vento to ensure that homeless children and youths have equal access to the same free, appropriate public education as provided to other children and youths. Kentucky receives approximately \$1,328,000 in federal funding under the McKinney-Vento program to promote educational successes for students who are experiencing homelessness.

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

Revenues (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A

NEW ADMINISTRATIVE REGULATIONS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(Repealer)

16 KAR 9:071. Repeal of 16 KAR 9:050 and 9:070.

RELATES TO: KRS 13A.310

STATUTORY AUTHORITY: KRS 161.020, 161.048, 161.049

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.048 requires the Education Professional Standards Board to promulgate administrative regulations establishing standards and procedures for the alternative certification including the school district training program. KRS 13A.310 allows repeal of administrative regulations if the promulgating body desires. This administrative regulation repeals administrative regulations that are included in the amendments to 16 KAR 9:060.

Section 1. The following administrative regulations are hereby repealed:

(1) 16 KAR 9:050, Alternative training program eligibility requirements for middle school and secondary school teachers; and

(2) 16 KAR 9:070, Kentucky Primary Alternative Certification Program.

JUSTIN MITCHELL, Board Chair

APPROVED BY AGENCY: December 9, 2019

FILED WITH LRC: December 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on February 24, 2020, at 10:00 a.m. in the State Board Room, Fifth Floor, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Deanna L. Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Deanna L. Durrett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 16 KAR 9:050 and 16 KAR 9:070 which establish requirements and procedures for the district training program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to avoid confusion with the new amendment to 16 KAR 9:060 which places all requirements and procedures for the district training program in one administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.310 allows the EPSB to repeal regulations that it wishes to no longer be effective. This regulation repeals 16 KAR 9:050 and 16 KAR 9:070 because the subject matter of those administrative regulations is covered by the amendment 16 KAR 9:060.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation repeals 16 KAR 9:050 and 16 KAR 9:070, to avoid confusion with 16 KAR 9:060.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All school districts and groups of districts interested in offering a district training program and applicants for certification through this route. There are currently 172 school districts 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: This regulation will repeal 16 KAR 9:050 and 16 KAR 9:070 to avoid confusion. This repealer will not require action from the districts or applicants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no expected cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Repeal of 16 KAR 9:050 and 9:070, will avoid any confusion regarding the requirements for the district training program established in 16 KAR 9:060.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is needed as it will simply repeal 16 KAR 9:050 and 16 KAR 9:070.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Certification fees are established by 16 KAR 4:040. No additional fees are established by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable to the requirements of this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Education Professional Standards Board 172 public school districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.310

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues created by this repealer.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues created by this repealer.

(c) How much will it cost to administer this program for the first year? There are no costs associated with the repealer.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with the repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This is not a fee generating or a cost incurring program but, rather, repeals regulations to avoid confusion with the amendments to 16 KAR 9:060.

GENERAL GOVERNMENT
Kentucky Board of Veterinary Examiners
(Repealer)

201 KAR 16:012. Repeal of 201 KAR 16:010, 201 KAR 16:015, 201 KAR 16:020, 201 KAR 16:030, 201 KAR 16:040, 201 KAR 16:050, 201 KAR 16:060, 201 KAR 16:080, 201 KAR 16:090, 201 KAR 16:100, 201 KAR 16:110.

RELATES TO: KRS Chapter 321

STATUTORY AUTHORITY: KRS 321.235(3), 321.351(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.175, 321.181, 321.190, 321.193, 321.195, 321.201, 321.207, 321.211, 321.221, 321.351, 321.353, 321.360, 321.441, 321.443, and 321.990 each authorizes the Kentucky Board of Veterinary Examiners to establish and determine the rules and administrative regulations for veterinary medicine in Kentucky. This administrative regulation repeals 201 KAR 16:010, 201 KAR 16:015, 201 KAR 16:020, 201 KAR 16:030, 201 KAR 16:040, 201 KAR 16:050, 201 KAR 16:060, 201 KAR 16:080, 201 KAR 16:090, 201 KAR 16:100, 201 KAR 16:110 because new administrative regulations have been filed to replace the ones listed in this repealer.

Section 1. The following administrative regulations hereby repealed:

- (1) 201 KAR 16:010, Code of ethical conduct;
- (2) 201 KAR 16:015, Fees;
- (3) 201 KAR 16:020, Approved veterinary colleges;
- (4) 201 KAR 16:030, License, renewal notice;
- (5) 201 KAR 16:040, Approved programs for veterinary technicians and veterinary technologists;
- (6) 201 KAR 16:050, Continuing education;
- (7) 201 KAR 16:060, Complaint processing procedures;
- (8) 201 KAR 16:080, Certified animal control agencies;
- (9) 201 KAR 16:090, Certification as an animal euthanasia specialist;
- (10) 201 KAR 16:100, Examination; and
- (11) 201 KAR 16:110, Prescription and dispensation of drugs for animal use.

STEVEN J. WILLS, DVM, Board Chair

APPROVED BY AGENCY: December 13, 2019

FILED WITH LRC: December 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2020 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. 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 February 29, 2020. 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, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals the administrative regulations for the practice of veterinary medicine in Kentucky, which are being replaced by new filings.

(b) The necessity of this administrative regulation: This administrative regulation repeals the administrative regulations for the practice of veterinary medicine in Kentucky, which are being replaced by new filings. This repeal is needed as to eliminate any conflicts with new filings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This repealer filing conforms to the statutes by eliminating older administrative regulation versions at the same time new filings are being made.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer will assist by eliminating administrative regulations that are being replaced with new filings, which will make clear to readers which filings are applicable in the future.

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

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Veterinarian Examiners, 2392 veterinary licenses, 421 veterinary technician licenses, 57 animal control agency certificate holders, 196 animal euthanasia specialist certificate holders.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 KBVE will need to do nothing to comply with the repealer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Nothing

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KBVE, and the readers of the filings in the future.

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

(a) Initially: No costs.

(b) On a continuing basis: No costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No source funds are required.

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

(8) State whether or not this administrative regulation

established any fees or directly or indirectly increased any fees: No fees are established in any form.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Veterinary Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

(c) How much will it cost to administer this program for the first year? There are no anticipated impacts to state or local government associated with this repealer.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated impacts to state or local government associated with this repealer.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Board of Nursing (New Administrative Regulation)

201 KAR 20:600. Standards for training programs for licensed certified professional midwives.

RELATES TO: KRS 314.404 – 314.416

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(1) authorizes the board to promulgate an administrative regulation to establish required standards for training programs for licensed certified professional midwives.

Section 1. (1) A training program that prepares an individual to become a licensed certified professional midwife (LCPM) which is located in this state shall be accredited by the Midwifery Education Accreditation Council (MEAC).

(2) The board shall retain jurisdiction over accredited programs and may conduct a site visit or other investigation into any allegation that may constitute a violation of these administrative regulations. The board may also conduct a site visit when an accreditation visit is scheduled.

(3) The training program shall submit all correspondence and reports to and from MEAC to the board within thirty (30) days of submission or receipt.

Section 2. A training program that prepares an individual to

become a LCPM which is located in this state shall meet the standards established by this administrative regulation.

Section 3. Program Administrator. (1)(a) There shall be a program administrator who is administratively responsible for overseeing the program.

(b) The program administrator shall be appointed by and be responsible to the governing institution.

(2) A program shall develop and implement a plan of organization and administration that clearly establishes the lines of authority, accountability, and responsibility for each program location.

(3) The program administrator shall have the following qualifications:

(a) A minimum of a master's degree from an accredited college or university;

(b) A minimum of the equivalent of two (2) years of full time teaching experience in midwifery;

(c) Have at least two years of experience in the independent practice of midwifery, nurse-midwifery, or obstetrics;

(d) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development, and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the governing institution and an educational development plan implemented. The mentor shall have documented experience in program administration.

(e) Have been the primary care giver for at least 75 births including provision of prenatal, intrapartum, and postpartum care; and

(f) Hold a license as an LCPM.

(4) An APRN or physician may be appointed as a program administrator if they meet the requirements of this section other than holding a license as an LCPM if, in the opinion of the governing institution, the individual being considered has a sufficient understanding of the LCPM scope of practice.

Section 4. Faculty.

(1) There shall be at least one (1) faculty member besides the program administrator.

(2) The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the student, the number of students and classes admitted annually, and the educational technology utilized.

(3) The faculty shall be approved by the administrator and shall include didactic and clinical faculty.

(4) Didactic faculty.

(a) Didactic faculty shall have a minimum of a baccalaureate degree from an accredited college or university.

(b) Didactic faculty licensed as an LCPM shall document a minimum of two (2) years full time or equivalent experience as an LCPM.

(c) Didactic faculty who hold a license other than as an LCPM shall document a minimum of two (2) years full time or equivalent experience in their profession.

(d) Didactic faculty shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.

(e) Didactic faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.

(5) Clinical faculty and preceptors.

(a) Clinical faculty or a preceptor shall hold a current, unencumbered license as a certified professional midwife or related profession.

(b) Clinical faculty or a preceptor shall have evidence of clinical competencies related to midwifery.

(6) There shall be documentation of orientation to the course, program outcomes, student learning objectives, evaluation methods to be used by the faculty, and documented role

expectations.

Section 5. Standards for Curriculum.

(1) Philosophy, mission, and outcomes.

(a) The philosophy, mission, and outcomes of the training program shall be clearly defined in writing by the faculty and shall be consistent with those of the governing institution.

(b) The program outcomes shall encompass the Core Competencies and Standards of Practice of the Midwives Alliance of North America and describe the expected competencies of the graduate.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(d) The training program shall include a minimum of 900 contact hours of didactic course work.

(2) Organization of the curriculum

(a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.

(b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program and prepare the student to meet the qualifications for certification by the North American Registry of Midwives.

(c) A course syllabus shall be developed for each course to include outcomes, planned instruction, learning activities, and method of evaluation.

1. Each course shall be implemented in accordance with the established course syllabus.

2. A copy of each course syllabus shall be on file in the program office and shall be available to the board upon request.

(d) The curriculum plan shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(e) A course may be offered as a distance learning course. A distance learning course shall meet the same standards as established in this administrative regulation.

(f) The curriculum shall have written measurable program outcomes that reflect the role of the graduate.

(3) The curriculum shall require that the student hold a current American Heart Association Basic Life Support (BLS) certificate for health care providers and include instruction in neonatal resuscitation resulting in a Neonatal Resuscitation Program (NRP) certificate.

Section 6. Clinical Experience/Preceptorship.

(1) The training program shall include a clinical experience/preceptorship of at least two (2) years but no more than five (5) years and is equivalent to 1350 clinical contact hours. The training program shall maintain a log of clinical hours for each student.

(2) The clinical experience/preceptorship shall include:

(a) Serving as an active participant in attending 20 births;

(b) Serving as the primary midwife, under supervision, in attending 20 additional births, at least ten of which shall be out of hospital births. A minimum of three (3) of the 20 births attended as primary midwife under supervision shall be with women for whom the student has provided primary care during at least four (4) prenatal visits, births, newborn exams, and one postpartum exam;

(c) Serving as the primary midwife, under supervision, in performing:

1. 75 prenatal exams, including at least 20 initial history and physical exams;

2. 20 newborn exams; and

3. 40 postpartum exams.

Section 7. Students.

(1) A student enrolled in the training program shall have a high school diploma or its equivalent.

(2) The training program shall maintain evidence of the above requirements in the student's file.

(3) Admission requirements shall be stated and published in the governing institution's publications.

(4) Program information communicated by the training program shall be accurate, complete, consistent, and publicly available.

Section 8. Student Policies

(1) Written LCPM student policies shall be accurate, clear, and consistently applied.

(2) Upon admission to the training program, each student shall be advised in electronic or written format of policies pertaining to:

(a) Evaluation methods to include the grading system;

(b) Tuition, fees and expenses associated with the training program and refund policies;

(c) Availability of counseling resources;

(d) Health requirements and other standards as required for the protection of student health;

(e) Grievance procedures;

(f) Financial aid information;

(g) Student responsibilities; and

(h) A plan for emergency care on campus or in clinical settings.

DINA BYERS, Board President

APPROVED BY AGENCY: December 12, 2019

FILED WITH LRC: December 12, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2020 at 10:00 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2020, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 11:59 p.m. on February 29, 2020. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: Senate Bill 94 (2019 Session) enacted KRS 314.400-416 which recognized licensed certified professional midwives (CPM) and placed their regulation with the Board of Nursing. This administrative regulation sets the standards for training programs for CPMs in Kentucky.

(b) The necessity of this administrative regulation: It is required by KRS 314.404(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards for CPM training programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards for CPM training programs.

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

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to the administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect any school that wishes to start a CPM training program in Kentucky, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to conform to the standards set in order to open a training program

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs to create a CPM training program are not known.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They may operate a CPM training program.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: The Board of Nursing estimates that to implement this and the other CPM regulations will initially cost \$150,000 and approximately \$50,000 per year thereafter.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: An increase in funding may be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.404

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are not sure how many certified professional midwives there will be, but we estimate not more than 20. This will generate \$20,000 in revenue.

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

(c) How much will it cost to administer this program for the first year? We estimate \$150,000.

(d) How much will it cost to administer this program for subsequent years? We estimate \$50,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Board of Nursing (New Administrative Regulation)

201 KAR 20:610. Approval process for training programs for licensed certified professional midwives.

RELATES TO: KRS 314.404 – 314.416

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(1) authorizes the board to promulgate an administrative regulation to establish required standards for training programs for licensed certified professional midwives.

Section 1. Definitions.

(1) "Board" means the Kentucky Board of Nursing.

(2) "Preceptor" means a licensed certified professional midwife (LCPM), APRN designated Certified Nurse Midwife, or physician, who serves as a role model and mentor to assist in the development and validation of the competencies of a student

(3) "Program for licensed certified professional midwives" means the educational unit that prepares a person for licensure as a certified professional midwife.

Section 2. Establishment of a Training Programs for Licensed Certified Professional Midwives.

(1) The governing institution that establishes and conducts a training programs for licensed certified professional midwives shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the U.S. Department of Education.

(2) The governing institution shall assume full legal responsibility for the overall conduct of the training program for licensed certified professional midwives.

(3) The governing institution may receive consultation from the board prior to establishing a training program.

Section 3. Letter of Intent.

(1) The governing institution shall submit to the board a letter of intent to establish a training program for licensed certified professional midwives.

(2) The letter of intent shall be completed under the direction or consultation of a program administrator who shall have the following qualifications:

(a) A minimum of a master's or higher degree from an accredited college or university;

(b) A minimum of at least two (2) years of experience in the independent practice of midwifery, nurse-midwifery, or obstetrics in the past five (5) years;

(c) Have been the primary care giver for at least 75 births including provision of prenatal, intrapartum and postpartum care;

(d) Hold a license as:

1. An LCPM

2. An APRN designated Certified Nurse Midwife; or

3. A physician; and

(e) Demonstrated experience or preparation in education that includes teaching adults, adult learning theory teaching methods, curriculum development and curriculum evaluation. A program administrator without previous program administrator experience shall have a mentor assigned by the governing institution and an educational development plan implemented. The mentor shall have documented experience in program administration.

(3) The letter of intent shall include:

(a) Approval from the governing body of the institution proposing the training program for licensed certified professional midwives or other empowered approval bodies as applicable;

(b) The results of a feasibility study that includes the following information related to the need for a training program for licensed certified professional midwives:

1. Projected workforce demand; and
2. A description of the applicant pool that is being targeted and how this population will be reached;

(c) Evidence of support from the community of interest including how support for the creation of and training for students enrolled in a program for licensed certified professional midwives will occur. This documentation shall include evidence of the community of interest's intention to contribute to the achievement of the clinical objectives of the program;

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

(e) Admission of students, and projected graduation of the first class;

(f) Evidence of a sound financial base and demonstrated financial stability available for planning, implementing, and maintaining the training programs for licensed certified professional midwives;

(g) A copy of the curriculum vitae of the program administrator involved in the planning; and

(h) The maximum number of new students that the program is able to enroll in one (1) academic year. This number shall be referred to as the program's enrollment baseline.

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

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

(c) If the letter of intent is approved by the board, the governing institution shall be notified in writing that it may move to the proposal phase. The proposal shall be submitted within one (1) year of the date of the approval of the letter of intent or the letter of intent shall expire.

(5) The letter of intent shall be accompanied by a fee of \$1000 which is non-refundable.

(6) When the letter of intent is submitted to the board, the institution shall begin the accreditation process with the Midwifery Education Accreditation Council (MEAC) and the Council on Postsecondary Education, if applicable.

(7) All communication between the certified professional midwives training program and MEAC shall be forwarded to the board by the program administrator at the time of receipt from or submission to the accrediting body, but no later than thirty (30) days of receipt by the program.

(8) The program administrator shall notify the board of pending site visits by MEAC and shall provide to the board copies of any formal communication submitted to MEAC at the time of submission.

Section 4. Proposal Phase.

(1) A completed program proposal shall be submitted to the board by the governing institution for approval.

(2) The program shall not be announced, advertised, or students admitted to the training program for licensed certified professional midwives until the proposal has been approved and developmental status has been granted by the board.

(3) The program proposal shall include:

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

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

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

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

(e) Student recruitment plan and the enrollment baseline;

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

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

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

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

(j) Availability and willingness of the community, including accredited agencies, to provide clinical experiences;

(k) Policies and procedures for student admission to program for licensed certified professional midwives and progression;

(l) Availability of clerical assistance and support staff;

(m) A general plan for systematic review of the program that results in continuing improvement; and

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

(4) The training program may meet with the board staff to clarify, verify, and amplify materials included in the program proposal.

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

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

(b) The board, in collaboration with the program, shall determine an opening date.

Section 5. Developmental Status.

(1) Students may be admitted after developmental status is granted.

(2) Employment of program administrator and faculty.

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

(b) The faculty shall be employed in sufficient numbers to prepare for the development of the curriculum component of the program.

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

(4) Any written contracts for use of clinical facilities shall be executed and available for review by the board prior to admission to the certified professional midwife program.

(5) The certified professional midwife program shall submit semi-annual progress and evaluation reports or other reports as requested by the board to demonstrate implementation of the approved proposal until the first class graduates.

(6) Site visits shall be conducted by the board as necessary.

(7) Developmental status may be withdrawn if:

(a) A class is not enrolled within eighteen (18) months of the date the board granted developmental status; or

(b) The governing institution fails to submit board required reports within the designated time period.

(8) The governing institution shall be notified in writing of the intent to withdraw developmental status. The governing institution may request reconsideration by the board. The request shall be in writing and sent no more than thirty (30) days from the date of the notification.

Section 6. Initial Status and Program Approval.

(1) The status of the program shall move automatically from developmental status to initial status upon admission of the first class.

(2) It shall be the responsibility of the certified professional midwife program to notify the board of the admission of the first class.

(3) The program shall notify the board in writing thirty (30) days prior to the graduation of the first class.

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

- (a) Achievement and continued approval by a MEAC and
- (b) Reports of site visits conducted by a board representative to evaluate program compliance with administrative regulations.
- (5) The board may grant program approval for a period of time not to exceed the approval period granted by MEAC.
- (6) If program approval is denied, the applicant may request a hearing pursuant to KRS Chapter 13B.

DINA BYERS, Board President

APPROVED BY AGENCY: December 12, 2019

FILED WITH LRC: December 12, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2020 at 10:00 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2020, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 11:59 p.m. on February 29, 2020. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

- (1) Provide a brief summary of:

(a) What this administrative regulation does: Senate Bill 84 (2019 Session) enacted KRS 314.400-416 which recognized licensed certified professional midwives (CPM) and placed their regulation with the Board of Nursing. This administrative regulation sets the approval process for training programs for CPMs in Kentucky.

(b) The necessity of this administrative regulation: It is required by KRS 314.404(1).

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting the approval process for CPM training programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting the approval process for CPM training programs.

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

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to the administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect any school that wishes to start a CPM training program in Kentucky, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to follow the process set in order to open a training program.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs to create a CPM training program are not known.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They may operate a CPM training program.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: The Board of Nursing estimates that to implement this and the other CPM regulations will initially cost \$150,000 and approximately \$50,000 per year thereafter.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: An increase in funding may be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does sets an application fee for the training program of one thousand dollars.

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.404

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are not sure how many certified professional midwives there will be, but we estimate not more than 20. This will generate \$20,000 in revenue.

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

(c) How much will it cost to administer this program for the first year? We estimate \$150,000.

(d) How much will it cost to administer this program for subsequent years? We estimate \$50,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT

Board of Nursing

(New Administrative Regulation)

201 KAR 20:620. Licensing requirements for licensed certified professional midwives.

RELATES TO: KRS 314.404 – 314.416

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative

VOLUME 46, NUMBER 7– JANUARY 1, 2020

regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(2) authorizes the board to promulgate an administrative regulation to establish licensing requirements for licensed certified professional midwives. KRS 314.404(5) authorizes the board to promulgate an administrative regulation to establish fees.

Section 1. Fees.

(1) The fee for initial licensure shall be one thousand dollars (\$1000).

(2) The fee for licensure renewal shall be one thousand dollars (\$1000).

(3) The fee for licensure reinstatement shall be one thousand dollars (\$1000).

Section 2. Initial Licensure. An applicant for initial licensure as a licensed certified professional midwife (LCPM) shall complete the Certified Professional Midwife Application for Licensure and pay the fee for initial licensure as established in section 1 of this administrative regulation.

Section 3. Educational Requirements.

(1) An applicant for initial licensure as an LCPM shall provide evidence that the program from which they graduated is accredited by the Midwifery Education Accreditation Council (MEAC).

(2) An applicant shall also provide a copy of his or her official transcript.

(3)(a) If the applicant was certified by the North American Registry of Midwives (NARM) before January 1, 2020 through an educational pathway not accredited by MEAC, the applicant shall provide evidence of having earned the Midwifery Bridge Certificate issued by NARM. This shall be in lieu of an official transcript.

(b) If the applicant is licensed in another state that does not require an accredited education, the applicant shall provide evidence of having earned the Midwifery Bridge Certificate issued by NARM and proof of licensure in the other state.

(4) An applicant shall provide evidence of current American Heart Association Basic Life Support (BLS) for health care providers and Neonatal Resuscitation Program (NRP) certifications.

(5) An applicant shall complete a pediatric abusive head trauma course described in KRS 620.020(8) and a domestic violence course described in KRS 194A.540 and provide evidence to the Board at the time of application.

Section 4. Competency Validation.

An applicant shall provide evidence of having passed the North American Registry of Midwives (NARM) Examination and been granted certification by NARM.

Section 5. Criminal Record Check.

(1) Within six (6) months of the date of the application, an applicant shall request a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI) using the FBI Applicant Fingerprint Card and including any required fee to the KSP and the FBI.

(2) An applicant shall provide a certified or attested copy of the court record of any misdemeanor or felony conviction and a letter of explanation that addresses each conviction at the time of application.

Section 6. Action in Another Jurisdiction.

An applicant shall provide a certified copy of any disciplinary action taken on any professional or business license in another jurisdiction and a letter of explanation at the time of application.

Section 7. License.

(1) An applicant who meets the requirements of KRS 314.404 and sections 1 through 6 of this administrative regulation shall be issued a license to practice as an LCPM.

(2) The license shall be issued for one year from the date of initial licensure and may be renewed pursuant to section 8 of this administrative regulation.

Section 8. Renewal.

(1) A license to practice as an LCPM may be renewed by completing the Certified Professional Midwife Licensure Renewal Application and paying the fee established in section 1 of this administrative regulation.

(2) The LCPM shall provide evidence of current certification with NARM at the time of renewal.

(3) The LCPM shall provide evidence of current BLS and NRP certifications at the time of renewal.

(4) Upon approval of the Certified Professional Midwife Renewal Application, the license shall be renewed for one year.

Section 9. Reinstatement.

(1) If the LCPM license has lapsed, an applicant may file the Certified Professional Midwife Application for Licensure to request reinstatement and pay the fee established in section 1 of this administrative regulation.

(2) The LCPM shall provide evidence of current certification with NARM at the time of application for reinstatement.

(3) The LCPM shall provide evidence of current BLS and NRP certifications at the time of application for reinstatement.

(4) An applicant for reinstatement shall also meet the requirements of sections 5 and 6 of this administrative regulation.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Certified Professional Midwife Application for Licensure", 1/2020, Kentucky Board of Nursing; and

(b) "Certified Professional Midwife Licensure Renewal Application", 1/2020, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

DINA BYERS, Board President

APPROVED BY AGENCY: December 12, 2019

FILED WITH LRC: December 12, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2020 at 10:00 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2020, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 11:59 p.m. on February 29, 2020. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: Senate Bill 84 (2019 Session) enacted KRS 314.400-416 which recognized licensed certified professional midwives (CPM) and placed their regulation with the Board of Nursing. This administrative regulation

sets the licensure requirements for CPMs in Kentucky.

(b) The necessity of this administrative regulation: It is required by KRS 314.404(5).

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting licensure requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting licensure requirements.

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

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to the administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect applicants for a CPM license in Kentucky, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to conform to the licensure requirements.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The fee for initial application is set at \$1000.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be licensed and may practice.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: The Board of Nursing estimates that to implement this and the other CPM regulations will initially cost \$150,000 and approximately \$50,000 per year thereafter.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: An increase in funding may be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does set fees of one thousand dollars for the initial application, reinstatement, and renewal.

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.404

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are not sure how many certified professional midwives there will be, but we estimate not more than 20. This will generate \$20,000

in revenue.

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

(c) How much will it cost to administer this program for the first year? We estimate \$150,000.

(d) How much will it cost to administer this program for subsequent years? We estimate \$50,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Board of Nursing (New Administrative Regulation)

201 KAR 20:630. Disciplinary actions for licensed certified professional midwives.

RELATES TO: KRS 314.404 – 314.416

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(4) authorizes the board to promulgate an administrative regulation to establish provisions for disciplinary actions for licensed certified professional midwives.

Section 1. The Board of Nursing shall have the authority to discipline an LCPM upon proof that the person:

(1) Has obtained a license by means of fraud, misrepresentation, or concealment of material facts, including making a false statement on an application or any other document required by the board for licensure;

(2) Has engaged in unprofessional conduct;

(3) Has been convicted of a felony;

(4) Has been convicted of a misdemeanor that meets the provisions of KRS 335B.020;

(5) Has performed an act that exceeds the scope of practice granted by law;

(6) Has had a license revoked, suspended, denied, or otherwise disciplined in any other territory or jurisdiction of the United States;

(7) Is unfit or incompetent to practice midwifery by reason of negligence or other causes, including but not limited to being unable to practice midwifery with reasonable skill or safety;

(8) Has misused or appropriated any drugs placed in the custody of the midwife for the use of others;

(9) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on essential records;

(10) Has been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property;

(11) Has violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law; or

(12) Has violated any administrative regulation promulgated by the board or any lawful order or directive previously entered by the board.

Section 2. The Board of Nursing shall follow the procedures established in and have the authority established by KRS 314.091, 201 KAR 20:161, and 201 KAR 20:162 for management and resolution of complaints filed against an LCPM.

Section 3. In addition to the provisions of section 2 of this administrative regulation, the Board of Nursing may impose a civil

penalty of up to \$10,000.

Section 4. Miscellaneous Requirements.

(1) An LCPM shall maintain a current mailing address with the board and notify the board in writing of a change of mailing address.

(2)(a) Holding a license shall constitute consent by the LCPM to service of notices or orders of the board. Notices and orders shall be sent to the mailing address on file with the board.

(b) Any notice or order of the board mailed or delivered to the mailing address on file with the board shall constitute valid service of the notice or order.

(3)(a) An LCPM shall, within ninety (90) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction.

(b) Upon learning of any failure to notify the board pursuant to this subsection, the board shall initiate an action for immediate temporary suspension until the person submits the required notification.

(4) An LCPM shall notify the board in writing within thirty (30) days if any professional or business license that is issued to the person by any agency of the commonwealth or any other jurisdiction:

(a) Is surrendered or terminated under threat of disciplinary action;

(b) Is refused, limited, suspended, or revoked; or

(c) If renewal or continuance is denied.

(5) If the board has reasonable cause to believe that an LCPM is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it shall require the person to submit to a substance use disorder evaluation or a mental or physical examination by a practitioner it designates.

(a) Holding a license shall constitute:

1. Consent by the LCPM to a substance use disorder evaluation, mental examination, or physical examination if directed in writing by the board. The direction to submit to an evaluation or examination shall contain the basis for the board's concern that the LCPM is unable to practice safely and effectively; and

2. Waiver of objections to the admissibility of the examining practitioner's testimony or examination reports on the grounds of privileged communication.

(b) The LCPM shall bear the cost of substance use disorder evaluation, mental examination, or physical examination ordered by the board.

(c) Upon failure of the LCPM to submit to a substance use disorder evaluation, mental examination, or physical examination ordered by the board, unless due to circumstances beyond the person's control, the board shall initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(d) If a substance use disorder evaluation, mental examination, or physical examination pursuant to this subsection results in a finding that indicates that the LCPM is unable to practice with reasonable skill and safety or has abused alcohol or drugs, the LCPM shall be subject to disciplinary procedures as established in this administrative regulation.

Section 5. Due process procedures, including appeal, pertaining to this administrative regulation shall be conducted in accordance with KRS Chapter 13B.

DINA BYERS, Board President

APPROVED BY AGENCY: December 12, 2019

FILED WITH LRC: December 12, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2020 at 10:00 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2020, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public.

Any person who 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 11:59 p.m. on February 29, 2020. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: Senate Bill 84 (2019 Session) enacted KRS 314.400-416 which recognized licensed certified professional midwives (CPM) and placed their regulation with the Board of Nursing. This administrative regulation deals with disciplinary actions against CPMs.

(b) The necessity of this administrative regulation: It is required by KRS 314.404(4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting disciplinary actions and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting disciplinary actions and procedures.

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

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to the administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect any licensed CPM that may have disciplinary action, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to conform to the procedures set in the regulation.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs are not known.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance with the regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: The Board of Nursing estimates that to implement this and the other CPM regulations will initially cost \$150,000 and approximately \$50,000 per year thereafter.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

- regulation or amendment: An increase in funding may be necessary.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This regulation does not.
- (9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.404

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are not sure how many certified professional midwives there will be, but we estimate not more than 20. This will generate \$20,000 in revenue.

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

(c) How much will it cost to administer this program for the first year? We estimate \$150,000.

(d) How much will it cost to administer this program for subsequent years? We estimate \$50,000.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT Board of Nursing (New Administrative Regulation)

201 KAR 20:640. Requirements for informed consent for licensed certified professional midwives.

RELATES TO: KRS 314.404 – 314.416

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(6) authorizes the board to promulgate an administrative regulation to establish requirements for informed consent by individuals receiving services from a licensed certified professional midwife.

Section 1. (1) An LCPM shall obtain informed consent from the individual receiving services.

(2) The LCPM shall maintain a copy of the informed consent document in the individual's records.

(3) The informed consent document shall include:

- (a) a description of the LCPM's education and credentials;
- (b) a description of the LCPM's statutory scope of practice, including a summary of the LCPM's limitations of skills and practices;
- (c) instructions for obtaining a copy of the administrative regulations 201 KAR 20:600-690;
- (d) instructions for filing a complaint with the board of nursing;
- (e) a summary of a written protocol for emergencies, including transfer to a higher level of care;
- (f) a description of the procedures, benefits, and risks of birth in the client's chosen environment, primarily those conditions that may arise during delivery;

(g) disclosure of professional liability insurance held by the LCPM;

(h) the financial responsibility of the client;

(i) a summary of the requirements for consultation, referral, or transfer of care established by 201 KAR 20:670 and 201 KAR 20:690; and

(j) procedures established by the LCPM for consultation, collaboration, referral, or transfer of care to a physician or other appropriate healthcare provider.

DINA BYERS, Board President

APPROVED BY AGENCY: December 12, 2019

FILED WITH LRC: December 12, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2020 at 10:00 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2020, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 11:59 p.m. on February 29, 2020. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of: (a) What this administrative regulation does: Senate Bill 84 (2019 Session) enacted KRS 314.400-416 which recognized licensed certified professional midwives (CPM) and placed their regulation with the Board of Nursing. This administrative regulation sets the standards for informed consent for CPMs in Kentucky.

(b) The necessity of this administrative regulation: It is required by KRS 314.404(6).

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards for informed consent for CPMs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards for informed consent for CPMs.

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

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to the administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect all licensed CPMs in Kentucky, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to conform to the standards set.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs are not known, but are estimated to be minimal.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance with the regulation and statute.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: The Board of Nursing estimates that to implement this and the other CPM regulations will initially cost \$150,000 and approximately \$50,000 per year thereafter.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: An increase in funding may be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.404

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are not sure how many certified professional midwives there will be, but we estimate not more than 20. This will generate \$20,000 in revenue.

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

(c) How much will it cost to administer this program for the first year? We estimate \$150,000.

(d) How much will it cost to administer this program for subsequent years? We estimate \$50,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Board of Nursing (New Administrative Regulation)

201 KAR 20:650. Licensed certified professional midwives permitted medical tests and formulary.

RELATES TO: KRS 314.404 – 314.416

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(7) authorizes the

board to promulgate an administrative regulation to establish a list of medical tests that a licensed certified professional midwife may order when providing certified professional midwifery services that is limited to only those tests that are indicated and approved for the safe conduct of pregnancy, labor or birth, and care of a client and not intended for the diagnosis or management of any acute condition unrelated to pregnancy.

Section 1. An LCPM may independently order the following medical tests:

- (1) Complete blood count (CBC);
- (2) Blood type, Rh, and antibody screen;
- (3) Screening for gestational diabetes;
- (4) Hepatitis B and C panels for immunity or infection;
- (5) HIV test;
- (6) HPV test;
- (7) Pap smear;
- (8) Screen tests for syphilis, chlamydia, gonorrhea, and herpes;
- (9) Rubella titers;
- (10) Urine or serum HCG;
- (11) Urinalysis;
- (12) Urine culture including Group B strep;
- (13) Vaginal culture for Group B strep;
- (14) Varicella titers;
- (15) Ultrasound for fetal viability, confirmation of singleton intrauterine pregnancy, gestational age, fetal position, placental localization, anatomy scan, or nuchal translucency;
- (16) Standard state newborn screening for metabolic disorders;
- (17) Newborn hearing screening;
- (18) Critical congenital heart disease screening (pulse oximetry);
- (19) Maternal prenatal genetic screening for errors of metabolism;
- (20) Hemoglobin A1C;
- (21) Standard screening tests for fetal genetic abnormalities including Quad Screen and cell-free DNA testing;
- (22) TSH screening; and
- (23) Complete Metabolic Panel (CMP).

Section 2. An LCPM may order any other test which is deemed necessary after consultation with a physician or other appropriate licensed healthcare provider.

Section 3. (1) An LCPM may obtain, transport, and administer the following legend medications:

- (a) Vitamin K;
 - (b) Rho D immune globulin;
 - (c) Erythromycin ophthalmic ointment USP (0.5%);
 - (d) Oxygen;
 - (e) Hepatitis B vaccine;
 - (f) Antibiotics which shall be administered pursuant to United States Centers for Disease Control (CDC) Guidelines for Prophylaxis:
 1. Penicillin;
 2. Ampicillin;
 3. Cefazolin;
 4. Clindamycin; and
 5. Vancomycin;
 - (g) Topical anesthetics:
 1. Procaine HCl;
 2. Novacaine;
 3. Benzocaine;
 4. Cetacaine; and
 5. Generic equivalents;
 - (h) Lidocaine 1% up to 20 milliliters per patient;
 - (i) Epinephrine;
 - (j) Glucose gel to be administered orally for neonatal hypoglycemia;
 - (k) Normal saline; and
 - (l) Medical supplies needed to administer the medications listed in this administrative regulation.
- (2)(a) An LCPM shall obtain and transport for emergencies

Oxytocin (Pitocin) for prevention of postpartum hemorrhage and Lactated Ringer's or Normal Saline for intravenous infusion.

(b) The LCPM shall obtain and transport at least one of the following to be used in the event of postpartum hemorrhage and if Oxytocin is not successful:

1. Methylergonovine (Methergine);
2. Hemabate; or
3. Misoprostal (Cytotec).

DINA BYERS, Board President

APPROVED BY AGENCY: December 12, 2019

FILED WITH LRC: December 12, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2020 at 10:00 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2020, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 11:59 p.m. on February 29, 2020. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: Senate Bill 84 (2019 Session) enacted KRS 314.400-416 which recognized licensed certified professional midwives (CPM) and placed their regulation with the Board of Nursing. This administrative regulation lists permitted medical tests and the formulary for CPMs in Kentucky.

(b) The necessity of this administrative regulation: It is required by KRS 314.404(7).

(c) How this administrative regulation conforms to the content of the authorizing statutes: By listing the permitted tests and medications that may be used by CPMs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By listing the tests and medications.

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

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to the administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect all licensed CPMs in Kentucky, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to comply with the regulation.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs are not known.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance with the regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: The Board of Nursing estimates that to implement this and the other CPM regulations will initially cost \$150,000 and approximately \$50,000 per year thereafter.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: An increase in funding may be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.404

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are not sure how many certified professional midwives there will be, but we estimate not more than 20. This will generate \$20,000 in revenue.

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

(c) How much will it cost to administer this program for the first year? We estimate \$150,000.

(d) How much will it cost to administer this program for subsequent years? We estimate \$50,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Board of Nursing (New Administrative Regulation)

201 KAR 20:660. Licensed certified professional midwives duty to report.

RELATES TO: KRS 314.404 – 314.416

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(10) authorizes the

board to promulgate an administrative regulation to require licensed certified professional midwives to report to the board annually as specified by the board information regarding cases in which the licensed certified professional midwife provided services when the intended place of birth at the onset of care was in an out-of-hospital setting. KRS 314.404(11) authorizes the board to promulgate an administrative regulation to require licensed certified professional midwives to report to the board, within thirty (30) days of the occurrence, a case of newborn or maternal death attended by a licensed certified professional midwife at the discovery of death.

Section 1. Pursuant to KRS 314.404(11), within thirty (30) days of a case of newborn or maternal death, the attending LCPM shall report the occurrence to the Board of Nursing on LCPM Incident Form.

Section 2. Pursuant to KRS 314.404(10), an LCPM shall report the following information to the Board of Nursing on or before September 1 of each for the period July 1 through June 30 preceding:

- (1) The total number of clients served;
- (2) The number of live births;
- (3) The number of cases of fetal demise, newborn deaths, and maternal deaths;
- (4) The number, reason for, and outcome of each referral, transfer, or transport of a client in the antepartum, intrapartum, or immediate postpartum periods;
- (5) A brief description of any complications resulting in the morbidity or mortality of a mother or a newborn for the first six (6) weeks; and
- (6) The planned location of the delivery and the actual location of the delivery if it is different.

Section 3. The LCPM Advisory Council shall review all reports.

Section 4. (1) The LCPM shall comply with the requirements of KRS 213.046 regarding the reporting of birth.

(2) The LCPM shall comply with the requirements of KRS Chapter 209A regarding reporting of suspected domestic violence.

Section 5. Incorporation by Reference.

(1) "LCPM Incident Form", 1/2020, Kentucky Board of Nursing, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

DINA BYERS, Board President

APPROVED BY AGENCY: December 12, 2019

FILED WITH LRC: December 12, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2020 at 10:00 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2020, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 11:59 p.m. on February 29, 2020. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: Senate Bill 84 (2019 Session) enacted KRS 314.400-416 which recognized licensed certified professional midwives (CPM) and placed their regulation with the Board of Nursing. This administrative regulation sets the requirements for reporting maternal or fetal mortality or morbidity for CPMs in Kentucky.

(b) The necessity of this administrative regulation: It is required by KRS 314.404(10) and KRS 314.404(11).

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting reporting requirements for CPMs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting reporting requirements for CPMs.

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

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to the administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect licensed CPMs in Kentucky, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to submit the required reports.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs should be minimal.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance with the statute and regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: The Board of Nursing estimates that to implement this and the other CPM regulations will initially cost \$150,000 and approximately \$50,000 per year thereafter.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: An increase in funding may be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, 314.404

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are not sure how many certified professional midwives there will be, but we estimate not more than 20. This will generate \$20,000 in revenue.

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

(c) How much will it cost to administer this program for the first year? We estimate \$150,000.

(d) How much will it cost to administer this program for subsequent years? We estimate \$50,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**GENERAL GOVERNMENT
Board of Nursing
(New Administrative Regulation)**

201 KAR 20:670. Licensed certified professional midwives consultation, collaboration, and referral provisions.

RELATES TO: KRS 314.404 – 314.416

STATUTORY AUTHORITY: KRS 314.131(1), 314.404
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(12) authorizes the board to promulgate an administrative regulation to define a list of conditions requiring collaboration, consultation, or referral of a client to a physician or other appropriate licensed health care provider, and the process for such collaboration, consultation, or referral.

Section 1. (1) Consultation does not require an in-person visit. It may include a discussion by the LCPM and an appropriate healthcare provider by telephone or other appropriate electronic communication.

(2) The consultant may recommend further evaluation which may be either in-person, by telehealth, or a records review.

(3) It is the responsibility of the LCPM to initiate a consultation and to communicate clearly to the consultant that the LCPM is seeking a consultation.

(4) A consultation may involve the consultant providing advice and information, providing care to the client or newborn, or prescribing treatment or medication for the client or newborn.

(5) It is the responsibility of the LCPM to provide all relevant client records to the consultant, including a written summary of the client's history and presenting problem, as appropriate.

(6) Consultation shall be fully documented by the LCPM in the client's record, including the consultant's name, date of service, and the consultant's findings, opinions, and recommendations. The LCPM shall discuss the consultant's recommendations with the client.

(7) After consultation and with the informed consent of the client, care of the client and responsibility for decision making either:

(a) Continues with the LCPM;

(b) Is shared in collaboration by the LCPM and an appropriate licensed healthcare provider;

(c) Is referred completely to an appropriate licensed healthcare provider; or

(d) Is transferred to a licensed healthcare facility providing a higher level of care.

(8) Referral or collaboration shall occur only after dialogue and agreement among the client, the LCPM, and the consultant.

(9) The LCPM shall ensure that the client can understand each provider's role and is able to identify which healthcare provider is responsible for various aspects of their care.

(10) Collaboration shall be documented by the LCPM in the client's record, including the name of the collaborating provider and the conditions or symptoms the collaborating provider is managing.

(11) The LCPM shall maintain communication with the collaborating provider to the extent necessary to coordinate client care.

(12) If the condition or symptom requiring collaboration is resolved as mutually agreed upon by the LCPM and the collaborating provider, the LCPM may resume sole management of the client's care if appropriate, and document the decision in the client's record.

(13) Discussion with the client regarding the indications for complete referral of care should take place in a timely manner following the decision for referral. When possible, this discussion shall occur in person and be documented in the client's record.

(14) It is the responsibility of the LCPM to provide all relevant client records to appropriate providers or facilities, including a written summary of the client's history and presenting problem, as appropriate.

(15) If the condition or symptom requiring referral of care is resolved as mutually agreed upon by the LCPM and other participating providers, the LCPM may resume primary management or enter into a collaboration of care if appropriate, and document the decision in the client's record.

Section 2. (1) If, on initial or subsequent assessment, one of the conditions listed in this subsection exists, the LCPM shall consult with a physician or other appropriate licensed healthcare provider and shall mutually determine whether collaboration or referral is appropriate and shall document that recommendation in the client record:

(a) Complete placenta previa;

(b) Partial placenta previa persisting after 32 weeks;

(c) HIV infection;

(d) Cardiovascular disease, including hypertension;

(e) Severe psychiatric illness that may result in bodily harm to self or others;

(f) History of cervical incompetence;

(g) Pre-eclampsia or eclampsia;

(h) Intrauterine growth restriction, oligohydramnios or polyhydramnios in the current pregnancy;

(i) Known potentially serious anatomic fetal abnormalities;

(j) Any type of diabetes not controlled by diet;

(k) Substance use disorder with current or recent use; or

(l) Any other condition or symptom which could threaten the life of the client or fetus, as assessed by an LCPM exercising reasonable skill and knowledge.

(2) If a client with a condition listed in this section declines to accept a medically indicated consultation, collaboration, or referral, the licensed certified professional midwife shall document the refusal in writing and shall transition the client to an appropriate higher level of care.

(3) If the condition mandating referral occurs during labor or delivery or the client

is otherwise acutely in jeopardy but refuses the referral, the LCPM shall call 911 and provide care until another appropriate licensed healthcare provider assumes care.

Section 3. (1) If, on initial or subsequent assessment, one of the following conditions exists, the LCPM shall consult with a physician or other appropriate licensed healthcare provider to

mutually determine whether collaboration or referral is necessary and shall document the recommendation in the client record:

- (a) Prior Cesarean section or other surgery resulting in a uterine scar;
- (b) Multifetal gestation;
- (c) Non-cephalic presentation after thirty-six (36) weeks gestation;
- (d) History of severe shoulder dystocia as documented by objective findings; or
- (e) Gestational age greater than 42 weeks.

(2) An individual with a condition listed in this section may give informed refusal to a consultation or to the consultant's recommendation. Prior to giving informed refusal, the LCPM shall recommend that the individual discuss the condition and the risks involved with a physician or other appropriate licensed healthcare provider. If the client continues to refuse the consultation, collaboration, or referral, the LCPM shall document in the client's record that she was informed of the condition requiring consultation, collaboration, or referral and the possible consequences. The client shall complete the Informed Refusal Form. The LCPM may continue to assume primary management of the client unless and until the client subsequently consents to the collaborative care or referral.

Section 4. (1) If, on initial or subsequent assessment, one of the following conditions exists, the LCPM shall recommend consultation, collaboration, or referral with a physician or other appropriate licensed healthcare provider:

- (a) Acute or chronic bacterial or fungal infection;
- (b) Liver or kidney disease;
- (c) Endocrinologic abnormalities;
- (d) Hematologic abnormalities other than physiologic anemia of pregnancy;
- (e) History of impaired glucose tolerance, history of diabetes satisfactorily controlled by diet and lifestyle changes alone, abnormal blood sugar or glucose tolerance test, or history of gestational diabetes;
- (f) Substance use disorder, in remission;
- (g) Current asthma or other significant pulmonary disease;
- (h) Abnormality in a screening test indicative of possible genital tract malignancy or pre-malignant condition during the pregnancy;
- (i) Seizure disorder or other significant neurologic disease;
- (j) Abnormal vaginal bleeding during pregnancy other than first trimester bleeding;
- (k) History of invasive malignancy;
- (l) History of severe and persistent mental illness;
- (m) History of prior intrauterine fetal demise or neonatal death;
- (n) History of preterm birth; or
- (o) Any other condition or symptom which could adversely affect the client or the fetus as assessed by an LCPM exercising reasonable skill and knowledge.

(2) If the client refuses the recommended consultation, collaboration, or referral pursuant to subsection (1) of this section, the LCPM shall document the refusal in the client's record and may continue to assume primary management of the client.

Section 5. Incorporation by Reference.

(1) "Informed Refusal Form", 1/2020, Kentucky Board of Nursing, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

DINA BYERS, Board President

APPROVED BY AGENCY: December 12, 2019

FILED WITH LRC: December 12, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2020 at 10:00 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2020, five

workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 11:59 p.m. on February 29, 2020. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: Senate Bill 84 (2019 Session) enacted KRS 314.400-416 which recognized licensed certified professional midwives (CPM) and placed their regulation with the Board of Nursing. This administrative regulation sets the standards for CPMs to collaborate, consult with, and refer to a higher level of provider, such as a physician.

(b) The necessity of this administrative regulation: It is required by KRS 314.404(12).

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards for collaboration, consultation, and referral.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards for collaboration, consultation, and referral.

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

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to the administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect all licensed CPMs in Kentucky, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to conform to the standards set.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs are not known, but estimated to be minimal.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance with the statute and regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: The Board of Nursing estimates that to implement this and the other CPM regulations will initially cost \$150,000 and approximately \$50,000 per year thereafter.

(6) Provide the source of the funding to be used for the

implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: An increase in funding may be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.404

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are not sure how many certified professional midwives there will be, but we estimate not more than 20. This will generate \$20,000 in revenue.

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

(c) How much will it cost to administer this program for the first year? We estimate \$150,000.

(d) How much will it cost to administer this program for subsequent years? We estimate \$50,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT Board of Nursing (New Administrative Regulation)

201 KAR 20:680. Licensed certified professional midwives client records.

RELATES TO: KRS 314.404 - 314.416

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(9) authorizes the board to promulgate an administrative regulation to further regulate, as necessary, the provision of certified professional midwifery services.

Section 1. (1) The Licensed Certified Professional Midwives (LCPM) shall maintain a record for each client. The record shall be complete and accurate. It shall document:

- (a) the client's history;
- (b) physical examinations;
- (c) laboratory test results;
- (d) medications administered;
- (e) antepartum visits;
- (f) consultations, collaborations, and referrals;
- (g) labor and delivery;

(h) postpartum visits; and

(i) neonatal evaluations.

(2) The LCPM shall comply with all state and federal laws and regulations regarding the confidentiality and retention of the client's records.

DINA BYERS, Board President

APPROVED BY AGENCY: December 12, 2019

FILED WITH LRC: December 12, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2020 at 10:00 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2020, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 11:59 p.m. on February 29, 2020. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: Senate Bill 84 (2019 Session) enacted KRS 314.400-416 which recognized licensed certified professional midwives (CPM) and placed their regulation with the Board of Nursing. This administrative regulation sets the standards for maintaining client records for CPMs in Kentucky.

(b) The necessity of this administrative regulation: It is required by KRS 314.404(9).

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards for maintaining client records.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards for maintaining client records.

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

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to the administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect all CPMs in Kentucky, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with

this proposed administrative regulation: They will have to conform to the standards.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs are not known, but are estimated to be minimal.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance with the regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: The Board of Nursing estimates that to implement this and the other CPM regulations will initially cost \$150,000 and approximately \$50,000 per year thereafter.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: An increase in funding may be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.404

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are not sure how many certified professional midwives there will be, but we estimate not more than 20. This will generate \$20,000 in revenue.

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

(c) How much will it cost to administer this program for the first year? We estimate \$150,000.

(d) How much will it cost to administer this program for subsequent years? We estimate \$50,000.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET

Board of Nursing

(New Administrative Regulation)

201 KAR 20:690. Licensed certified professional midwives transfer guidelines.

RELATES TO: KRS 314.404 – 314.416

STATUTORY AUTHORITY: KRS 314.131(1), 314.404, 314.414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.404(3) authorizes the board to promulgate an administrative regulation to establish

statewide requirements for licensed certified professional midwives and hospitals regarding the transfer of care from a licensed certified professional midwife to a hospital. KRS 314.414 authorizes the board to promulgate administrative regulations to implement the requirements developed by the work group.

Section 1. (1) In the prenatal period, the LCPM shall provide information to the client about hospital care and procedures that may be necessary. The LCPM shall document that a transfer plan has been developed with the client for hospital transfer should the need arise.

(2) The LCPM shall assess the status of the client, fetus, and newborn throughout the maternity care cycle and shall determine when a transfer is necessary pursuant to 201 KAR 20:670.

(3) The transfer plan shall contain:

(a) The name and location of geographically adjacent facilities providing:

1. Emergency care;
2. Obstetrical care; and
3. Newborn care.

(b) The level of obstetrical or newborn care available;

(c) The approximate travel time to each facility;

(d) A list of the modes of transport services available, including emergency medical services available through 911;

(e) The requirements for activating each mode of transportation;

(f) The mechanism by which medical records and other information concerning the client may be rapidly transmitted to each facility, including fax numbers and electronic health record portals;

(g) Each facility's preferences regarding patient preregistration; and

(h) Contact information for either a healthcare provider or practice group who has agreed in advance to accept clients in transfer, or a facility's preferred method of accessing care by the facility's designated provider on call.

(4) The LCPM shall notify the receiving provider or hospital of:

- (a) The incoming transfer;
- (b) The reason for the transfer;
- (c) A brief relevant clinical history;
- (d) The planned mode of transport; and
- (e) The expected time of arrival.

(5) The LCPM shall continue to provide routine or urgent care en route in coordination with any emergency services personnel and shall address the psychosocial needs of the client during the change of birth setting.

(6) Upon arrival at the hospital, the LCPM shall provide a verbal report, including details on the client's current health status and the need for urgent care. The LCPM shall also provide a legible copy of relevant prenatal and labor medical records.

(7) The LCPM shall transfer clinical responsibility to the hospital provider.

(8) If the client chooses, the LCPM may remain to provide continuous support.

DINA BYERS, Board President

APPROVED BY AGENCY: December 12, 2019

FILED WITH LRC: December 12, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2020 at 10:00 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2020, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 11:59 p.m. on February 29, 2020. 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: Senate Bill 84 (2019 Session) enacted KRS 314.400-416 which recognized licensed certified professional midwives (CPM) and placed their regulation with the Board of Nursing. This administrative regulation sets the transfer guidelines for CPMs in Kentucky when the client needs to be transferred to a hospital.

(b) The necessity of this administrative regulation: It is required by KRS 314.404(3) and KRS 314.414.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting transfer guidelines.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting transfer guidelines.

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

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to the administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment to the administrative regulation will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect all CPMs in Kentucky, number unknown.

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

(a) A detailed explanation of the actions the entities referenced in question (3) will be required to undertake in order to comply with this proposed administrative regulation: They will have to follow the transfer guidelines.

(b) An estimate of the costs imposed on entities referenced in question (3) in order to comply with this proposed administrative regulation: The costs are not known, but estimated to be minimal.

(c) The benefits that may accrue to the entities referenced in question (3) as a result of compliance: They will be in compliance with the regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation, both initially and on a continuing basis: The Board of Nursing estimates that to implement this and the other CPM regulations will initially cost \$150,000 and approximately \$50,000 per year thereafter.

(6) Provide the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation or amendment: An increase in funding may be necessary.

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

(9) TIERING: Is tiering applied? Tiering is not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.404

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 are not sure how many certified professional midwives there will be, but we estimate not more than 20. This will generate \$20,000 in revenue.

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

(c) How much will it cost to administer this program for the first year? We estimate \$150,000.

(d) How much will it cost to administer this program for subsequent years? We estimate \$50,000.

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:

DEPARTMENT OF AGRICULTURE Office of the Commissioner (Repealer)

302 KAR 20:012. Repeal of 302 KAR 20:030, 302 KAR 20:050, 302 KAR 20:052, 302 KAR 20:066, 302 KAR 20:090, 302 KAR 20:100, 302 KAR 20:150.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS Chapter 257

NECESSITY, FUNCTION, AND CONFORMITY: KRS chapter 257 authorizes the board to establish and determine the rules and administrative regulations for farmed cervids and equine. This administrative regulation repeals 302 KAR 20:030, 302 KAR 20:050, 302 KAR 20:052, 302 KAR 20:066, 302 KAR 20:090, 302 KAR 20:100, and 302 KAR 20:150 because these regulations are migrating into the new chapter 22.

Section 1. The following administrative regulations hereby repealed:

(1) 302 KAR 20:030, Authority to inspect, test, identify, remove and dispose of livestock and poultry;

(2) 302 KAR 20:050, Carcasses;

(3) 302 KAR 20:052, Animal carcass composting;

(4) 302 KAR 20:066, Chronic wasting disease surveillance in farmed cervids;

(5) 302 KAR 20:90, Biological;

(6) 302 KAR 20:100, Garbage; and

(7) 302 KAR 20: 150, Restriction of transportation of livestock infected with a communicable disease.

DR. ROBERT STOUT, Kentucky State Veterinarian

APPROVED BY AGENCY: December 11, 2019

FILED WITH LRC: December 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2020 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. 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 February 29, 2020. 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, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals several administrative regulations within the OSV. They are replaced with similar updated filings 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 commands KDA and OSV to regulate the livestock industry in regards to animal health. This regulation repeals several administrative regulations within the OSV. They are replaced with a similar updated filings 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 that the repealed administrative regulations are no longer valid in chapter 20, and are instead found in chapter 22.

(2) If 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 cervids or equine.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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 as a whole.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 22:150. Cervids.

RELATES TO: KRS 257.020, 257.030, 257.080

STATUTORY AUTHORITY: KRS 257.550, KRS 257.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1), 246.295(1), and 257.550 require the Department of Agriculture in cooperation with the Department of Fish and Wildlife Resources to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky and develop a herd monitoring system, and establishes requirements for intrastate and interstate movement of farmed cervids.

Section 1. Definitions.

(1) "USDA-accredited veterinarian" means a veterinarian accredited by the USDA in accordance with the provisions of 9 C.F.R. 161.1 to 161.4.

(2) "Adjacent herd" means:

(a) A herd of cervids occupying premises that share a border or boundary line with premises occupied by a positive herd, to include herds separated by roads or streams; or

(b) A herd of cervids occupying premises that were previously occupied by a positive herd within the past five (5) years.

(3) "Animal identification number" or "AIN" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of fifteen (15) digits, with the first three (4) being the country code (either 840 for the United States at large or a unique code for any U.S. territory that elects to use it in place of the 840 code).

(4) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(5) "Approved laboratory" means the National Veterinary Service Laboratory in Ames, Iowa, or any other laboratory approved by the Administrator of the Cervid and Plant Health Inspection Service of the USDA.

(6) "Certificate of Veterinary Inspection" or "CVI" means an official document, on a form approved by the chief animal health official of the state of origin or by USDA APHIS Veterinary Services for verification of veterinary inspection that is issued by a licensed and accredited veterinarian.

(7) "Certified" means the status achieved by a herd that has met the standards of the Chronic Wasting Disease Herd Certification Program continuously for at least five (5) years.

(8) "Certified Chronic Wasting Disease (CWD) Herd" means a herd of cervids that has achieved "Certified" status in the Kentucky Herd Certification Program, the federal Chronic Wasting Disease Herd Certification Program, or a state Chronic Wasting Disease Certification Program approved by APHIS or the State Veterinarian.

(9) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.

(10) "Cervid Chronic Wasting Disease Surveillance and Identification" or "CCWDSI" means a Cervid Management Plan that includes two (2) programs:

(a) The Chronic Wasting Disease HCP; and

(b) The Chronic Wasting Disease HMP.

(11) "Cervid Herd Plan" means a written herd management agreement or premises management agreement:

(a) Developed by OSV in collaboration with the herd owner to address compliance issues within a HCP or HMP herd; and

(b) Which sets out the steps needed to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CDD exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

(12) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(13) "Chronic Wasting Disease Herd Certification Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.

(14) "Chronic Wasting Disease Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD.

(15) "Farmed cervid" means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade, or barter or for taking by any harvest or slaughter method. Farmed cervid shall exclude any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with a HCP or HMP.

(16) "Exposed" means a cervid that is part of a CWD positive herd, or that has been exposed to a CWD-positive cervid or contaminated premises within the previous five (5) years.

(17) "Harvest" means to slaughter or take by hunting farmed cervids for meat and other products.

(18) "Herd" means a group of cervids that are:

(a) Under common ownership or supervision and are grouped on one (1) or more parts of any single permitted premises (lot, farm, or ranch); or

(b) Under common ownership or supervision on two (2) or more premises which are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.

(19) "Identification" means a device or means of identification approved for use under this administrative regulation by the State Veterinarian.

(20) "Interstate movement" means movement from another state into Kentucky.

(21) "Intrastate movement" means movement solely within the boundaries of Kentucky.

(22) "Licensed and accredited veterinarian" means a veterinarian:

(a) Approved by the Deputy Administrator of USDA APHIS VS and the State Veterinarian, in accordance with 9 C.F.R. Part 161, to perform functions required by cooperative state-federal cervid disease control and eradication programs; and

(b) Who is licensed to practice veterinary medicine in Kentucky under KRS Chapter 321.

(23) "Move" means to carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

(24) "National Uniform Eartagging System" or "NUES" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

(25) "Official identification" means a device or means of cervid identification approved for use under 9 C.F.R. Part 55 by APHIS and the state veterinarian to uniquely identify individual cervids.

(26) "Official Chronic Wasting Disease test" means any test for the diagnosis of Chronic Wasting Disease approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.

(27) "Official eartag" means an identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured shall bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals shall bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the USDA Administrator. The official eartag shall be tamper-resistant and have a high retention rate in the animal.

(28) "Official identification number" or "OID" means a nationally unique number that is permanently associated with a cervid that adheres to one (1) of the following systems:

(1) National Uniform Eartagging System (NUES);

(2) Animal Identification Number (AIN);

(3) Any other numbering system approved by the Administrator for the official identification of animals, including a group identification number.

(29) "Office of State Veterinarian" or "OSV" means that office within the Kentucky Department of Agriculture in KRS 246.030(4).

(30) "Owner" is defined by KRS 257.010(11) and means any person owning or leasing from another, or having in charge any cervid.

(31) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

(32) "POL" or "Premises of Origin Location" means the land, farm or specific parts of a farm where the cervid are physically located.

(33) "Positive" means a cervid that has had a diagnosis of CWD confirmed by means of two (2) official CWD tests.

(34) "Premises identification number" or "PIN" means a nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health

authority, a geographically distinct location from other premises. The PIN may be used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may be used as a component of a group/lot identification number (GIN).

(35) "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids, or parts thereof, to any location without specific written approval of the State Veterinarian.

(36) "Radio Frequency Identification Device" or "RFID" means a device electronically encoded with a unique identification and that meets the applicable International Standards Organization (ISO) standards.

(37) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Guam.

(38) "USDA" means the United States Department of Agriculture.

Section 2. All Farmed Cervids Shall Be in a Program. Every farmed cervid in Kentucky shall be enrolled in either the Chronic Wasting Disease Herd Certification Program or the Chronic Wasting Disease Herd Monitoring Program. All farm cervids are required to follow the Chronic Wasting Disease program standards from the USDA.

Section 3. Chronic Wasting Disease Herd Certification Program (HCP)

(1) A HCP permit shall be required to participate in the HCP program. A HCP permit is valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HCP shall submit the following:

1. A complete Chronic Wasting Disease Surveillance Identification Herd Certification Program (HCP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian certifying that the veterinarian and the herd owner have a valid veterinarian-client-patient relationship; and

3. A fee of \$150.

(b) The OSV shall grant a HCP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees will be returned to the applicant without approval. The OSV shall not approve any application where the applicant owes fees or fines to the KDA.

(c) A HCP participant whose permit expires prior to renewal shall be subject to the penalties set forth in Section 14 of this administrative regulation.

(2) Annual HCP permit renewal required. Renewal applicants shall:

(a) Submit a complete Chronic Wasting Disease Surveillance Identification Herd Certification Program (HCP) Application by November 30 of each year.

(b) Pay a fee of \$135 for herds up to fifty (50) cervids, or \$450 for herds containing more than fifty (50) cervids, for applications submitted prior to December 1, preceding the applicable permit year.

(c) Pay a fee of \$150 for herds up to fifty (50) cervids, or \$500 for herds containing more than fifty (50) cervids, for applications submitted between December 1 and December 31, preceding the applicable permit year.

(d) Pay a fee of \$250 for herds up to fifty (50) cervids, or \$600 for herds containing more than fifty (50) cervids, for applications submitted late, January 1 and after of the applicable permit year.

(e) Submit a current herd inventory as of the time of application submission, and the most recent reporting documents due to the OSV as required in Section 11(3) if not already on file with the OSV.

(3) HCP Requirements.

(a) Herds enrolled in this program shall meet the requirements set forth in this section and the requirements set forth in 9 C.F.R. Part 55, Subpart B.

1. After an initial permit is issued, the participant shall enroll the herd into the HCP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other

timelines in this regulation.

2. After the first year in the HCP, the participant shall:

a. Conduct the physical inventory and continuously identify cervids as required;

b. Provide any records to the OSV for the cervids that are required in this administrative regulation; and

c. Maintain and complete the provisions of this administrative regulation and a Cervid Herd Plan if developed.

(b) Cervid identification requirement.

1. Each cervid six (6) months of age or older shall have at least two (2) forms of cervid identification, one (1) of which shall be an official identification and one (1) form shall be a visual type of identification, both of which shall be unique to that cervid within the herd.

2. A cervid of any age shall have official identification before being moved from the premises for any purpose.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. An annual herd inventory shall be conducted that reviews all records and includes observation of all cervids in an enclosed area, including physical restraint if necessary, to reconcile all visible identification devices with available records. This required inventory shall be conducted in January, February, or March. Beginning April 1, the herd shall be placed in quarantine and no movement shall be permitted until the physical inventory is completed for those herds not completing a physical inventory January, February, or March.

3. The state veterinarian or an APHIS representative may request additional physical inventories to verify herd compliance with program standards.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for inspection.

5. Additional herd inventory record inspections and reviews shall be conducted quarterly at the cervid premises or at another location mutually agreed to by the owner and the OSV.

(d) Herd Additions.

1. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP or from a herd in a state with a USDA-approved CWD Certification Program where chronic wasting disease has never been confirmed.

2. No new cervids shall be introduced into the herd unless it has been approved by the State Veterinarian.

3. If cervids are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

(e) HCP Reporting requirements. The owner shall report to OSV any cervids that escape or disappear and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. The reporting time frame shall be:

a. For cervids that escape or disappear, a report shall be made within forty-eight (48) hours.

b. For cervids taken by harvest, a report shall be submitted within seven (7) days.

c. For cervids that die from illness or any other reason, a report shall be submitted within seven (7) days.

d. A confirmation of no population changes have occurred in the preceding calendar month if no events that required reporting in a, b, or c above. This report shall be submitted to the OSV by the close of business on the first of each month for the activities of the previous calendar month.

2. The report shall include all applicable identification numbers, including the visual tag, and the date of the death, disappearance or escape.

3. Cervids that die or are harvested shall have the required tissue specimens collected for Chronic Wasting Disease testing except where exempted by 9 C.F.R. 55.23.

4. In accordance with 9 C.F.R. 55.23, an APHIS or OSV representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(f) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of

observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(g) An owner maintaining separate herds shall comply with the separate-herd requirements set forth in 9 C.F.R. 55.23.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements set forth in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids including the OID and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd including:

a. The OID, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intrastate or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd, including:

a. The date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment;

b. A cervid deaths or harvest on the premises, including; the date of death, the apparent cause of death; the cervid's age, sex, and state-federal official individual cervid identification; date and laboratory submitted for CWD testing, if required; and the disposition of the cervid's carcass. If the carcass was removed from the premises, the record shall identify the carcass' destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from tags, electronic implants, etc.) associated with each cervid.

(j) Herd status levels.

1. When a herd is first enrolled in the Herd Certification Program, it shall be placed in first-year status, except that if the herd is comprised solely of cervids obtained from herds already enrolled in the Herd Certification Program, the newly enrolled herd shall have the same status as the lowest status of any herd that provided cervids for the herd.

2. If a herd continues to meet the requirements of the Herd Certification Program, the herd status shall be upgraded by one (1) year on the anniversary of the program enrollment date.

3. One (1) year after the date when a herd was placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as it remains enrolled in the program, if its status is not revoked or suspended in accordance with this administrative regulation or 9 C.F.R. 55.24.

4. A herd owner shall be issued a certificate of "Certified" status upon completing the Herd Certification Program requirements set forth in this administrative regulation.

5. Renewal of a Certified Cervid Herd. A herd is certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to holding cervids shall be required.

6. The herd enrollment date is the date when the latter of these two events occurred:

a. The physical inventory was completed in accordance with Section 11(3)(c) of this administrative regulation; or

b. The initial cervid delivery.

(k) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be

submitted to an approved laboratory within thirty (30) days of collection.

(l) USDA Chronic Wasting Disease Program Standards deficiencies may require a Cervid Herd Plan in lieu of, or in addition to, administrative penalties.

Section 4. Chronic Wasting Disease Herd Monitoring Program (HMP).

(1) A HMP permit shall be required to participate in the HMP program. A HMP permit is valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HMP program shall submit the following:

1. A complete Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

3. A fee of \$500.

(b) OSV shall grant the HMP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees will be returned to the applicant without approval. The OSV shall not approve any application where the applicant owes any fees or fines to the KDA.

(c) HMP participants whose permit expires prior to renewal shall be subject to the penalties in Section 14 of this administrative regulation.

(2) Annual HMP permit renewal required. Renewal applicants shall:

(a) Submit a completed Herd Monitoring Program (HMP) application by November 30 of each year.

(b) Pay a fee of \$500.

(c) Submit a current herd inventory as of the moment of application, and the most recent reporting documents due to the OSV as required in Section 11(3) if not already on file with the OSV.

(d) The permit shall be effective January 1 through December 31 of each year.

(3) Restrictions and limitations on HMP-enrolled cervids and herds.

(a) No cervid shall leave an HMP-enrolled herd alive.

(b) No cervid shall be moved to another HMP-enrolled herd.

(c) No HMP herd, nor any cervid within a HMP-enrolled herd shall ever be eligible to enter the HCP.

(4) HMP Requirements.

(a) Herds enrolled in this program shall meet the requirements provided in this section and the requirements in 9 C.F.R. Part 55, Subpart B.

1. After an initial permit is issued, the participant shall enroll his herd into the HMP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines in this regulation.

2. After the first year in the HMP, the participant shall:

a. Conduct the inventory and continuously identify cervids as required.

b. Provide any records to the OSV for the cervids that are required in this administrative regulation.

c. Maintain and complete the provisions of this administrative regulation and a herd-specific Cervid Herd Plan if developed.

(b) Cervid identification requirement.

1. Each cervid six (6) months of age or older shall have at least two (2) forms of cervid identification, one (1) of which shall be an official identification and one (1) form shall be a visual type of identification, which shall be unique to that cervid within the herd.

2. A cervid of any age shall have official identification before being moved from the premises for any purpose.

3. Any untagged cervid that dies or is harvested shall be officially identified and shall be CWD tested.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. An annual herd inventory shall be conducted and submitted to the OSV that reviews all records and documents that would

change the baseline herd inventory.

3. The state veterinarian or an APHIS representative may request a physical inventory to verify herd compliance with program standards.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for inspection.

(d) Herd Additions. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state with an USDA-approved CWD Certification Program where CWD has never been confirmed. If evidence of natural additions are found, a Cervid Herd Plan shall be developed to eliminate future breeding.

(e) HMP Participant Reporting requirements. The owner shall report to the OSV any cervids that escape or disappear, and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. This report shall be submitted to the OSV by the close of business on the first business day of each month for the activities of the previous calendar month.

2. The report shall include applicable cervid identification numbers, including the visual tag, and the date of the death, disappearance, escape, and the dates when the CWD tests were submitted for testing.

3. All cervids that die or are harvested shall have the required tissue specimens collected for CWD testing.

4. In accordance with 9 C.F.R. 55.23, an APHIS or OSV representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(f) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(g) An owner maintaining separate herds shall comply with the separate-herds requirements set forth in 9 C.F.R. 55.23.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements set forth in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids including the OID and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd, including:

a. The OID, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intra- or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd including:

A record of each cervid that died or was harvested on the premises including: the date of death; the apparent cause of death; the cervid's age, sex; and state-federal official individual cervid identification, date and laboratory submitted for CWD testing, if required; and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from tags, electronic implants, etc.) associated with each cervid.

(k) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be

submitted to an approved laboratory within thirty (30) days of collection.

Section 5. Testing, Investigation, and Quarantine.

(1) Surveillance Testing Procedures.

(a) CWD testing shall be in accordance with the procedures set forth in 9 C.F.R. 55.8.

(b) A diagnosis of CWD by an approved laboratory shall be sent to the National Veterinary Service Laboratory for confirmation.

(c) If required tissues from test eligible cervids are not submitted for laboratory diagnosis by the cervid owner, the state veterinarian shall revoke the permit or implement a mutually agreed upon Cervid Herd Plan.

(2) Investigation of CWD-positive cervids.

(a) An epidemiological investigation in accordance with 9 C.F.R. 55.23 shall be conducted by OSV or APHIS VS for all cervids diagnosed at an approved laboratory CWD positive or suspect.

(b) All CWD-positive herds and all source, exposed, and adjacent herds and the premises where these herds are located shall be investigated epidemiologically by OSV.

(3) Duration of Quarantine. Quarantines issued by the State Veterinarian for CWD in accordance with this administrative regulation shall be removed as follows:

(a) A premises may be removed from quarantine after completion of the cervid herd plan and five (5) years of compliance with all provisions of 9 C.F.R. Part 55.

(b) An adjacent or exposed herd or premises may be removed from quarantine only after an epidemiological investigation and by order of the OSV.

Section 6. Certificate of Veterinary Inspection.

(1) A Certificate of Veterinary Inspection shall remain valid for thirty (30) days after date of inspection.

(2) A CVI shall contain the following information:

(a) Identification of each animal recorded on the certificate;

(b) An official identification (OID) for each cervid;

(c) The species, breed, sex, and age of each cervid;

(d) The name and address of the owner or agent shipping the cervid;

(e) The location from which the animal is loaded for movement;

(f) The name and address of the person receiving the cervid;

(g) The location at which the animal will be received;

(h) The purpose of the movement and the total number of cervids;

(i) All non-applicable data fields are crossed out by the USDA-accredited Veterinarian prior to signing;

(j) The movement permit number issued by the OSV.

(k) The following statement or one substantially similar: "I certify as an accredited veterinarian that the above described animals have been inspected by me on this date and that they are not showing signs of infection or communicable disease. The vaccinations and results of tests are as indicated on the certificate. The animals listed on this certificate meet the state of destination requirements and federal interstate requirements"; and

(l) The signature, USDA-accreditation number, and phone number of the veterinarian.

(3) Paper submitted Certificate of Veterinary Inspection

(a) The first physical page shall be mailed or otherwise delivered to the OSV within seven (7) days of the date it is written.

(b) An exact replica image (a scan in a PDF) of the first page may be submitted in lieu of the first physical page required in subsection (1) by submitting via electronic mail within seven (7) days of the date it is written to Statevet@ky.gov.

(c) The second page shall physically accompany the cervid being moved and be readily accessible during the movement.

(d) The third page shall be sent to the Animal Health Official in the state of destination within seven (7) days of the date it is written.

(e) The fourth page shall be retained by the issuing veterinarian for at least five (5) years from the date of issuance.

(f) A legible copy of any supplemental pages shall be stapled to the original and each copy of the CVI.

(4) Electronically submitted CVIs.

(a) Certificate of Veterinary Inspection and Permit submission requirements may be submitted via an importable format as allowed by USAHA AHSIS Subcommittee on Data Standards' "standard XML schema document."

(b) Cervids moving with an electronically submitted Certificate of Veterinary Inspection shall be accompanied by a paper copy or have the electronic material stored on a device that may be read immediately upon request.

(5) No person shall issue a CVI bearing the seal of the Commonwealth of Kentucky unless that person is a Kentucky licensed and USDA-accredited veterinarian.

Section 7. Movement Permit.

(1) No person shall move a cervid within or into Kentucky without first obtaining a permit from the OSV at least forty-eight (48) hours prior to the movement.

(2) Proof of required vaccinations or other applicable health practices to ensure disease prevention based on place or origin, as found on the website www.kyagr.gov, shall be completed prior to permit issuance. Instructions for a permit may be obtained on the website.

(3) Movement permit instructions may be obtained by calling OSV at 502-573-0282, Monday through Friday, 8 a.m. EST to 4:30 p.m. EST.

(4) Required testing or vaccination. Required tests and vaccinations shall be performed or verified by one (1) of the following:

- (a) A licensed and USDA-accredited veterinarian;
- (b) A representative of the State Veterinarian; or
- (c) A representative of the federal government.

(5) Required tests shall be conducted at no expense to the Commonwealth of Kentucky.

(6) Required laboratory tests shall be conducted in a state-federal approved laboratory.

Section 8. Official Identification and Other Required Identification.

(1) Methods of Official Identification. An official individual identification shall consist of a set of alphanumeric characters or physical characteristics which are uniquely associated with an individual cervid and which constitute the following:

- (a) Official USDA NUES;
- (b) An RFID if all the following apply:

1. The RFID uniquely identifies the animal, and is USDA approved;

- 2. The RFID is attached to or implanted in the animal;
- 3. The RFID is registered to a PIN or to a person; and
- 4. Only one (1) RFID is placed on an animal.

(2) Use of more than one (1) official eartag.

(a). More than one (1) official eartag is expressly permitted by the OSV for tagging events required by subsection (6) of this section.

(b) The person applying the additional official eartag shall record the following information about the event and maintain the record for five (5) years: The date the additional official eartag is added; the reason for the additional official eartag device; and the official identification numbers of the new official eartag and the one(s) already attached to the animal.

(c) An eartag with an Animal Identification Number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to a cervid that is already officially identified with one (1) or more National Uniform Eartagging System tags. The person applying the Animal Identification Number eartag shall record the date the Animal Identification Number tag is added and the official identification numbers of any official eartags and shall maintain those records for five (5) years.

(3) Removal or loss of official identification devices.

(a) Official identification devices are intended to provide permanent identification of cervids and to ensure the ability to find the source of animal disease outbreaks. Removal of these devices is prohibited except

as approved by the OSV or a USDA area veterinarian in charge when a device needs to be replaced.

(b) If a cervid loses an official identification device and needs a new one:

1. A replacement tag with a different official identification number may be applied. The person applying a new official identification device with a different official identification number shall record the following information about the event and maintain the record for five (5) years: The date the new official identification device was added; the official identification number on the device; and the official identification number on the old device, if known.

2. Replacement of a temporary identification device with a new official identification device is considered to be a retagging event, and shall be noted on the Retag Form.

(4) Circumstances under which OSV may authorize replacement of an official identification device include, but are not limited to:

(a) Deterioration of the device such that loss of the device appears likely or the number can no longer be read;

(b) Infection at the site where the device is attached, necessitating application of a device at another location (e.g., a slightly different location of an eartag in the ear);

(c) Malfunction of the electronic component of a radio frequency identification (RFID) device; or

(d) Incompatibility or inoperability of the electronic component of an RFID device with the management system or unacceptable functionality of the management system due to use of an RFID device.

(e) 982 tags may be replaced with RFID after written permission from the OSV has been given.

(5) Removal of OID without prior written approval of the OSV is strictly prohibited.

(6) Replacement records required. Any time an official identification device is replaced, as authorized by OSV or the USDA, the person replacing the device shall record the following information about the event and maintain the record for five (5) years:

- (a) The date on which the previous device was removed;
- (b) Contact information for the location where the device was removed;
- (c) The official identification number (to the extent possible) on the device that was removed;
- (d) The type of device removed (e.g., metal eartag, RFID eartag);
- (e) The reason for the removal of the former device;
- (f) The new official identification number on the replacement device; and
- (g) The type of replacement device that was applied to replace the former device.

(7) Beginning July 1, 2020, RFID OID shall be applied in any initial tagging event, retagging event, or anytime a cervid is restrained by any method, including permitted movements. All imported cervids shall require an RFID at the time of importation beginning July 1, 2020. This RFID shall be cross referenced with any other existing OID at the time of application. Existing OID shall not be removed.

Section 9. Premises of Origin Location.

(1) POL information shall be provided by the person seeking the permit for the premises from which the cervid are to be loaded when seeking the movement permit.

(2) The POL of the specific location the cervids were loaded shall include:

(a) A PIN issued by the USDA, or the Animal Health Official in the state of origin or a LID; and

(2) The owner at the time of movement and that owner's address and contact information.

Section 10. Requirements for Interstate Movement into Kentucky.

(1) No person shall move a cervid into Kentucky without first obtaining a CVI and movement permit from the OSV at least forty-

eight (48) hours prior to movement and scheduling by the OSV.

(2) An OSV representative, USDA representative, or an USDA-accredited veterinarian shall be present for the unloading of the cervids at the point of destination and shall be responsible for removing the transport seal.

(3) No entry permit shall be issued for a cervid that does not have certified status or an equivalent status, as documented by a certificate issued in accordance with 9 C.F.R. 81.4. No entry permit shall be issued for a cervid that originated in, or at any time resided, in a state where CWD has been confirmed in either wild or captive cervids.

(4) No entry permit shall be issued for a cervid that is not:

(a) Negative to an official tuberculosis test within ninety (90) days of entry; or

(b) Originating from a cervid tuberculosis accredited herd. The herd accreditation number and the last herd test date shall be listed on the CVI.

Section 11. Requirements for Movement Within Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement within Kentucky.

(2) No CVI shall be required when the movement is from the same herd to a different permitted premises within the same farm, so long as the cervid has OID prior to the movement.

(3) Movement may not commence until forty-eight (48) hours after the issuance of the permit.

(4) An OSV representative, USDA representative, or an USDA-accredited veterinarian shall be present at the unloading of the cervids at the point of destination for movements to a different premises. For movements in (2), no representative at time of unloading is required.

Section 12. Requirements for Movement for Export from Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement from Kentucky.

(2) Movement may not commence until forty-eight (48) hours after the issuance of the permit by the OSV and scheduling.

(3) All cervids being exported from Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection.

Section 13. Requirements for Movement Through Kentucky. Cervids moving through Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection. A Kentucky movement permit is not required for direct movement through Kentucky. Persons directly moving cervids through Kentucky may voluntarily obtain a permit from the OSV.

Section 14. Voluntary Accreditation and Certification Programs.

1. Owners of cervids wishing to seek a voluntary herd certification for brucellosis shall follow the provisions set forth in APHIS 91-45-16, Brucellosis in Cervidae.

2. Owners of cervids wishing to seek a voluntary herd accreditation for tuberculosis eradication shall follow the provisions set forth in APHIS 91-45-011, Bovine Tuberculosis Eradication.

3. After the completion of terms in APHIS 91-45-011 or APHIS 91-45-16, the OSV shall issue a certificate for the respective disease that shall be valid in Kentucky for a period of thirty-six (36) months from issuance.

Section 15. Retention of Records.

(1) Intrastate movement or sales documents shall be maintained by both the buyer and the seller for at least five (5) years after the movement of the cervids.

(2) Official identification device distribution records. Any veterinarian who distributes OIDS shall maintain distribution lists and documents for at least five (5) years after issuance.

(3) Interstate movement records and documentation that is required by this administrative regulation shall be maintained for at

least five (5) years.

(4) Herd plans, inventory records, and disposition of cervid records shall be maintained for at least five (5) years.

Section 16. Penalties.

(1) Penalties for failure to comply with standards established in this administrative regulation.

(a) OSV shall have the authority to revoke or suspend a herd's permit for the Herd Certification Program or the Herd Monitoring Program if:

1. A person falsifies information on an enrollment application, or falsifies subsequent information required for continued enrollment, or refuses to produce documents requested by a representative of OSV;

2. A person fails to comply with requirements in this administrative regulation on cervid identification, cervid inventory, herd records, testing, or cervid movement;

3. A person or facility fails to remain in compliance with KRS chapters 257 or 150, or any administrative regulation promulgated under the authority thereof;

4. A person fails to comply with an instruction from a representative of OSV; or

5. A person fails to produce any document required to be created or maintained by this administrative regulation.

(b) In accordance with KRS 257.990, a permit holder may be subject to a monetary fine for violation of this administrative regulation.

(2) Penalties for failure to comply with Section 6, 7, 8 or 9 of this administrative regulation:

(a) In accordance with KRS 150.740(6), a person shall be guilty of a Class D felony upon conviction; and

(b) Upon conviction of a second violation, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) In accordance with KRS 150.740(7), the Kentucky Department of Fish and Wildlife Resources shall have authority to seize captive cervids that were imported into the in violation of this administrative regulation and KRS 150.740 and 257.550.

(4) Any person whose permit is revoked shall not reapply to the HCP or HMP programs for a period of five (5) years.

(5) Herds enrolled in HMP or HCP programs whose permit holders fail to reapply for permits on or before the application deadline shall be immediately placed in quarantine. Such herds shall be subject to a physical herd inventory prior to permit issuance.

(6) Removal of OID from a cervid without written permission of the OSV shall result in the loss of status for all cervids inside the herd.

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

(a) Cervid Chronic Wasting Disease Surveillance Identification Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

(b) Deceased Animal Report;

(c) Herd/Flock Additions Form;

(d) Herd/Flock Deletion Form;

(e) Retag Form; and

(f) USDA Chronic Wasting Disease Program Standards;

(g) APHIS 91-45-16, Brucellosis in Cervidae; and

(h) APHIS 91-45-011, Bovine Tuberculosis Eradication.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT STOUT, Kentucky State Veterinarian

APPROVED BY AGENCY: December 11, 2019

FILED WITH LRC: December 13, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2020 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. 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 February 29, 2020. 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, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates the standards required for the farmed cervids industry in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish rules that comply with the USDA, that will allow for a farm cervid program in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.550 commands KDA to create a farmed cervids program, 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 the steps required for producers to be in compliance with the KDA and federal programs.

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

(a) How the amendment will change this existing administrative regulation: This 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, 96 HCP and 7 HMP producers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, 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): The fees or costs are associated with this filing vary depending on program and timeliness.

(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 ability to sell cervids outside of the Commonwealth.

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

(a) Initially: Approximately \$130,000 annually.

(b) On a continuing basis: Approximately \$130,000 annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Program fees 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: Fees are necessary at this time, and are included in the filing/

(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? 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 257.550, 552

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 \$17,000.

(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? Approximately \$17,000 this past year.

(c) How much will it cost to administer this program for the first year? Approximately \$130,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$130,000.

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

Revenues (+/-): \$17,000

Expenditures (+/-): Approximately \$130,000.

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Kentucky Community Corrections Grant Program (New Administrative Regulation)

500 KAR 10:050. Prison Industry Enhancement Certification Program.

RELATES TO: KRS 196.700 – 196.705, 197.105

STATUTORY AUTHORITY: KRS 196.704(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.704(8) requires the Kentucky State Corrections Commission to promulgate administrative regulations for the Prison Industry Enhancement Certification Program and the businesses involved in the program, the operating procedures of the commission, and the procedures addressing the handling of injury to inmates participating in the program. This administrative regulation establishes requirements for compliance with the statutes for the Prison Industry Enhancement Certification Program and review of plans by the commission.

Section 1. Prison Industry Enhancement Certification Program Committee.

(1) The commission may establish a Prison Industry Enhancement Certification Program (PIECP) Committee. The committee members shall be appointed by the commission or the chairperson.

(2) If the committee is established, it shall perform the functions required in KRS 196.704(3) and (4).

(3) The committee shall:

(a) Consist of five (5) members and a quorum shall be a

majority of its members;

- (b) Elect a chair of the committee;
- (c) Keep minutes of its meetings;
- (d) Make decisions by a majority vote; and

(e) Report to the commission at each commission meeting concerning its activities since the previous commission meeting.

(4) For the provisions in KRS 196.704(4), the commission or committee shall review any materials listed in KRS 196.704(4) received by the commission, including:

(a) Verification of wage requirements pursuant to KRS 197.105(4) and (5);

(b) Verification of federal wage requirements as stated in 501 KAR 6:160, CPP 08-01-01 incorporated by reference;

(c) Elements and strength of business plan submitted by a business requesting to participate in the program; and

(d) The feasibility and merits of the proposed plan within a correctional setting.

(5) For the provisions in KRS 196.704(3), the commission or committee shall:

(a) Consider the following in its assessment:

- 1. Strength of the proposed plan;
- 2. Financial strength of the business requesting to participate;
- 3. Number of inmates able to participate under the plan and any expansions proposed;
- 4. Marketability of the skills learned by the inmates participating in the program under the plan;

5. Ready job availability for inmates participating in the program as they are released; and

6. Other factors of similar importance in assessing the strength of a PIECP business application; and

- (b) Provide its assessment to the department.
- (6) The commission may change a decision of the committee if it is not part of a signed contract.

Section 2. Department Responsibilities.

(1) For each business plan submitted to the commission, the department shall prepare a preliminary assessment that includes the following information:

(a) Private worker impact review information;

(b) Wage review information; and

(c) Compliance with federal guidelines incorporated into 501 KAR 6:160, 08-05-01.

(2) The department shall post information for interested businesses about participation in the PIECP on its website.

(3) The department shall require a business that participates in the PIECP to provide for injuries to inmates participating in the program through workers' compensation insurance.

Section 3. PIECP Strategic Plan and Annual Report.

(1) The department shall submit to the commission a proposed statewide strategic plan for the PIECP by March 1 each year.

(2) The commission shall review the proposed plan and may adopt all or portions of it for the plan required by KRS 196.704(1).

(3) The department shall submit to the commission a report summarizing the annual operations of the PIECP, the status of implementation of the strategic plan, and an accounting of the distribution of profits and losses.

(4) The commission shall review the report and may adopt all or portions of it for the annual report required by KRS 196.704(6). The commission shall address any additional requirements in KRS 196.704(6) in the report.

Section 4. PIECP Review.

(1) The department shall present to the commission each quarter an update of the PIECP operations within the department.

(2) The department shall submit new and revised PIECP policies to the commission for review prior to implementation of the policies.

(3) The commission shall review the PIECP policies and procedures submitted. The commission may:

- (a) Approve the policies;
- (b) Recommend changes; or
- (c) Request more information.

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on September 12, 2019 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

JOHN C. TILLEY, Secretary

APPROVE BY AGENCY: November 25, 2019

FILED WITH LRC: December 3, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 21, 2020 at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 29, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for the Prison Industry Enhancement Certification Program (PIECP), sets parameters for committee work and plans submitted for the PIECP, and states requirements for the Department of Corrections to provide information in compliance with the statutes.

(b) The necessity of this administrative regulation is: This administrative regulation is required by KRS 196.704(8).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 196.704(8) requires the commission to promulgate administrative regulations for the Prison Industry Enhancement Certification Program (PIECP) and the businesses involved in the program, the operating procedures of the commission, and the procedures addressing the handling of injury to inmates participating in the program. KRS 15A.160 and 196.035 authorize the Secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement to have administrative regulations and establishes parameters for the PIECP.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately fifty-five KCI employees and an unknown number of inmates since private industry partnerships are not yet in place. It also affects a limited number of private businesses that partner with KCI in the PIECP.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The commission will need to follow the steps outlined to administer the PIECPs. The Department of Corrections will need to follow the administrative regulation instructions to supply the required information to the commission.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The commission members are compensated in accordance with KRS 196.701. The Department of Corrections dedicates several days per quarter to PIECP administrative duties. Staffing cost is not expected to increase outside of what is currently budgeted to the Department of Corrections.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Corrections will have more opportunities for work and training of inmates for improved reintegration upon release.

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

(a) Initially: No additional cost is anticipated to the commission. The largest cost to the Department of Corrections is encompassed in the PIECP implementation including staff time for policy development, engaging with PIECP partners, conducting PIECP assessments, and strategic planning. Staff is compensated from the Department of Corrections budget. Currently, there is one staff member assigned to implementing the PIECP. However, with expected growth of the PIECP, staff and compensation costs are also expected to rise. At this time of project building and program implementation, up to fifty percent of the staff member's time is dedicated to PIECP, which equates to approximately \$1,000.00 each week

(b) On a continuing basis: No additional cost is anticipated to the commission. The cost for the Department of Corrections would vary based on the number and scale of the PIECP program. Costs may include promoting future programs and monitoring of current programs. Staff is compensated from the Department of Corrections budget and may equate to fifty percent of the staff member's duties for approximately \$1,000.00 each week. However, with expected growth of the PIECP, staff and compensation costs are also expected to rise.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The funding for the PIECP will come from the private businesses that partner with KCI in the PIECP. Department of Corrections funding for staff will come from the biennial budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees are not established or increased in this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this administrative regulation impact the operations of Kentucky Correctional Industries, the Department of Corrections, the Kentucky Labor Cabinet, Kentucky Education and Workforce Development Cabinet, other state agencies involved with the Prison Industry Enhancement Certification Program (PIECP), and private industry. This impacts approximately fifty-five KCI employees and an unknown number of inmates since private

industry partnerships are not yet in place. It also impacts a limited number of private businesses that partner with KCI in the PIECP.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15A.160, 196.035, 196.704

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Under PIECP, businesses that participate in KCI shall be subject to state and local taxes. Inmates participating in PIECP shall be subject to state and local income taxes. The revenue generated will be dependent on the type and number of PIECPs.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Under PIECP, businesses that participate in KCI shall be subject to state and local taxes. Inmates participating in PIECP shall be subject to state and local income taxes. The revenue generated will be dependent on the type and number of PIECPs.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how KCI operates, but is not expected to increase costs from what will be budgeted to the Department of Corrections. Oversight of PIECP by the commission is provided in accordance to KRS 196.710. Staffing cost is not expected to increase outside of what is currently budgeted to the Department of Corrections.

(d) How much will it cost to administer this program for subsequent years? Oversight of PIECP by the commission is provided in accordance to KRS 196.710. Staffing cost is not expected to increase outside of what is currently budgeted to the Department of Corrections.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of December 16, 2019

Call to Order and Roll Call

The December meeting of the Administrative Regulation Review Subcommittee was held on Monday, December 16, 2019 at 1:00 p.m. In Room 129 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the November 2019 were approved.

Present were:

Members: Senators Perry Clark, Alice Forgy Kerr, and Stephen West. Representatives Deanna Frazier, Marylou Marzian, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Rob Akers, Cassie Trueblood, Education Professional Standards Board; Sharron Burton, Personnel Cabinet; Jeremy Branham, Richard Dobson, Department of Revenue; Phil Dietz, Chuck O'Neil, John Wood, Board of Emergency Medical Services; Jay Hall, Evan Jones, Department of Tourism; Rhonda Nix, Department of Tourism; Steve Fields, Rich Storm, Jessica Tyler, Department of Fish and Wildlife Resources; Clint Quarles, Department of Agriculture; Dennis Hatfield, Bert Gibbons, Michael Mullins, Department for Natural Resources; Patrick O' Connor, Department of Insurance; Stephanie Brammer-Barnes, Office Inspector General.

The Administrative Regulation Review Subcommittee met on Monday, December 16, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET:
Education Professional Standards Board: Educator
Preparation**

16 KAR 6:031. Repeal of 016 KAR 006:030. Rob Akers, associate commissioner, and Cassie Trueblood, counsel, represented the board.

**PERSONNEL CABINET: Office of the Secretary: Personnel
Cabinet, Classified**

101 KAR 2:210 & E. Plan Year Handbook for the Public Employee Health Insurance Program. Sharon Burton, deputy executive director, Office of Legal Services, represented the office.

**FINANCE AND ADMINISTRATION CABINET: Department of
Revenue: Sales and Use Tax; Registration and Collection**

103 KAR 25:050. Factors and agents. Jeremy Branham, consultant, and Richard Dobson, executive director, Office of Sales and Excise Taxes, represented the department.

In response to a question by Co-Chair West, Mr. Dobson stated that this package of administrative regulations included updates in accordance with Kentucky tax reform and updates for clarity.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 25:060. Temporary vendors and transient merchants.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 5 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Service and Professional Occupations

103 KAR 26:030. Optometrists, oculists and opticians.

A motion was made and seconded to approve the following amendments: to amend the TITLE, the RELATES TO paragraph, and Sections 2 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 26:050. Common carriers.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the

drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 26:110. Motor carrier repair and replacement parts.

Sales and Use Tax; Miscellaneous Retailer Occupations

103 KAR 27:080. Meals served by railroads, airlines, and other transportation companies.

103 KAR 27:100. Motor vehicles, manufactured homes, mobile homes, and trailers.

103 KAR 27:220. Restaurant transactions.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Sales and Use Tax; Miscellaneous Retail Transactions

103 KAR 28:090. Tangible personal property; security instrument enforcement.

Sales and Use Tax; General Exemptions

103 KAR 30:270. Oil and gas extraction machinery.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Alcoholic Beverages

103 KAR 40:091. Repeal of 103 KAR 040:091.

Selective Excise Tax; Cigarettes

103 KAR 41:031. Repeal of 103 KAR 041:030, 103 KAR 041:050, 103 KAR 041:060, and 103 KAR 041:200.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM: Kentucky Board of Emergency Medical Services**

202 KAR 7:020. Board organization. Phil Dietz, chair; Chuck O'Neal, deputy executive director; and John Wood, counsel, represented the board.

In response to questions by Co-Chair West, Mr. Wood stated that changes to quorum requirements were to compensate for fluctuations in the number of board members required as a result

of executive orders, not because of problems with attendance.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A; and (2) to include material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Travel Development

300 KAR 1:010 & E. Procedure for Tourism Marketing Incentive Program. Jay Hall, acting commissioner; Evan Jones, assistant general counsel; and Rhonda Nix, assistant director, represented the department.

In response to a question by Co-Chair West, Mr. Hall stated that this administrative regulation was being amended for equity pertaining to the Matching Funds Program. The formula for distribution of the annual 2.5 million dollars for the Matching Funds Program was being amended to include expenditures related to room nights and economic impact, rather than population and tourism expenditures.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, and CONFORMITY paragraph; and Sections 1 through 3, 5 through 9, and 11 through 21 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Fish and Wildlife Resources: Hunting and Fishing

301 KAR 3:100. Special commission permits. Steve Fields, staff attorney; Rich Storm, commissioner; and Jessica Tyler, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

DEPARTMENT OF AGRICULTURE: Industrial Hemp

302 KAR 50:050. THC sampling and testing, post-testing actions. Clint Quarles, counsel, represented the department.

In response to questions by Co-Chair West, Mr. Quarles stated that this administrative regulation updated the analysis method for THC levels in hemp to improve accuracy and to remove an unnecessary step. The University of Kentucky was responsible for and would continue to be responsible for performing the actual analysis for THC levels in hemp. This change was not expected to expedite results.

In response to questions by Senator Clark, Mr. Quarles stated that the classification of "certified seed" did not directly indicate THC levels. THC expectations related to seed were based on the genetic pedigree and THC levels in the ancestor plants. THC levels were also affected by environmental conditions, such as growing conditions and weather; therefore, it was impossible to predict the exact THC levels to expect from seed. The classification of "certified seed" indicated varietal protection. The zero and three-tenths (0.3) percent THC threshold for hemp was established at the federal level, and Kentucky was required to adhere to that standard. Seed itself could not be analyzed for THC levels because seeds did not have THC levels. Analysis occurred only after the plant reached a certain point in the growth cycle. Crops were only destroyed if required based on the federal limit. THC levels could fluctuate even among different parts of the same field. Exceedances of the THC level were not frequent. Some exceedances were as high as two (2) percent.

In response to a question by Representative Marzian, Mr. Quarles stated that analysis had to occur at a certain point in the growth cycle. Crops were only destroyed if required based on the federal limit.

A motion was made and seconded to approve the following

amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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 of Natural Resources: Division of Oil and Gas

805 KAR 1:001. Definitions for 805 KAR Chapter 001. Dennis Hatfield, division director, represented the division. Bill Barr, legislative affairs chair, Kentucky Oil and Gas Association, and Tom FitzGerald, Kentucky Resources Council, appeared in support of these administrative regulations.

In response to questions by Co-Chair West, Mr. Hatfield stated that this package of administrative regulations was developed primarily by the Kentucky Oil and Gas Workgroup, which was composed of various stakeholders for the purpose of modernizing these programs. Most changes were the result of House Bill 199 from the 2019 Regular Session of the General Assembly. There were also reorganizational changes related to the Red Tape Reduction Initiative. Mr. Barr stated that this package of administrative regulations both modernized and reorganized requirements. Mr. FitzGerald stated that the agency amendment to 805 KAR 1:170 was the result of consensus among stakeholders to allow more flexibility pertaining to fluid pits. Fluid pit liners would be necessary for pits in the Eastern parts of Kentucky where there tended to be karst geological conditions; however, liners would not necessarily be required in clay areas in Western parts of Kentucky. The agency amendment was not intended to be related to fracking. Mr. Barr stated that these pits were typically used for very short-term processes that lasted days or a few weeks prior to reclamation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:020. Protection of fresh water zones.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:030. Well location and as-drilled location plat, preparation, form and contents.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:050. Bonds, requirements, cancellation.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:060. Plugging wells.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:080. Gas storage reservoirs; drilling, plugging in vicinity.

A motion was made and seconded to approve the following

amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:110. Underground injection control.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 15 and 17 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:120. Operating or deepening existing wells and drilling deeper than the permitted depth.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, and 4 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:140. Directional and horizontal wells.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 5, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Division of Oil and Gas

805 KAR 1:160. Posting of an identification sign and a danger sign on a crude oil tank battery site.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:170. Content of the operations and reclamation plan.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 5 through 7 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to: (a) establish that, if site conditions necessitate that pits be constructed in fill areas, the division shall first determine if the location is stable to prevent failure of the pit; (b) reduce from twelve (12) mil to ten (10) mil, the required fluid pit liner thickness; and (c) authorize a waiver of fluid pit liner requirements under specific circumstances. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:180. Production reporting.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:190. Gathering lines.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 2, 6, 10 through 12, 14, and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 1:200. General information associated with oil and gas permits.

A motion was made and seconded to approve the following amendments: to amend Section 7 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

Division of Mine Reclamation and Enforcement: Explosives and Blasting

805 KAR 4:050. Records

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Miner Training, Education and Certification

805 KAR 7:101. Repeal of 805 KAR 007:100.

Sanctions and Penalties

805 KAR 9:011. Repeal of 805 KAR Chapter 009.

PUBLIC PROTECTION CABINET: Department of Insurance: Authorization of Insurers and General Requirements

806 KAR 3:230. Standards for safeguarding customer information. Patrick O'Connor, deputy commissioner, represented the department.

In response to a question by Co-Chair West, Mr. O'Connor stated that most of the changes to this package of administrative regulations were technical in nature.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:060. Registration of service contracts for consumer products.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Investments

806 KAR 7:021. Repeal of 806 KAR 007:020.

Agents, Consultants, Solicitors, and Adjusters

806 KAR 9:265. Rental vehicle agent license.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare: Health Services and Facilities

902 KAR 20:280. Prescribed pediatric extended care centers. Stephanie Brammer – Barnes, regulation coordinator, represented the division.

In response to a question by Representative Marzian, Ms. Brammer – Barnes stated that Home of the Innocents would not be affected by this administrative regulation; however, the facilities that were affected by this administrative regulation were

VOLUME 46, NUMBER 7– JANUARY 1, 2020

currently treating increased numbers of infants. This administrative regulation applied to facilities that treated children with complex medical needs. There were currently nine (9) licensed facilities of this type, where care was provided by teams of licensed RNs, LPNs, and nurse assistants.

In response to a question by Co-Chair West, Ms. Brammer – Barnes stated that the primary change to this administrative regulation was the result of a request from these facilities. Two (2) RNs were still required to be on-site at the facility. This was primarily a cost-saving measure.

The following administrative regulations were deferred or removed from the December 16, 2019, subcommittee agenda:

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 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.

DEPARTMENT OF AGRICULTURE: Office of the State Veterinarian: Livestock Sanitation

302 KAR 22:010. Authority to inspect, test, identify, remove and dispose of livestock, poultry, and fish.

302 KAR 22:020. Restriction of transportation of livestock, poultry, and fish.

302 KAR 22:040. Carcass transport and composting.

302 KAR 22:080. Feed restrictions.

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Mine Reclamation and Enforcement: Surface Effects of Noncoal Mining

405 KAR 5:002. Definitions for 405 KAR Chapter 005.

405 KAR 5:032. Permit requirements.

General Provisions

405 KAR 7:040. General obligations of operators and permittees.

405 KAR 7:050. Coal processing waste disposal sites.

Permits

405 KAR 8:010. General provisions for permits.

405 KAR 8:030. Surface coal mining permits.

Bond and Insurance Requirements

405 KAR 10:050. Bond forfeiture.

Performance Standards for Surface Mining Activities

405 KAR 16:100. Permanent and temporary impoundments.

405 KAR 16:210. Post mining land use capability.

Performance Standards for Underground Mining Activities

405 KAR 18:100. Permanent and temporary impoundments.

405 KAR 18:220. Post mining land use capability.

Special Performance Standards

405 KAR 20:040. Prime farmland.

Operation of Two (2) Acres or Less

405 KAR 26:011. Repeal of 405 KAR 026:001.

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: Motorcycle Safety

500 KAR 15:010 & E. Motorcycle safety education program.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration

601 KAR 2:030E. Ignition interlock.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:260. Treatment guidelines.

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.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare

902 KAR 20:450. Ambulatory infusion agencies.

Department for Community Based Services: Child Welfare

922 KAR 1:330 & E. Child protective services.

The subcommittee adjourned at 1:40 p.m. The next meeting of the subcommittee is tentatively scheduled for January 13, 2020, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND
FAMILY SERVICES
Meeting of December 9, 2019**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of December 9, 2019, having been referred to the Committee on December 4, 2019, pursuant to KRS 13A.290(6):

201 KAR 029:015
201 KAR 036:060
902 KAR 020:370
902 KAR 020:430 & E
922 KAR 001:320 & E

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 12-16-2019 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 9, 2019 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS,
AND ADMINISTRATIVE REGULATIONS
Meeting of December 16, 2019**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Licensing, Occupations, & Administrative Regulations for its meeting of 12-16-2019, having been referred to the Committee on December 4, 2019, pursuant to KRS 13A.290(6):

201 KAR 011:002
201 KAR 11:011
201KAR 011:105
201 KAR 011:121
201 KAR 011:170
201 KAR 011:190
201 KAR 011:210
201 KAR 011:220
201 KAR 011:461

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:

201 KAR 11:121
201 KAR 11:210

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:

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

G - 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

G - 14

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

G - 25

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

G - 30

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

G - 31

A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
REGISTER YEAR 45					
The administrative regulations listed under VOLUME 44 are those administrative regulations that were originally published in Volume 44 (last year's) issues of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when the <i>2018 Kentucky Administrative Regulations Service</i> was published.					
SYMBOL KEY:			Amended	2152	
* Statement of Consideration not filed by deadline			101 KAR 002:034		
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			Amended	2955	
*** Withdrawn before being printed in Register			As Amended	3390	7-5-2019
IJC Interim Joint Committee			101 KAR 002:180		
(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.			Amended	3443	
			101 KAR 002:190	3592	
			101 KAR 003:045		
			Amended	2960	
			As Amended	3394	7-5-2019
			102 KAR 001:060		
			Amended	2404	
			As Amended	3398	7-5-2019
			103 KAR 015:050		
			Amended	3445	
			103 KAR 015:060		
			Repealed	3594	9-6-2019
			103 KAR 015:061(r)	3594	9-6-2019
			103 KAR 017:120		
			Repealed	3595	9-6-2019
			103 KAR 017:121(r)	3595	9-6-2019
			200 KAR 003:020	2528	
			Am Comments	3190	
			200 KAR 014:200	3596	11-1-2019
			201 KAR 014:201(r)	3596	11-1-2019
			201 KAR 001:290	2802	
			As Amended	3399	7-5-2019
			201 KAR 001:300		
			Amended	2964	
			As Amended	3401	7-5-2019
			201 KAR 001:310	2804	
			As Amended	3403	7-5-2019
			201 KAR 002:010		
			Amended	3447	
			201 KAR 002:090		
			Amended	3449	
			201 KAR 002:095		
			Amended	3450	
			201 KAR 002:100		
			Amended	3451	
			201 KAR 002:116		
			Amended	3453	
			201 KAR 002:165		
			Amended	3454	11-1-2019
			201 KAR 002:225		
			Amended	3456	
			201 KAR 002:240		
			Amended	3458	
			201 KAR 002:270		
			Amended	3460	
			201 KAR 002:310		
			Amended	3461	
			201 KAR 002:340		
			Amended	3462	
			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		
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				
As Amended	3387	7-5-2019			
016 KAR 003:020					
Repealed	2801	7-5-2019			
016 KAR 003:030					
Repealed	2801	7-5-2019			
016 KAR 003:040					
Repealed	2801	7-5-2019			
016 KAR 003:050					
Repealed	2801	7-5-2019			
016 KAR 003:090	2250				
As Amended	3387	7-5-2019			
016 KAR 8:030					
Amended	3240				
031 KAR 004:120					

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
Amended	3251		Amended	3507	8-22-2019
201 KAR 013:060			302 KAR 016:101		
Amended	3253		Amended	3509	8-22-2019
201 KAR 020:370			302 KAR 016:111		
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	11-1-2019
201 KAR 041:030			401 KAR 008:050		
Amended	3477		Amended	3519	11-1-2019
201 KAR 041:040			401 KAR 011:001		
Amended	3478		Amended	3522	
201 KAR 041:060			401 KAR 011:030		
Amended	3480	9-6-2019	Amended	3524	
201 KAR 041:065			401 KAR 011:040		
Amended	3482		Amended	3527	
201 KAR 041:070			401 KAR 011:050		
Amended	3483		Amended	3531	
201 KAR 041:080			401 KAR 011:060		
Amended	3486		Amended	3535	
201 KAR 046:010			405 KAR 010:001		
Amended	2967		Amended	2979	
As Amended	3403	7-5-2019	405 KAR 010:015		
201 KAR 046:020			Amended	2982	
Amended	2970	7-5-2019	500 KAR 009:011(r)	3354	
201 KAR 046:030			500 KAR 0015:010	3355	
Amended	2971	7-5-2019	601 KAR 002:030		
201 KAR 046:040			Withdrawn		8-7-2019
Amended	2972	7-5-2019	704 KAR 003:303		
201 KAR 046:045			Amended	2987	
Amended	2975	7-5-2019	As Amended	3410	7-5-2019
201 KAR 046:081			704 KAR 008:060	2810	
Amended	2976	7-5-2019	Am Comments	3193	
202 KAR 003:010			As Amended	3410	7-5-2019
Amended	3259	9-6-2019	803 KAR 002:180		
202 KAR 007:520			Amended	2989	6-7-2019
Amended	2760		803 KAR 025:270	2534	
As Amended	3405	7-5-2019	Am Comments	2928	
202 KAR 007:560			804 KAR 007:020		
Amended	3489		Amended	3262	
202 KAR 007:575	2805		804 KAR 007:030		
As Amended	3409	7-5-2019	Repealed	3360	8-2-2019
301 KAR 002:030			804 KAR 007:031(r)	3360	8-2-2019
Amended	3260		805 KAR 003:100		
301 KAR 002:221			Amended	2991	
Amended	3491	8-20-2019	As Amended	3410	7-5-2019
301 KAR 002:222			805 KAR 003:110		
Amended	3493	8-20-2019	Amended	3538	
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	
302 KAR 016:010			806 KAR 009:030		
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	
Amended	3504		Withdrawn		9-3-2019
302 KAR 016:070			806 KAR 009:110		
Amended	3506	8-22-2019	Amended	3541	
302 KAR 016:091			806 KAR 009:190		

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
Amended	3542		Amended	3316	7-19-2019
806 KAR 009:200			907 KAR 001:022		
Amended	3543		Amended	2784	
806 KAR 009:310			Am Comments	3419	8-2-2019
Amended	3269		907 KAR 001:330		
806 KAR 009:321(r)	3362		Amended	2790	8-2-2019
806 KAR 009:341(r)	3600		907 KAR 001:340		
806 KAR 009:350			Amended	2793	8-2-2019
Amended	3545		907 KAR 001:441 (r)	2813	8-2-2019
806 KAR 010:030			907 KAR 001:436		
Amended	1824		Repealed	2813	8-2-2019
Am Comments	2716		907 KAR 001:604		
As Amended	3411	7-5-2019	Amended	3318	10-4-2019
806 KAR 010:050			907 KAR 001:755		
Repealed	3363	8-2-2019	Amended	2796	8-2-2019
806 KAR 010:051(r)	3363	8-2-2019	907 KAR 005:005		
806 KAR 015:080			Amended	2496	
Repealed	3601	10-4-2019	As Amended	3412	7-5-2019
806 KAR 015:081(r)	3601	10-4-2019	908 KAR 001:340		
806 KAR 047:010			Repealed	2538	8-19-2019
Amended	2993		908 KAR 001:341(r)	2538	8-19-2019
806 KAR 047:020	2997		908 KAR 001:370		
Repealed	2997	9-6-2019	Amended	2500	
806 KAR 047:021(r)	2997	9-6-2019	Am Comments	3195	
806 KAR 047:030	2997		908 KAR 001:372	2539	
Repealed	2997	9-6-2019	Am Comments	3215	
807 KAR 005:056			908 KAR 001:374	2546	
Amended	3272		Am Comments	3222	
808 KAR 001:180	2266		910 KAR 002:020		
815 KAR 007:120			Amended	3322	
Amended	3274	8-2-2019	910 KAR 002:040		
815 KAR 007:125			Amended	3573	
Amended	3277	8-2-2019	911 KAR 001:010	2814	
831 KAR 001:010			Am Comments	3425	
Amended	3546		911 KAR 001:020	2819	
831 KAR 001:020			Am Comments	3430	7-19-2019
Amended	3549	9-6-2019	911 KAR 001:060	2823	
831 KAR 001:030			Am Comments	3434	7-19-2019
Amended	3551		911 KAR 001:070		
902 KAR 002:070			Repealed	2828	7-19-2019
Amended	3279		911 KAR 001:071(r)	2828	7-19-2019
902 KAR 004:030			911 KAR 001:080		
Amended	3553	8-19-2019	Repealed	2828	7-19-2019
902 KAR 004:035			921 KAR 001:380		
Amended	3557	8-19-2019	Amended	3583	
902 KAR 007:010			921 KAR 002:015		
Amended	3560		Amended	2520	
902 KAR 009:010			Am Comments	3232	7-5-2019
Amended	3564		922 KAR 001:310		
902 KAR 015:010			Amended	3326	
Amended	3281		922 KAR 001:350		
902 KAR 020:036			Amended	3340	
Amended	3286		922 KAR 001:470		
902 KAR 020:111			Amended	3587	
Amended	2781		922 KAR 001:495		
Am Comments	3416	7-19-2019	Amended	3350	
902 KAR 045:065			922 KAR 001:510		
Amended	3294		Amended	3589	
902 KAR 045:070					
Amended	3304				
902 KAR 045:075					
Amended	3314	9-9-2019			
902 KAR 045:110					
Amended	3568				
Withdrawn		6-28-2019			
902 KAR 045:120					
Amended	3571	8-19-2019			
902 KAR 050:100					
Repealed	3364	7-19-2019			
902 KAR 050:101(r)	3364	7-19-2019			
902 KAR 050:110					

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.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
REGISTER YEAR 46					
SYMBOL KEY:			Repealed	281	10-4-2019
* Statement of Consideration not filed by deadline			032 KAR 001:061(r)	281	10-4-2019
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			045 KAR 001:050		
*** Withdrawn before being printed in Register			Amended	998	
IJC Interim Joint Committee			As Amended	1799	
(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.			101 KAR 002:102		
			Amended	558	
			As Amended	1080	11-1-2019
			101 KAR 002:120		
			Amended	1915	
			101 KAR 002:180		
			As Amended	407	9-6-2019
			101 KAR 002:190		
			As Amended	409	9-6-2019
			101 KAR 002:210		
			Amended	1276	
			101 KAR 002:230		
			Amended	44	10-4-2019
			101 KAR 003:015		
			Amended	564	11-1-2019
			102 KAR 001:032	778	12-6-2019
			As Amended	1410	
			102 KAR 001:035		
			Amended	1580	
			102 KAR 001:036		
			Amended	1581	
			102 KAR 001:037		
			Amended	1583	
			102 KAR 001:100		
			Amended	1584	
			102 KAR 001:125		
			Amended	1585	
			102 KAR 001:135		
			Amended	1586	
			103 KAR 001:010		
			Amended	46	
			As Amended	862	10-4-2019
			103 KAR 001:060		
			Amended	48	
			As Amended	862	10-4-2019
			103 KAR 001:120		
			Amended	1588	
			103 KAR 002:005		
			Amended	50	
			Withdrawn		7-24-2019
			Amended	2104	
			103 KAR 002:030		
			Amended	51	10-4-2019
			103 KAR 005:150		
			Repealed	282	10-4-2019
			103 KAR 005:151(r)	282	10-4-2019
			103 KAR 005:160		
			Amended	53	10-4-2019
			103 KAR 007:030		
			Repealed	283	10-4-2019
			103 KAR 008:030		10-4-2019
			Repealed	284	10-4-2019
			103 KAR 008:011(r)	284	10-4-2019
			103 KAR 008:110		
			Amended	54	10-4-2019
			103 KAR 008:130		
			Amended	55	
			As Amended	864	10-4-2019
			103 KAR 008:140		
			Repealed	285	10-4-2019
			103 KAR 008:141(r)	285	10-4-2019
			103 KAR 008:150		
			Repealed	285	10-4-2019
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.)					
101 KAR 002:120E	1771	10-22-2019			
101 KAR 002:210E	1068	09-13-2019			
105 KAR 001:149	1775	11-15-2019			
105 KAR 001:390E	6	6-12-2019			
300 KAR 001:010E	1070	8-23-2019			
301 KAR 001:152E	9	5-24-2019			
Replaced	150	9-10-2019			
401 KAR 006:001E	311	7-11-2019			
401 KAR 006:310E	313	7-11-2019			
401 KAR 006:320E	323	7-11-2019			
401 KAR 006:350E	327	7-11-2019			
501 KAR 001:040E	1780	10-21-2019			
501 KAR 001:071E	1786	10-21-2019			
601 KAR 002:030E	849	8-7-2019			
803 KAR 025:271E	333	6-21-2019			
902 KAR 020:430E	336	6-28-2019			
902 KAR 045:090E	12	6-14-2019			
Replaced	264	9-9-2019			
907 KAR 003:170E	18	6-14-2019			
Replaced	1423	12-6-2019			
907 KAR 010:830E	347	6-19-2019			
Replaced	1154	11-1-2019			
907 KAR 010:840E	1787	10-30-2019			
907 KAR 015:005E	356	6-28-2019			
907 KAR 015:010E	359	6-28-2019			
907 KAR 015:015E	371	6-28-2019			
907 KAR 015:020E	374	6-28-2019			
907 KAR 015:022E	385	6-28-2019			
907 KAR 015:025E	396	6-28-2019			
922 KAR 001:320E	400	6-28-2019			
922 KAR 001:330E	855	8-14-2019			
ORDINARY ADMINISTRATIVE REGULATIONS					
009 KAR 001:010					
As Amended	405	9-6-2019			
009 KAR 001:040					
As Amended	405	9-6-2019			
013 KAR 001:020					
Amended	550				
Am Comments	1430				
As Amended	1791				
013 KAR 004:010					
Amended	1913				
016 KAR 006:031(r)	1376				
016 KAR 008:030					
As Amended	26	8-2-2019			
016 KAR 009:060					
Amended	2100				
016 KAR 009:071(r)	2160				
032 KAR 001:060					

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
103 KAR 008:160			103 KAR 030:261(r)	289	10-4-2019
Amended	1591		103 KAR 030:170		
103 KAR 008:170	1718		Amended	2105	
103 KAR 015:050	3445		103 KAR 030:270		
As Amended	865	10-4-2019	Amended	1289	
103 KAR 016:200			As Amended	2025	
Amended	57		103 KAR 031:020		
As Amended	866	10-4-2019	Amended	1595	
103 KAR 016:250			103 KAR 031:030		
Amended	60		Amended	70	
As Amended	868	10-4-2019	As Amended	877	10-4-2019
103 KAR 016:400	286		103 KAR 031:080		
As Amended	875	10-4-2019	Amended	1597	
103 KAR 018:150			103 KAR 031:090		
Amended	1593		Amended	1598	
103 KAR 025:050			103 KAR 031:111		
Amended	1277		Amended	72	
As Amended	2023		As Amended	878	10-4-2019
103 KAR 025:060			103 KAR 031:200		
Amended	1278		Amended	1599	
As Amended	2023		103 KAR 040:010		
103 KAR 025:131			Amended	1601	
Amended	570		103 KAR 040:050		
As Amended	1084	11-1-2019	Amended	2107	
103 KAR 026:010			103 KAR 040:091(r)	1377	
Amended	67	10-4-2019	103 KAR 041:031(r)	1378	
103 KAR 026:030			As Amended	2026	
Amended	1280		103 KAR 041:040		
As Amended	2024		Amended	1602	
103 KAR 026:050			103 KAR 041:100		
Amended	1281		Amended	1603	
As Amended	2024		103 KAR 041:110		
103 KAR 026:070			Amended	1604	
Amended	571		103 KAR 041:220	779	11-1-2019
As Amended	1085	11-1-2019	103 KAR 043:010		
103 KAR 026:080			Amended	1606	
Amended	1919		103 KAR 043:051(r)	1719	
103 KAR 026:090			103 KAR 043:101(r)	1996	
Amended	574		105 KAR 001:149	1997	
As Amended	1087	11-1-2019	105 KAR 001:200		
103 KAR 026:110			Amended	74	
Amended	1282		As Amended	879	10-4-2019
103 KAR 026:120			105 KAR 001:250		
Amended	1920		Amended	1925	
103 KAR 027:020			105 KAR 001:390		
Amended	1922		Amended	76	
103 KAR 027:080			As Amended	883	10-4-2019
Amended	1284		105 KAR 001:445	2001	
103 KAR 027:100			200 KAR 003:020		
Amended	1285		As Amended	28	8-2-2019
103 KAR 027:120			200 KAR 006:015		
Amended	1923		As Amended	1800	
103 KAR 027:140			201 KAR 001:100		
Amended	69	10-4-2019	Amended	1001	
103 KAR 027:180			As Amended	1800	
Amended	577		201 KAR 001:190		
As Amended	1088	11-1-2019	Amended	1004	
103 KAR 027:220			As Amended	1802	
Amended	1287		201 KAR 002:010		
As Amended	2025		As Amended	410	8-19-2019
103 KAR 028:010			201 KAR 002:020		
Amended	578		Amended	1926	
As Amended	1089	11-1-2019	201 KAR 002:090		
103 KAR 030:170			As Amended	410	8-19-2019
Amended	581		201 KAR 002:100		
As Amended	1091	11-1-2019	As Amended	411	8-19-2019
103 KAR 028:090			201 KAR 002:116		
Amended	1288		As Amended	412	8-19-2019
103 KAR 030:260			201 KAR 002:225		
Repealed	289	10-4-2019	As Amended	412	8-19-2019

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
201 KAR 002:240			Repealed	1805	12-16-2019
As Amended	413	8-19-2019	201 KAR 011:210		
201 KAR 002:270			Amended	599	
As Amended	414	8-19-2019	Am Comments	1457	
201 KAR 002:340			As Amended	1824	
As Amended	414	8-19-2019	As Amended IJC	2031	12-16-2019
201 KAR 006:030			201 KAR 011:215		
As Amended	415	8-19-2019	Repealed	1805	12-16-2019
201 KAR 006:040			201 KAR 011:220		
As Amended	416	8-19-2019	Amended	606	
201 KAR 008:540			Am Comments	1463	
Amended	80		As Amended	1829	12-16-2019
Am Comments	1177		201 KAR 011:225		
As Amended	1410	11-18-2019	Repealed	1805	12-16-2019
201 KAR 008:550			201 KAR 011:230		
Amended	1928		Repealed	1805	12-16-2019
201 KAR 010:050			201 KAR 011:232		
Amended	1607		Repealed	1805	12-16-2019
201 KAR 010:080			201 KAR 011:235		
Amended	1608		Repealed	1805	12-16-2019
201 KAR 011:002(r)	780		201 KAR 011:240		
As Amended	1805	12-16-2019	Repealed	1805	12-16-2019
201 KAR 011:011			201 KAR 011:245		
Amended	83		Repealed	1805	12-16-2019
Am Comments	1180		201 KAR 011:250		
As Amended	1806	12-16-2019	Repealed	1805	12-16-2019
201 KAR 011:030			201 KAR 011:300		
Repealed	1805	12-16-2019	Repealed	1805	12-16-2019
201 KAR 011:045			201 KAR 011:350		
Repealed	1805	12-16-2019	Repealed	1805	12-16-2019
201 KAR 011:062			201 KAR 011:400		
Repealed	1805	12-16-2019	Repealed	1805	12-16-2019
201 KAR 011:090			201 KAR 011:410		
Repealed	1805	12-16-2019	Repealed	1805	12-16-2019
201 KAR 011:095			201 KAR 011:420		
Repealed	1805	12-16-2019	Repealed	290	12-16-2019
201 KAR 011:100			201 KAR 011:430		
Repealed	1805	12-16-2019	Repealed	1805	12-16-2019
201 KAR 011:105			201 KAR 011:440		
Amended	86		Repealed	1805	12-16-2019
Am Comments	1183		201 KAR 011:450		
As Amended	1808	12-16-2019	Repealed	1805	12-16-2019
201 KAR 011:110			201 KAR 011:460		
Repealed	1805	12-16-2019	Repealed	1805	12-16-2019
201 KAR 011:115			201 KAR 011:461(r)	290	12-16-2019
Repealed	1805	12-16-2019	201 KAR 012:030		
201 KAR 011:121			Amended	608	
Amended	582		As Amended	1091	11-1-2019
Am Comments	1438		201 KAR 013:040		
As Amended	1810		As Amended	417	8-19-2019
As Amended IJC	2027	12-16-2019	201 KAR 013:055		
201 KAR 011:135			As Amended	419	8-19-2019
Repealed	1805	12-16-2019	201 KAR 013:060		
201 KAR 011:145			As Amended	420	8-19-2019
Repealed	1805	12-16-2019	201 KAR 015:010		
201 KAR 011:147			Amended	89	
Repealed	1805	12-16-2019	As Amended	1094	11-1-2019
201 KAR 011:170			201 KAR 015:015		
Amended	588		Amended	90	11-1-2019
Am Comments	1444		201 KAR 015:030		
As Amended	1814	12-16-2019	Amended	91	
201 KAR 011:175			As Amended	1094	11-1-2019
Repealed	1805	12-16-2019	201 KAR 015:040		
201 KAR 011:180			Amended	93	
Repealed	1805	12-16-2019	As Amended	1095	11-1-2019
201 KAR 011:190			201 KAR 015:050		
Amended	596		Amended	95	
Am Comments	1453		As Amended	1096	11-1-2019
As Amended	1822	12-16-2019	201 KAR 015:080		
201 KAR 011:195			Amended	99	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	1099	11-1-2019	201 KAR 020:650	2171	
201 KAR 015:110			201 KAR 020:660	2172	
Amended	100		201 KAR 020:670	2174	
As Amended	1100	11-1-2019	201 KAR 020:680	2176	
201 KAR 015:120			201 KAR 020:690	2177	
Amended	104		201 KAR 022:170		
As Amended	1102	11-1-2019	Amended	2108	
201 KAR 015:125	292		201 KAR 025:090		
As Amended	1102	11-1-2019	As Amended	421	8-19-2019
201 KAR 016:011(r)	782		201 KAR 029:015		
*Withdrawn	*	9-13-2019	Amended	1007	
201 KAR 016:012(r)	2161		201 KAR 030:010		
201 KAR 016:200	784		Amended	105	10-4-2019
Withdrawn	*	9-13-2019	201 KAR 030:021(r)	293	
201 KAR 016:210	786		As Amended	884	10-4-2019
Withdrawn	*	9-13-2019	201 KAR 030:020		
201 KAR 016:212	788		Repealed	884	10-4-2019
Withdrawn	*	9-13-2019	201 KAR 030:030		
201 KAR 016:214	790		Repealed	884	10-4-2019
Withdrawn	*	9-13-2019	201 KAR 030:040		
201 KAR 016:216	791		Amended	107	
Withdrawn	*	9-13-2019	As Amended	885	10-4-2019
201 KAR 016:220	793		201 KAR 030:050		
Withdrawn	*	9-13-2019	Repealed	884	10-4-2019
201 KAR 016:230	794		201 KAR 030:060		
Withdrawn	*	9-13-2019	Repealed	884	10-4-2019
201 KAR 016:240	795		201 KAR 030:070		
Withdrawn	*	9-13-2019	Amended	110	10-4-2019
201 KAR 016:250	797		201 KAR 030:110		
Withdrawn	*	9-13-2019	Amended	112	
201 KAR 016:260	799		As Amended	886	9-11-2019
Withdrawn	*	9-13-2019	201 KAR 030:120		
201 KAR 016:270	801		Repealed	884	10-4-2019
Withdrawn	*	9-13-2019	201 KAR 030:125		
201 KAR 016:272	802		Repealed	884	10-4-2019
Withdrawn	*	9-13-2019	201 KAR 030:130		
201 KAR 016:280	804		Amended	115	
Withdrawn	*	9-13-2019	201 KAR 030:150		
201 KAR 016:290	805		Repealed	884	10-4-2019
Withdrawn	*	9-13-2019	201 KAR 030:020		
201 KAR 016:300	807		Repealed	884	10-4-2019
Withdrawn	*	9-13-2019	201 KAR 030:160		
201 KAR 016:310	810		Amended	119	
Withdrawn	*	9-13-2019	As Amended	887	9-11-2019
201 KAR 016:400	811		201 KAR 030:170		
Withdrawn	*	9-13-2019	Repealed	884	10-4-2019
201 KAR 016:500	1720		201 KAR 030:180		
201 KAR 016:510	1723		Repealed	884	10-4-2019
201 KAR 016:512	1725		201 KAR 030:200		
201 KAR 016:514	1726		Repealed	884	10-4-2019
201 KAR 016:516	1728		201 KAR 030:310		
201 KAR 016:520	1730		Repealed	884	10-4-2019
201 KAR 016:530	1731		201 KAR 030:015		
201 KAR 016:540	1732		Repealed	884	10-4-2019
201 KAR 016:550	1735		201 KAR 030:330		
201 KAR 016:560	1736		Amended	127	
201 KAR 016:570	1738		As Amended	893	9-11-2019
201 KAR 016:572	1740		201 KAR 030:360		
201 KAR 016:580	1741		Repealed	884	10-4-2019
201 KAR 016:590	1743		201 KAR 030:375		
201 KAR 016:600	1745		Repealed	884	10-4-2019
201 KAR 016:610	1747		201 KAR 030:380		
201 KAR 016:700	1749		Repealed	884	10-4-2019
201 KAR 020:370			201 KAR 036:060		
As Amended	420	8-19-2019	Amended	1009	
201 KAR 020:600	2162		As Amended		
201 KAR 020:610	2164		201 KAR 041:030		
201 KAR 020:620	2166		As Amended	423	9-6-2019
201 KAR 020:630	2168		201 KAR 041:040		
201 KAR 020:640	2170		As Amended	424	9-6-2019

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
201 KAR 041:065			302 KAR 015:010		
As Amended	425	9-6-2019	Amended	1614	
201 KAR 041:070			302 KAR 015:020		
As Amended	425	9-6-2019	Amended	1617	
201 KAR 041:080			302 KAR 015:030		
As Amended	427	9-6-2019	Amended	1619	
202 KAR 006:010			302 KAR 016:010		
Amended	131		As Amended	430	8-22-2019
As Amended	894	9-10-2019	302 KAR 016:020		
202 KAR 006:020			As Amended	430	8-22-2019
Amended	133		302 KAR 016:040		
As Amended	895	9-10-2019	As Amended	431	8-22-2019
202 KAR 006:030			302 KAR 016:111		
Amended	136	9-10-2019	As Amended	432	8-22-2019
202 KAR 006:050			302 KAR 016:121		
Amended	138		As Amended	433	8-22-2019
As Amended	897	9-10-2019	302 KAR 016:131		
202 KAR 006:060			As Amended	433	8-22-2019
Amended	140		302 KAR 020:011(r)		
As Amended	898	9-10-2019	Withdrawn	***	10-30-2019
202 KAR 006:070			302 KAR 020:012(r)	2178	
Amended	141		302 KAR 021:011(r)	1750	
As Amended	898	9-10-2019	302 KAR 022:010	1379	
202 KAR 006:080			302 KAR 022:020	1380	
Amended	143		302 KAR 022:030	1751	
As Amended	899	9-10-2019	302 KAR 022:040	1381	
202 KAR 006:090			302 KAR 022:070	1753	
Amended	145		302 KAR 022:080	1382	
As Amended	900	9-10-2019	302 KAR 020:150	2179	
202 KAR 006:100			302 KAR 031:040		
Amended	147		Amended	1621	
As Amended	902	9-10-2019	302 KAR 034:010		
202 KAR 007:020			Repealed	815	10-7-2019
Amended	1291		302 KAR 034:011(r)	815	10-7-2019
As Amended	2036		302 KAR 034:020		
202 KAR 007:560			Repealed	815	10-7-2019
As Amended	428	8-19-2019	302 KAR 034:030		
300 KAR 001:010			Repealed	815	10-7-2019
Amended	1294		302 KAR 034:040		
As Amended	2038		Repealed	815	10-7-2019
301 KAR 001:152			302 KAR 034:050		
Amended	150	9-10-2019	Repealed	815	10-7-2019
301 KAR 001:185			302 KAR 034:060		
As Amended	1103	11-1-2019	Repealed	815	10-7-2019
301 KAR 001:201			302 KAR 035:011(r)	816	10-7-2019
Amended	612		302 KAR 035:020		
As Amended	1104	11-1-2019	Repealed	816	10-7-2019
301 KAR 001:410			302 KAR 035:030		
Amended	617	11-1-2019	Repealed	816	10-7-2019
301 KAR 002:030			302 KAR 035:040		
As Amended	32	7-9-2019	Repealed	816	10-7-2019
301 KAR 002:049			302 KAR 035:050		
Amended	1012		Repealed	816	10-7-2019
301 KAR 002:090			302 KAR 056:060		
Amended	1016		Repealed	816	10-7-2019
As Amended	1830		302 KAR 035:070		
301 KAR 002:185			Repealed	816	10-7-2019
Amended	620		302 KAR 035:010		
As Amended	1110		Repealed	816	10-7-2019
301 KAR 002:195			302 KAR 036:010		
Amended	2109		Repealed	817	10-7-2019
301 KAR 002:251			302 KAR 036:011(r)	817	10-7-2019
Amended	1610		302 KAR 037:010		
301 KAR 002:300			Amended	1626	
Amended	2115		302 KAR 050:050		
301 KAR 003:100			Amended	1306	
Amended	1303		As Amended	2048	
301 KAR 004:090			302 KAR 075:130		
Amended	152	9-10-2019	Amended	622	
Amended	2118		As Amended	1111	10-7-2019

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
302 KAR 076:100			405 KAR 005:002		
Amended	623		Amended	1308	
As Amended	1111	10-7-2019	405 KAR 005:032		
302 KAR 080:010			Amended	1312	
Amended	625		405 KAR 007:040		
As Amended	1112	10-7-2019	Amended	1318	
302 KAR 081:010			405 KAR 007:050		
Amended	626		Amended	1321	
As Amended	1112	10-7-2019	405 KAR 008:010		
302 KAR 101:010			Amended	1323	
As Amended	433	9-6-2019	405 KAR 008:030		
400 KAR 001:110			Amended	1336	
Amended	1019		405 KAR 010:001		
As Amended	1832		As Amended	906	9-10-2019
401 KAR 005:091(r)	2003		405 KAR 010:015		
401 KAR 006:001			As Amended	908	9-10-2019
Amended	628		405 KAR 010:050		
Am Comments	1465		Amended	1346	
401 KAR 006:211(r)	818		405 KAR 016:100		
401 KAR 006:310			Amended	1348	
Amended	631		405 KAR 016:210		
Am Comments	1468		Amended	1351	
401 KAR 006:320			405 KAR 018:100		
Amended	640		Amended	1353	
Am Comments	1477		405 KAR 018:220		
401 KAR 006:350			Amended	1356	
Amended	645		405 KAR 020:040		
Am Comments	1481		Amended	1358	
401 KAR 008:030			405 KAR 026:011(r)	1384	
Am Comments	947	11-1-2019	416 KAR 001:010		
401 KAR 008:050			Amended	2120	
Am Comments	950	11-1-2019	500 KAR 010:001		
401 KAR 010:001			Amended	2124	
Amended	154		500 KAR 010:020		
Am Comments	1186		Amended	2126	
401 KAR 010:026			500 KAR 010:030		
Amended	158		Amended	2128	
Am Comments	1189		500 KAR 010:040		
401 KAR 010:029			Amended	2130	
Amended	199		500 KAR 010:050	2186	
Am Comments	1229		501 KAR 001:040		
401 KAR 010:030			Amended	1943	
Amended	202		501 KAR 006:060		
Am Comments	1231		Amended	655	
As Amended	1840		As Amended	1413	12-6-2019
401 KAR 010:031			501 KAR 006:110		
Amended	222		Amended	234	
Am Comments	1251		Am Comments	969	
As Amended	1858		As Amended	1119	11-1-2019
401 KAR 011:001			501 KAR 006:140		
Am Comments	952	11-1-2019	Amended	657	
401 KAR 011:030			As Amended	1414	12-6-2019
Am Comments	954		501 KAR 006:160		
As Amended	1114	11-1-2019	Amended	236	
401 KAR 011:040			As Amended	912	10-4-2019
Am Comments	958		505 KAR 001:160		
As Amended	1116	11-1-2019	Amended	659	
401 KAR 011:050			As Amended	1120	11-1-2019
Am Comments	962	11-1-2019	601 KAR 009:130		
401 KAR 011:060			Amended	237	
Am Comments	967	11-1-2019	As Amended	906	
401 KAR 058:005			As Amended IJC	1415	9-30-2019
Amended	230		601 KAR 013:090		
As Amended	904	9-10-2019	Amended	241	
401 KAR 051:010			Am Comments	1260	
Amended	651	11-19-2019	As Amended	1418	11-18-2019
401 KAR 052:100			601 KAR 013:100		
Amended	1937		Amended	244	
401 KAR 063:010			Am Comments	1263	
Amended	1941		As Amended	1420	11-18-2019

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
603 KAR 005:150			Am Comments	1493	
Amended	248		As Amended	2054	
As Amended	916	9-9-2019	805 KAR 001:080		
701 KAR 005:090			Amended	670	
Amended	249		Am Comments	1497	
Am Comments	971		As Amended	2056	
As Amended	1120	11-1-2019	805 KAR 001:110		
702 KAR 003:130			Amended	674	
Amended	252		Am Comments	1500	
As Amended	1122	11-1-2019	As Amended	2058	
702 KAR 005:080			805 KAR 001:120		
Amended	2132		Amended	681	
702 KAR 007:065			As Amended	2064	
Amended	254		805 KAR 001:140		
As Amended	916	10-4-2019	Amended	682	
702 KAR 007:125			Am Comments	1506	
Amended	2137		As Amended	2065	
703 KAR 005:140			805 KAR 001:160		
Amended	2142		Amended	1360	
703 KAR 005:240			As Amended	2066	
Amended	1029		805 KAR 001:170		
703 KAR 005:270			Amended	685	
Amended	2144		Am Comments	1509	
703 KAR 005:280			As Amended	2068	
Amended	1032		805 KAR 001:180		
Am Comments	2087		Amended	689	
704 KAR 003:303			Am Comments	1513	
Amended	1629		As Amended	2071	
704 KAR 003:370			805 KAR 001:190		
Amended	2149		Amended	691	
704 KAR 007:090			Am Comments	1515	
Amended	2152		As Amended	2072	
704 KAR 008:080	1754		805 KAR 001:200		
739 KAR 002:140			Amended	697	
Amended	1949		Am Comments	1521	
739 KAR 002:150	2005		As Amended	2077	
780 KAR 002:040			805 KAR 003:110		
Amended	1630		As Amended	434	8-20-2019
780 KAR 002:060			805 KAR 004:050		
Amended	1632		Amended	1363	
787 KAR 003:010			As Amended	2078	
Recodified from 803 KAR 1:010		6-14-2019	805 KAR 007:101(r)	1387	
Amended	258		805 KAR 009:011(r)	821	
Am Comments	973		806 KAR 003:230		
As Amended	1122	10-3-2019	Amended	1364	
803 KAR 001:010			As Amended	2079	
Recodified as 787 KAR 3:010		6-14-2019	806 KAR 003:240	296	
803 KAR 025:260	1385		As Amended	919	10-4-2019
803 KAR 025:270			806 KAR 005:060		
As Amended	33	7-11-2019	Amended	1366	
804 KAR 007:020			As Amended	2081	
As Amended	34	8-2-2019	806 KAR 007:021(r)	1388	
804 KAR 010:040	295		806 KAR 007:031(r)	1046	
As Amended	919	10-4-2019	806 KAR 009:020		
805 KAR 001:001	819		As Amended	1865	
Am Comments	1487		806 KAR 009:025	1047	
As Amended	2049		As Amended	1866	
805 KAR 001:020			806 KAR 009:030		
Amended	660		As Amended	1869	
Am Comments	1489		806 KAR 009:110		
As Amended	2050		Am Comments	978	
805 KAR 001:030			As Amended	1869	
Amended	663		806 KAR 009:190		
As Amended	2052		As Amended	1869	
805 KAR 001:050			806 KAR 009:200		
Amended	665		As Amended	1870	
Am Comments	1491		806 KAR 009:221(r)	1050	
As Amended	2053		As Amended	1870	
805 KAR 001:060			806 KAR 009:265		
Amended	667		Amended	1368	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
As Amended	2083		902 KAR 008:040		
806 KAR 009:310			Amended	1698	
As Amended	1871		902 KAR 008:060		
806 KAR 009:350			Amended	1701	
As Amended	1872		902 KAR 008:070		
806 KAR 010:061(r)	1052		Amended	1954	
806 KAR 013:040			902 KAR 008:080		
Amended	1634		Amended	1704	
806 KAR 013:071(r)	1756		902 KAR 008:090		
806 KAR 013:101(r)	1757		Amended	1956	
806 KAR 013:120			902 KAR 008:096		
Amended	262		Amended	1958	
806 KAR 014:061(r)	1053		902 KAR 008:100		
806 KAR 015:090			Amended	1709	
Amended	1635		902 KAR 008:110		
806 KAR 017:480			Amended	1711	
Amended	1952		902 KAR 008:120		
806 KAR 047:010			Amended	1963	
Am Comments	39		902 KAR 008:140		
As Amended	434	9-6-2019	Amended	1968	
807 KAR 005:056			902 KAR 009:010		
Am Comments	41		As Amended	439	8-19-2019
As Amended	435	8-20-2019	902 KAR 015:010		
808 KAR 001:170			Am Comments	478	9-9-2019
Amended	699		902 KAR 020:036		
As Amended	1126	11-1-2019	Am Comments	484	
808 KAR 009:050			As Amended	1132	
Amended	703	11-1-2019	902 KAR 020:280		
815 KAR 020:010			Amended	1370	
Amended	1637		902 KAR 020:370		
815 KAR 020:020			Amended	705	
Amended	1643		Am Comments	1523	
815 KAR 020:030			As Amended	1873	
Amended	1648		902 KAR 020:430		
815 KAR 020:050			Amended	709	
Amended	1651		Am Comment	1528	
815 KAR 020:055			902 KAR 020:450	1389	
Amended	1654		902 KAR 021:020		
815 KAR 020:060			Amended	719	11-1-2019
Amended	1657		902 KAR 045:065		
815 KAR 020:070			Am Comments	492	
Amended	1664		As Amended	921	
815 KAR 020:080			As Amended IJC	1138	9-9-2019
Amended	1667		902 KAR 045:070		
815 KAR 020:090			Am Comments	502	
Amended	1668		As Amended	929	
815 KAR 020:111(r)	1758		As Amended IJC	1146	9-9-2019
815 KAR 020:120			902 KAR 045:090		
Amended	1674		Amended	264	9-9-2019
815 KAR 020:130			902 KAR 050:002		
Amended	1682		Repealed	823	11-1-2019
815 KAR 020:150			902 KAR 050:003(r)	823	11-1-2019
Amended	1686		902 KAR 050:005		
815 KAR 020:170			Amended	721	11-1-2019
Amended	1689		902 KAR 055:070		
815 KAR 020:180			Amended	270	11-18-2019
Amended	1691		902 KAR 055:120	824	11-1-2019
815 KAR 020:195			902 KAR 055:130	1760	
Amended	1693		907 KAR 001:604		
831 KAR 001:010			Am Comments	512	
As Amended	436	9-6-2019	As Amended	937	
831 KAR 001:030			907 KAR 003:170		
As Amended	437	9-6-2019	Amended	273	
900 KAR 002:050			Am Comments	1267	
Amended	1695		As Amended	1423	12-6-2019
902 KAR 002:070			907 KAR 005:005		
Am Comments	476	9-9-2019	Amended	1713	
902 KAR 007:010			907 KAR 010:830		
Am Comments	979		Amended	723	
As Amended	1128	11-1-2019	As Amended	1154	11-1-2019

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
907 KAR 010:840	2006				
907 KAR 015:005					
Amended	733				
As Amended	1875				
907 KAR 015:010					
Amended	736				
Am Comments	1539				
As Amended	1878				
907 KAR 015:015					
Amended	748				
As Amended	1888				
907 KAR 015:020					
Amended	751				
Am Comments	1551				
As Amended	1889				
907 KAR 015:022					
Am Comments	1563				
As Amended	1890				
907 KAR 015:025					
Amended	762				
As Amended	1909				
908 KAR 001:370					
As Amended	441	8-19-2019			
908 KAR 001:372					
As Amended	459	8-19-2019			
908 KAR 001:374					
As Amended	464	8-19-2019			
910 KAR 002:020					
Am Comments	516	9-9-2019			
910 KAR 002:040					
Am Comments	984				
As Amended	1162	11-1-2019			
911 KAR 001:010					
As Amended	906	8-19-2019			
920 KAR 001:070					
Amended	1970				
921 KAR 001:380					
As Amended	472	8-19-2019			
921 KAR 003:050					
Amended	1973				
922 KAR 001:310					
Am Comments	521	9-9-2019			
922 KAR 001:320					
Amended	766				
Am Comments	1573				
922 KAR 001:330					
Amended	1038				
Am Comments	2093				
922 KAR 001:350					
Am Comments	535	9-9-2019			
922 KAR 001:470					
Am Comments	995	11-1-2019			
922 KAR 001:495					
Am Comments	545				
As Amended	944				
As Amended IJC	1170	9-9-2019			
922 KAR 001:510					
As Amended	475	8-19-2019			

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.

KRS INDEX

KRS SECTION	REGULATION	KRS SECTION	REGULATION
2.013	201 KAR 011:210	61.590	105 KAR 001:200
2.015	902 KAR 020:370		105 KAR 001:390
	922 KAR 001:320	61.595	105 KAR 001:200
	922 KAR 001:565	61.623	105 KAR 001:200
2.110	920 KAR 001:070	61.637	105 KAR 001:200
13A	202 KAR 007:020		105 KAR 001:390
13A.310	016 KAR 006:031	61.645	105 KAR 001:445
	016 KAR 009:071	61.673	101 KAR 002:102
13B	103 KAR 008:170	61.680	105 KAR 001:200
	902 KAR 008:110	61.705	105 KAR 001:200
	922 KAR 001:320	61.805 – 61.850	702 KAR 007:065
	922 KAR 002:090	61.870 - 61.884	405 KAR 008:010
	922 KAR 002:100	61.872	902 KAR 008:070
13B.005-13B.170	013 KAR 001:020	64.810	045 KAR 001:050
13B.050	902 KAR 055:130	65A	739 KAR 002:140
13B.080	902 KAR 055:130	65.7621	202 KAR 006:070
13B.090	902 KAR 055:130		202 KAR 006:080
13B.110	902 KAR 055:130		202 KAR 006:090
13B.120	902 KAR 055:130	65.7621 – 65.7643	202 KAR 006:010
13B.140	907 KAR 010:830		202 KAR 006:020
15A.065	505 KAR 001:160		202 KAR 006:030
15A.067	505 KAR 001:160		202 KAR 006:050
16.576	105 KAR 001:200		202 KAR 006:060
16.577	105 KAR 001:200		202 KAR 006:100
16.645	105 KAR 001:200	65.7627	202 KAR 006:070
17.500	902 KAR 020:430		202 KAR 006:080
	902 KAR 020:450		202 KAR 006:090
18A.020	101 KAR 002:102	65.7629	202 KAR 006:070
	101 KAR 003:015		202 KAR 006:080
18A.030	101 KAR 002:102		202 KAR 006:090
	101 KAR 002:210	65.7631	202 KAR 006:070
	101 KAR 002:230		202 KAR 006:080
	101 KAR 003:015		202 KAR 006:090
18A.095	101 KAR 002:102	65.7635	202 KAR 006:080
	103 KAR 001:120		202 KAR 006:090
18A.110	101 KAR 002:102	65.7636	202 KAR 006:080
	101 KAR 002:230	65.7639	202 KAR 006:080
	101 KAR 003:015		202 KAR 006:090
18A.140	101 KAR 002:102	65.7643	202 KAR 006:070
	101 KAR 003:015		202 KAR 006:080
18A.145	101 KAR 002:102		202 KAR 006:090
	101 KAR 003:015	66.480	702 KAR 003:130
18A.195	101 KAR 002:102	68.210	045 KAR 001:050
	101 KAR 003:015	75.430	739 KAR 002:140
18A.202	101 KAR 002:120	78.510	105 KAR 001:390
18A.205	105 KAR 001:149	78.545	105 KAR 001:200
18A.225	101 KAR 002:210	78.5302	105 KAR 001:250
	105 KAR 001:149	91A.350	300 KAR 001:010
18A.990	101 KAR 002:102	91A.400	103 KAR 027:220
	101 KAR 003:015	95A	739 KAR 002:140
18A.2254	101 KAR 002:210	95A.292	739 KAR 002:140
23A.010	922 KAR 001:320	118.035	101 KAR 002:102
43.010	601 KAR 009:130		101 KAR 003:015
43.070	045 KAR 001:050	121.015	032 KAR 001:061
43.075	045 KAR 001:050	121.180	032 KAR 001:061
45.149	601 KAR 009:130	131.010	103 KAR 001:010
45.229	907 KAR 010:840	131.030	103 KAR 001:010
45.237 - 45.241	922 KAR 001:565	131.032	103 KAR 001:120
45A	601 KAR 002:030E	131.081	103 KAR 001:010
	702 KAR 003:130		103 KAR 001:120
45A.045	200 KAR 006:015	131.110	103 KAR 001:010
49.220	103 KAR 001:010		103 KAR 026:110
49.250	103 KAR 001:010	131.130	103 KAR 001:120
61.373	101 KAR 003:015		103 KAR 002:030
61.394	101 KAR 002:102	131.155	103 KAR 001:060
	101 KAR 003:015		103 KAR 018:150
61.410	702 KAR 003:130	131.180	103 KAR 001:010
61.505	105 KAR 001:390		103 KAR 031:020
61.510	105 KAR 001:390	131.190	103 KAR 001:120
61.510-61.705	105 KAR 001:149	131.990	103 KAR 001:120

KRS SECTION	REGULATION	KRS SECTION	REGULATION
132.010	815 KAR 020:010		103 KAR 031:080
132.020	103 KAR 008:160		103 KAR 031:090
	103 KAR 008:130	139.210	103 KAR 031:111
	103 KAR 008:141		103 KAR 026:070
	103 KAR 008:170		103 KAR 027:220
132.200	103 KAR 008:130	139.240	103 KAR 026:070
	103 KAR 008:141		103 KAR 027:180
	103 KAR 008:160		103 KAR 031:030
	103 KAR 008:170	139.250	103 KAR 031:030
132.285	103 KAR 007:031	139.260	103 KAR 026:070
132.370	103 KAR 005:151		103 KAR 026:090
	103 KAR 005:160		103 KAR 026:110
132.530	103 KAR 007:031		103 KAR 026:120
136.181	103 KAR 008:011		103 KAR 027:120
136.182	103 KAR 008:011		103 KAR 027:180
138.130	103 KAR 041:040		103 KAR 027:220
138.135	103 KAR 041:031		103 KAR 028:010
	103 KAR 041:110		103 KAR 030:261
	103 KAR 041:220		103 KAR 030:270
138.140	103 KAR 041:110		103 KAR 031:030
138.143	103 KAR 041:031		103 KAR 031:111
	103 KAR 041:220	139.270	103 KAR 026:070
138.146	103 KAR 041:031		103 KAR 026:110
	103 KAR 041:100		103 KAR 026:120
	103 KAR 041:220		103 KAR 027:220
138.155	103 KAR 041:110		103 KAR 030:261
138.195	103 KAR 041:031		103 KAR 030:270
	103 KAR 041:040		103 KAR 031:020
	103 KAR 041:220		103 KAR 031:111
138.210	103 KAR 043:010	139.280	103 KAR 026:120
138.220	103 KAR 043:010		103 KAR 030:270
138.250	103 KAR 043:051		103 KAR 031:111
138.344	103 KAR 043:101	139.290	103 KAR 026:090
138.450	103 KAR 027:100		103 KAR 027:220
138.460	103 KAR 027:100		103 KAR 030:270
139.010	103 KAR 025:050		103 KAR 031:090
	103 KAR 025:060		103 KAR 031:111
	103 KAR 026:010	139.300	103 KAR 031:111
	103 KAR 026:030	139.310	103 KAR 026:070
	103 KAR 026:080		103 KAR 026:110
	103 KAR 026:090		103 KAR 026:120
	103 KAR 026:110		103 KAR 027:220
	103 KAR 026:120		103 KAR 030:261
	103 KAR 027:020		103 KAR 030:270
	103 KAR 027:080		103 KAR 031:090
	103 KAR 027:100	139.330	103 KAR 026:110
	103 KAR 027:120		103 KAR 026:120
	103 KAR 027:140		103 KAR 027:220
	103 KAR 027:180		103 KAR 030:261
	103 KAR 027:220		103 KAR 030:270
	103 KAR 028:010	139.340	103 KAR 025:050
	103 KAR 028:090		103 KAR 026:070
	103 KAR 030:170	139.430	103 KAR 031:111
	103 KAR 030:270	139.440	103 KAR 031:111
	103 KAR 031:020	139.470	103 KAR 026:050
	103 KAR 031:030		103 KAR 027:100
	103 KAR 031:080		103 KAR 027:180
	103 KAR 031:090		103 KAR 028:010
	103 KAR 031:111		103 KAR 030:170
	103 KAR 031:200		103 KAR 030:270
139.200	103 KAR 025:050	139.480	103 KAR 026:050
	103 KAR 025:060		103 KAR 026:090
	103 KAR 026:010		103 KAR 026:110
	103 KAR 026:090		103 KAR 027:220
	103 KAR 026:110		103 KAR 028:010
	103 KAR 026:120		103 KAR 030:261
	103 KAR 027:020		103 KAR 030:270
	103 KAR 027:080	139.482	103 KAR 028:010
	103 KAR 027:100	139.485	103 KAR 027:180
	103 KAR 027:220		103 KAR 027:220
	103 KAR 028:010	139.495	103 KAR 028:010
	103 KAR 030:261	139.518	103 KAR 031:200
	103 KAR 030:270	139.540	103 KAR 026:110
	103 KAR 031:020		103 KAR 030:261

KRS SECTION	REGULATION	KRS SECTION	REGULATION
139.550	103 KAR 031:030	150.015	301 KAR 002:185
	103 KAR 025:060	150.025	301 KAR 002:090
	103 KAR 026:110	150.092	301 KAR 002:049
	103 KAR 030:261		301 KAR 002:300
139.590	103 KAR 031:030	150.170	301 KAR 001:152
	103 KAR 025:131		301 KAR 001:201
	103 KAR 026:110		301 KAR 001:410
139.620	103 KAR 031:030		301 KAR 002:049
139.660	103 KAR 031:020		301 KAR 002:251
	103 KAR 025:060		301 KAR 002:300
	103 KAR 031:030		301 KAR 003:100
139.710	103 KAR 026:070	150.175	301 KAR 001:152
	103 KAR 031:030		301 KAR 001:201
139.720	103 KAR 026:110		301 KAR 001:410
	103 KAR 027:180		301 KAR 002:300
	103 KAR 031:020		301 KAR 003:100
	103 KAR 031:030		301 KAR 004:090
139.730	103 KAR 031:200	150.180	301 KAR 002:195
139.760	103 KAR 026:070		301 KAR 002:251
139.980	103 KAR 031:111	150.183	301 KAR 004:090
139.990	103 KAR 025:131		301 KAR 002:195
	103 KAR 025:131		301 KAR 004:090
140.100	103 KAR 031:111	150.235	301 KAR 001:410
141.011	103 KAR 002:005	150.290	301 KAR 002:195
141.120	103 KAR 016:250	150.305	301 KAR 002:090
141.121	103 KAR 016:400		301 KAR 002:195
141.200	103 KAR 016:400		301 KAR 004:090
	103 KAR 016:200	150.320	301 KAR 002:195
	103 KAR 016:250	150.330	301 KAR 002:090
141.201	103 KAR 016:250		301 KAR 002:195
141.202	103 KAR 016:250		301 KAR 004:090
	103 KAR 016:400	150.340	301 KAR 001:201
141.330	103 KAR 018:150	150.360	301 KAR 002:090
142.303	907 KAR 010:830		301 KAR 002:195
	907 KAR 010:840	150.370	301 KAR 002:049
142.406	300 KAR 001:010		301 KAR 002:251
146/080 – 146.115	416 KAR 001:010		301 KAR 004:090
146.200 – 146.360	401 KAR 010:001	150.399	301 KAR 002:049
	401 KAR 010:026		301 KAR 002:251
	401 KAR 010:029	150.411	301 KAR 004:090
	401 KAR 010:030	150.415	301 KAR 002:251
	401 KAR 010:031	150.416	301 KAR 002:251
	405 KAR 008:010	150.445	301 KAR 001:152
146.410 – 146.535	401 KAR 010:001		301 KAR 001:410
	401 KAR 010:026	150.450	301 KAR 001:152
	401 KAR 010:029	150.470	301 KAR 001:185
	401 KAR 010:030	150.620	301 KAR 001:201
	401 KAR 010:031		301 KAR 001:410
146.550 – 146.570	401 KAR 010:001	150.722	301 KAR 004:090
	401 KAR 010:026	150.990	301 KAR 001:152
	401 KAR 010:029		301 KAR 001:185
	401 KAR 010:030		301 KAR 001:201
	401 KAR 010:031		301 KAR 001:410
146.600 – 146.619	401 KAR 010:001		301 KAR 002:049
	401 KAR 010:026		301 KAR 002:185
	401 KAR 010:029		301 KAR 002:251
	401 KAR 010:030		301 KAR 002:300
	401 KAR 010:031		301 KAR 004:090
146.990	401 KAR 010:001	150.995	301 KAR 002:049
	401 KAR 010:026		301 KAR 002:251
	401 KAR 010:029	151	401 KAR 005:091
	401 KAR 010:030	151.100	405 KAR 016:100
	401 KAR 010:031		405 KAR 018:100
148.522	300 KAR 001:010	151.125	405 KAR 007:050
148.525	300 KAR 001:010	151.250	405 KAR 016:100
150.010	301 KAR 001:152		405 KAR 018:100
	301 KAR 001:201	151.297	405 KAR 007:050
	301 KAR 001:410	156.029	702 KAR 003:130
	301 KAR 002:049		704 KAR 007:090
	301 KAR 002:090	156.035	704 KAR 007:090
	301 KAR 002:185	156.070	702 KAR 007:065
	301 KAR 002:195		704 KAR 003:303
	301 KAR 002:300		704 KAR 008:080
	301 KAR 004:090	156.076	702 KAR 003:130

KRS SECTION	REGULATION	KRS SECTION	REGULATION
156.160	702 KAR 003:130	161.675	102 KAR 001:100
	702 KAR 005:080	161.677	102 KAR 001:032
	704 KAR 003:303	161.700	102 KAR 001:032
	704 KAR 007:090	161.705	102 KAR 001:135
	704 KAR 008:080	161.740	704 KAR 003:370
156.200	702 KAR 003:130	161.770	701 KAR 005:090
156.290	702 KAR 003:130	161.790	701 KAR 005:090
156.496	922 KAR 001:565	161.5465	102 KAR 001:036
156.557	704 KAR 003:370	163.500	920 KAR 001:070
156.800	704 KAR 003:370	163.506	920 KAR 001:070
156.802	780 KAR 002:040	164.020	013 KAR 001:020
	780 KAR 002:060	164.020(23)	013 KAR 004:010
157	922 KAR 002:090	164.945	013 KAR 001:020
157.320	702 KAR 007:125	164.946	013 KAR 001:020
157.350	702 KAR 007:125		013 KAR 004:010
157.360	702 KAR 007:125	164.947	013 KAR 001:020
158.030	702 KAR 007:125		013 KAR 004:010
	922 KAR 002:090	164.992	013 KAR 001:020
	922 KAR 002:100		013 KAR 004:010
158.031	703 KAR 005:140	165A.320	013 KAR 001:020
158.070	702 KAR 007:125		013 KAR 004:010
158.100	702 KAR 007:125	165A.450	013 KAR 004:010
158.150	780 KAR 002:060	176.050	603 KAR 005:150
158.240	702 KAR 007:125	176.430	401 KAR 010:030
158.1411	704 KAR 008:080	177.047	603 KAR 005:150
158.1413	704 KAR 008:080	177.103	603 KAR 005:150
158.444	780 KAR 002:060	177.106	603 KAR 005:150
158.645	703 KAR 005:270	186.010	601 KAR 002:030E
	704 KAR 008:080		601 KAR 009:130
158.6451	703 KAR 005:240	186.018	922 KAR 002:100
	703 KAR 005:270	186.020	922 KAR 002:100
	704 KAR 003:303	186.050	601 KAR 009:130
	704 KAR 008:080	186.053	601 KAR 009:130
158.6453	703 KAR 005:140	186.162	601 KAR 009:130
	703 KAR 005:240	186.172	601 KAR 009:130
	703 KAR 005:270	186.174	601 KAR 009:130
	703 KAR 005:280	186.411	601 KAR 013:090
	704 KAR 003:303		601 KAR 013:100
	704 KAR 008:080	186.440	601 KAR 002:030E
158.6455	703 KAR 005:240		601 KAR 013:100
	703 KAR 005:270	186.442	601 KAR 002:030E
	703 KAR 005:280	186.444	601 KAR 013:090
158.782	703 KAR 005:280		601 KAR 013:100
159.010	702 KAR 007:125	186.480	601 KAR 002:030E
159.030	702 KAR 007:125	186.531	601 KAR 002:030E
159.035	702 KAR 007:125	186.560	601 KAR 002:030E
159.140	702 KAR 007:125	186.570	601 KAR 002:030E
	922 KAR 001:330		601 KAR 013:090
159.170	702 KAR 007:125		601 KAR 013:100
160	702 KAR 003:130	186A.060	601 KAR 009:130
160.290	704 KAR 003:303	186A.070	601 KAR 009:130
	704 KAR 008:080	186A.120	601 KAR 009:130
160.346	703 KAR 005:280	189.010	103 KAR 027:100
160.380	702 KAR 007:065	189.125	922 KAR 002:100
160.445	702 KAR 007:065	189A.005	601 KAR 002:030E
161.011	702 KAR 005:080	189A.010	601 KAR 002:030E
161.028	016 KAR 009:060	189A.040	601 KAR 002:030E
161.030	016 KAR 009:060	189A.070	601 KAR 002:030E
161.048	016 KAR 009:060	189A.085	601 KAR 002:030E
161.049	016 KAR 009:060	189A.090	601 KAR 002:030E
161.200	702 KAR 007:125	189A.103	601 KAR 002:030E
161.220	102 KAR 001:036	189A.105	601 KAR 002:030E
	102 KAR 001:037	189A.107	601 KAR 002:030E
161.420	102 KAR 001:032	189A.200	601 KAR 002:030E
161.440	102 KAR 001:135	189A.240	601 KAR 002:030E
161.500	102 KAR 001:035	189A.250	601 KAR 002:030E
161.540	102 KAR 001:032	189A.340	601 KAR 002:030E
	702 KAR 003:130	189A.345	601 KAR 002:030E
161.545	102 KAR 001:036	189A.400	601 KAR 002:030E
161.560	102 KAR 001:125	189A.410	601 KAR 002:030E
	702 KAR 003:130	189A.420	601 KAR 002:030E
161.580	102 KAR 001:135	189A.440	601 KAR 002:030E
161.605	102 KAR 001:032	189A.500	601 KAR 002:030E
	102 KAR 001:035	189.540	702 KAR 005:080

KRS SECTION	REGULATION	KRS SECTION	REGULATION
194A.005	920 KAR 001:070		907 KAR 010:840
	922 KAR 001:320	205.638	907 KAR 010:830
	922 KAR 001:330		907 KAR 010:840
	922 KAR 001:565	205.639	907 KAR 010:830
194A.025	907 KAR 015:005		907 KAR 010:840
194A.030	920 KAR 001:070	205.640	907 KAR 010:830
	922 KAR 001:320		907 KAR 010:840
194A.050	902 KAR 008:110	205.641	907 KAR 010:830
	902 KAR 045:065	205.6405	907 KAR 010:840
	902 KAR 045:070	205.6406	907 KAR 010:840
	922 KAR 001:330	205.6407	907 KAR 010:840
	922 KAR 001:565	205.6408	907 KAR 010:840
	922 KAR 002:100	205.712	601 KAR 002:030E
194A.060	907 KAR 003:170	205.8451	907 KAR 015:005
	920 KAR 001:070	209.020	922 KAR 001:320
	922 KAR 001:560	209A.020	922 KAR 001:320
194A.125	907 KAR 003:170	210.005	902 KAR 020:430
196	501 KAR 006:060	211.005	902 KAR 045:065
	501 KAR 006:110		902 KAR 045:070
	501 KAR 006:140	211.015	902 KAR 008:040
196.700 – 196.705	500 KAR 010:050		902 KAR 045:065
196.700 – 196.736	500 KAR 010:001		902 KAR 045:070
	500 KAR 010:020	211.025	902 KAR 045:065
	500 KAR 010:030		902 KAR 045:070
	500 KAR 010:040	211.090	902 KAR 008:096
197	501 KAR 006:060		902 KAR 008:100
	501 KAR 006:110	211.170	902 KAR 008:040
	501 KAR 006:140		902 KAR 008:060
197.105	500 KAR 010:050		902 KAR 008:070
198B.050	815 KAR 020:195		902 KAR 008:080
198B.260	902 KAR 020:280		902 KAR 008:090
	902 KAR 020:430		902 KAR 008:096
199.011	922 KAR 001:320		902 KAR 008:100
	922 KAR 001:560		902 KAR 008:110
	922 KAR 001:565		902 KAR 008:120
	922 KAR 002:090		902 KAR 008:140
	922 KAR 002:100	211.684	922 KAR 001:330
199.462	922 KAR 001:565	211.760	902 KAR 045:065
199.470 - 199.590	922 KAR 001:565	211.892	805 KAR 001:060
199.480	922 KAR 001:560	211.893	805 KAR 001:060
199.505	922 KAR 001:560	211.1751	902 KAR 008:040
199.555	101 KAR 002:120		902 KAR 008:060
	922 KAR 001:320		902 KAR 008:070
199.557	922 KAR 001:320		902 KAR 008:090
199.892	922 KAR 002:090		902 KAR 008:096
199.894	922 KAR 002:090		902 KAR 008:100
	922 KAR 002:100	211.1752	902 KAR 008:060
199.895	922 KAR 002:090	211.1755	902 KAR 008:060
	922 KAR 002:100		902 KAR 008:090
199.8951	922 KAR 002:100		902 KAR 008:110
199.896 - 199.898	922 KAR 002:090	212.040	902 KAR 008:080
	922 KAR 002:100	212.170	902 KAR 008:040
199.8982	922 KAR 002:100		902 KAR 008:060
199.990	922 KAR 001:560		902 KAR 008:070
200.080-120	505 KAR 001:160		902 KAR 008:090
200.503	902 KAR 020:430		902 KAR 008:096
202A.011	922 KAR 001:330		902 KAR 008:100
205.211	922 KAR 001:565		902 KAR 008:110
205.510	902 KAR 020:430		902 KAR 008:120
	907 KAR 003:170		902 KAR 008:140
	907 KAR 010:830	231.230	902 KAR 008:140
	907 KAR 015:005	212.850	902 KAR 008:080
205.520	902 KAR 021:020	212.870	902 KAR 008:040
	907 KAR 015:010		902 KAR 008:060
	907 KAR 015:015		902 KAR 008:070
	907 KAR 015:020		902 KAR 008:080
	907 KAR 015:022		902 KAR 008:090
	907 KAR 015:025		902 KAR 008:096
205.559	907 KAR 003:170		902 KAR 008:100
205.560	806 KAR 017:480		902 KAR 008:110
	907 KAR 003:170		902 KAR 008:120
205.565	907 KAR 010:830		902 KAR 008:140
	907 KAR 010:840	214.010	922 KAR 002:090
205.637	907 KAR 010:830		922 KAR 002:100

KRS SECTION	REGULATION	KRS SECTION	REGULATION
214.036	922 KAR 001:330		401 KAR 010:030
	922 KAR 002:090		401 KAR 010:031
	922 KAR 002:100	224.16-070	401 KAR 010:001
214.540	902 KAR 021:020		401 KAR 010:026
214.542	902 KAR 021:020		401 KAR 010:029
214.543	902 KAR 021:020		401 KAR 010:030
216.380	907 KAR 010:830		401 KAR 010:031
	907 KAR 010:840	224.20	401 KAR 063:010
216.510	900 KAR 002:050	224.10-100	401 KAR 063:010
216.525	900 KAR 002:050	224.20-100	401 KAR 051:010
216.555	900 KAR 002:050		401 KAR 052:100
216.557	900 KAR 002:050		401 KAR 058:005
216.560	900 KAR 002:050	224.20-110	401 KAR 051:010
216.875	902 KAR 020:280		401 KAR 052:100
216.880	902 KAR 020:280		401 KAR 058:005
216.885	902 KAR 020:280	224.20-120	401 KAR 051:010
216B.015	900 KAR 002:050		401 KAR 052:100
216B.020	902 KAR 020:370		401 KAR 058:005
216B.042	902 KAR 020:450	224.20-300	401 KAR 058:005
216B.050	902 KAR 020:430	224.20-310	401 KAR 058:005
216B.105	902 KAR 020:430	224.20-320	401 KAR 058:005
216B.155	806 KAR 017:480	224.43-010 – 224.43-815	401 KAR 006:350
217.005 – 217.215	902 KAR 045:090	224.46-012 – 224.46-870	401 KAR 006:350
217.290	902 KAR 045:090	224.60-100 – 224.60-160	401 KAR 006:350
217.992	902 KAR 045:090	224.70-100 – 224.70-140	401 KAR 010:001
217B	302 KAR 031:040		401 KAR 010:026
217B.555	902 KAR 045:090		401 KAR 010:029
217B.990	902 KAR 045:090		401 KAR 010:030
217C.010	902 KAR 050:005		401 KAR 010:031
217C.070	902 KAR 050:003	224.71-100 – 224.71-145	401 KAR 010:001
218A.182	902 KAR 055:130		401 KAR 010:026
218A.205	201 KAR 002:020		401 KAR 010:029
	201 KAR 008:540		401 KAR 010:030
223.170	401 KAR 006:211		401 KAR 010:031
223.180	401 KAR 006:211	224.73-100 – 224.30-120	401 KAR 010:001
223.190	401 KAR 006:211		401 KAR 010:026
223.210	401 KAR 006:211		401 KAR 010:029
223.400	401 KAR 006:001		401 KAR 010:030
223.400-223.460	401 KAR 006:001		401 KAR 010:031
	401 KAR 006:310	224.73-100 – 224.30-120	416 KAR 001:010
	401 KAR 006:320	224.99-010	401 KAR 058:005
	401 KAR 006:350	227.550	103 KAR 027:100
223.991	401 KAR 006:001	237.109	902 KAR 008:100
	401 KAR 006:310	237.115	902 KAR 008:100
	401 KAR 006:320	241.067	804 KAR 010:040
	401 KAR 006:350	241.069	804 KAR 010:040
224	401 KAR 005:091	241.021	804 KAR 010:040
224.071	405 KAR 007:050	243.020	103 KAR 040:050
224.01-300	103 KAR 030:261	243.200	103 KAR 040:050
224.1-310	103 KAR 030:261	243.720	103 KAR 040:091
224.1-010	103 KAR 008:160	243.850	103 KAR 040:050
	401 KAR 010:001	244.150	103 KAR 040:010
	401 KAR 010:026	246.250	302 KAR 015:020
	401 KAR 010:029		302 KAR 015:030
	401 KAR 010:030	247	302 KAR 034:011
	401 KAR 010:031		302 KAR 035:011
224.1-300	103 KAR 008:170		302 KAR 036:011
224.1-310	103 KAR 008:170	247.220	302 KAR 015:010
224.1-400	401 KAR 010:001	257	302 KAR 020:011
	401 KAR 010:026		302 KAR 020:012
	401 KAR 010:029	257.020	302 KAR 021:011
	401 KAR 010:030		302 KAR 022:010
	401 KAR 010:031		302 KAR 022:020
224.1-405	401 KAR 006:350		302 KAR 022:030
224.10-010	401 KAR 006:320		302 KAR 022:070
224.10-100	401 KAR 006:320		302 KAR 022:080
	401 KAR 058:005		302 KAR 022:150
	401 KAR 052:100	257.030	302 KAR 021:011
224.10-110	401 KAR 006:211		302 KAR 022:010
224.10-410	400 KAR 001:110		302 KAR 022:030
224.10-410 – 224.10-470	401 KAR 006:320		302 KAR 022:040
224.16-050	401 KAR 010:001		302 KAR 022:150
	401 KAR 010:026	257.080	302 KAR 021:011
	401 KAR 010:029		302 KAR 022:030

KRS SECTION REGULATION

257.160 302 KAR 022:150
260.010 302 KAR 022:040
260.850 – 260.869 302 KAR 037:010
2624.010 – 262.660 302 KAR 050:050
273.161 – 273.405 416 KAR 001:010
278 300 KAR 001:010
278.548 807 KAR 005:056
286.4 920 KAR 001:070
286.8-010 808 KAR 001:170
286.8-020 808 KAR 001:170
286.8-030 808 KAR 001:170
286.8-032 808 KAR 001:170
286.8-034 808 KAR 001:170
286.8-036 808 KAR 001:170
286.8-060 808 KAR 001:170
286.8-070 808 KAR 001:170
286.8-080 808 KAR 001:170
286.8-090 808 KAR 001:170
286.8-255 808 KAR 001:170
286.8-260 808 KAR 001:170
286.8-290 808 KAR 001:170
286.9-010 808 KAR 001:170
286.9-020 808 KAR 009:050
286.9-030 808 KAR 001:170
286.9-040 808 KAR 009:050
286.9-050 808 KAR 001:170
286.9-060 808 KAR 009:050
286.9-070 808 KAR 001:170
286.9-071 808 KAR 009:050
286.9-073 808 KAR 001:170
286.9-080 808 KAR 009:050
286.9-104 808 KAR 009:050
304.1-040 806 KAR 010:061
304.17A-005 806 KAR 017:480
304.17A-500 806 KAR 017:480
304.17A-545 806 KAR 017:480
304.17A-575 806 KAR 017:480
304.17A-576 806 KAR 017:480
304.2-110 806 KAR 010:061
304.2-140 806 KAR 047:010
304.4-010 806 KAR 009:025
304.5-070 806 KAR 009:221
304.7-010 - 304.7-350 806 KAR 009:265
304.7-361 806 KAR 005:060
304.9-030 806 KAR 007:021
304.9-105 806 KAR 007:031
304.9-130 806 KAR 009:221
304.9-150 806 KAR 009:025
304.9-160 806 KAR 009:221
304.9-190 806 KAR 009:025
304.9-230 806 KAR 009:221
304.9-270 806 KAR 009:025
304.9-295 806 KAR 009:025
304.9-320 806 KAR 009:221
304.9-430 806 KAR 009:025
304.9-505 806 KAR 009:221
806 KAR 009:265

KRS SECTION

304.10-030
304.10-040
304.10-140
304.12-090 - 304.12-110
304.13-051 - 304.13-065
304.13-057
304.13-121
304.13-151
304.13-167
304.13-400 – 304.13-420
304.14-010
304.14-120
304.14-642
304.15-075
304.15-700
304.20-400 - 304.20-450
304.17A-257
304.47-010
304.47-020
304.47-040
304.47-050
304.47-080
304.99-020
309.080
309.130
309.300 - 309.319
311.571
311.646
311.840
311.860
311A.015
311A.020
311A.145
313.035
313.060
313.085
314.011
314.041
314.042
314.051
314.404-314.416
314A.110
314A.112
314A.215
314A.220
315.050
316
316.010
316.030
316.125
316.127
316.130
316.132
316.140
316.150

REGULATION

806 KAR 010:061
806 KAR 010:061
806 KAR 010:061
806 KAR 013:101
806 KAR 013:101
806 KAR 013:120
806 KAR 013:040
806 KAR 013:071
806 KAR 013:120
806 KAR 013:120
806 KAR 013:101
806 KAR 014:061
806 KAR 015:090
806 KAR 009:221
806 KAR 015:090
806 KAR 009:221
806 KAR 013:101
902 KAR 021:020
806 KAR 047:010
806 KAR 047:010
806 KAR 047:010
806 KAR 047:010
806 KAR 047:010
806 KAR 003:230
907 KAR 015:005
902 KAR 020:430
907 KAR 015:005
920 KAR 001:070
902 KAR 020:280
922 KAR 002:100
907 KAR 015:005
902 KAR 020:430
202 KAR 007:020
202 KAR 007:020
202 KAR 007:020
201 KAR 008:550
201 KAR 008:540
201 KAR 008:540
907 KAR 015:005
922 KAR 002:090
922 KAR 002:100
902 KAR 020:280
902 KAR 020:370
902 KAR 020:430
902 KAR 020:370
201 KAR 020:600
201 KAR 020:610
201 KAR 020:620
201 KAR 020:630
201 KAR 020:640
201 KAR 020:650
201 KAR 020:660
201 KAR 020:670
201 KAR 020:680
201 KAR 020:690
201 KAR 029:015
201 KAR 029:015
201 KAR 029:015
201 KAR 029:015
201 KAR 002:020
201 KAR 015:010
201 KAR 015:110
201 KAR 015:040
201 KAR 015:050
201 KAR 015:110
201 KAR 015:030
201 KAR 015:110
201 KAR 015:110
201 KAR 015:030
201 KAR 015:030
201 KAR 015:120
201 KAR 015:080

KRS SECTION	REGULATION	KRS SECTION	REGULATION
316.165	201 KAR 015:125	321.207	201 KAR 016:514
316.170	201 KAR 015:015		201 KAR 016:550
316.210	201 KAR 015:015		201 KAR 016:560
316.260	201 KAR 015:110		201 KAR 016:572
317A.020	201 KAR 012:030		201 KAR 016:580
317A.050	201 KAR 012:030	321.211	201 KAR 016:510
317A.060	201 KAR 012:030		201 KAR 016:570
318	815 KAR 020:010		201 KAR 016:580
	815 KAR 020:080		201 KAR 016:590
	815 KAR 020:111	321.221	201 KAR 016:540
318.010	815 KAR 020:020		201 KAR 016:590
	815 KAR 020:030	321.235	201 KAR 016:590
	815 KAR 020:070		201 KAR 016:610
	815 KAR 020:130		201 KAR 016:700
	815 KAR 020:180	321.240	201 KAR 016:510
	815 KAR 020:195		201 KAR 016:512
318.015	815 KAR 020:020		201 KAR 016:516
	815 KAR 020:070	321.351	201 KAR 016:500
	815 KAR 020:090		201 KAR 016:610
	815 KAR 020:130		201 KAR 016:700
318.020	815 KAR 020:030	321.353	201 KAR 016:610
318.030	815 KAR 020:030	321.360	201 KAR 016:610
	815 KAR 020:050		201 KAR 016:700
318.040	815 KAR 020:030	321.441	201 KAR 016:512
318.050	815 KAR 020:030		201 KAR 016:520
318.054	815 KAR 020:030		201 KAR 016:530
318.060	815 KAR 020:030		201 KAR 016:540
318.080	815 KAR 020:030		201 KAR 016:570
318.090	815 KAR 020:150		201 KAR 016:580
318.130	815 KAR 020:020		201 KAR 016:590
	815 KAR 020:060	322	401 KAR 006:320
	815 KAR 020:090	322.010	405 KAR 008:010
	815 KAR 020:120	322.340	405 KAR 008:010
	815 KAR 020:130	322A	401 KAR 006:320
	815 KAR 020:150	323A.040	201 KAR 010:050
	815 KAR 020:170	323A.050	201 KAR 010:050
	815 KAR 020:180	323A.060	201 KAR 010:050
318.134	815 KAR 020:050	323A.070	201 KAR 010:050
	815 KAR 020:150	323A.100	201 KAR 010:050
	815 KAR 020:195		201 KAR 010:080
318.140	815 KAR 020:150	323A.210	201 KAR 010:080
318.150	815 KAR 020:020	324.010	201 KAR 011:011
	815 KAR 020:060		201 KAR 011:121
	815 KAR 020:070		201 KAR 011:170
	815 KAR 020:090		201 KAR 011:210
	815 KAR 020:120		201 KAR 011:220
	815 KAR 020:130	324.020	201 KAR 011:210
	815 KAR 020:170		201 KAR 011:220
318.160	815 KAR 020:050	324.040	201 KAR 011:210
	815 KAR 020:150	324.045	201 KAR 011:190
318.165	815 KAR 020:120		201 KAR 011:210
318.170	815 KAR 020:150	324.046	201 KAR 011:011
318.200	815 KAR 020:020		201 KAR 011:170
	815 KAR 020:055		201 KAR 011:190
	815 KAR 020:070		201 KAR 011:210
	815 KAR 020:130	324.085	201 KAR 011:170
319	907 KAR 015:010		201 KAR 011:210
319.050	902 KAR 020:430	324.090	201 KAR 011:170
319.053	907 KAR 015:005		201 KAR 011:210
319.056	902 KAR 020:430	324.111	201 KAR 011:011
	907 KAR 015:005		201 KAR 011:121
319.064	902 KAR 020:430	324.121	201 KAR 011:121
	907 KAR 015:005	324.117	201 KAR 011:011
319A.010	902 KAR 020:280		201 KAR 011:105
319C.010	902 KAR 020:430	324.141	201 KAR 011:210
	907 KAR 015:005	324.150	201 KAR 011:190
321	201 KAR 016:012	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

KRS SECTION	REGULATION	KRS SECTION	REGULATION
324.200	201 KAR 011:190	344.030	101 KAR 002:102
324.281	201 KAR 011:121		101 KAR 003:015
	201 KAR 011:170	344.500	920 KAR 001:070
	201 KAR 011:190	349.015	805 KAR 001:030
	201 KAR 011:210		805 KAR 001:140
324.282	201 KAR 011:002		805 KAR 001:170
	201 KAR 011:105		805 KAR 009:011
324.287	201 KAR 011:210	349.035	805 KAR 001:140
324.310	201 KAR 011:121		805 KAR 009:011
	201 KAR 011:210	349.040	805 KAR 001:140
324.330	201 KAR 011:210		805 KAR 009:011
324.360	201 KAR 011:121	349.075	805 KAR 001:140
324.395	201 KAR 011:220		805 KAR 009:011
324.410	201 KAR 011:011	349.335	805 KAR 001:080
324.420	201 KAR 011:011	349.045	805 KAR 001:020
324.990	201 KAR 011:210	349.105	805 KAR 001:170
324A	201 KAR 030:010	349.110	805 KAR 001:020
324A.020	201 KAR 030:190		805 KAR 009:011
324A.015	201 KAR 030:021	349.115	805 KAR 001:030
	201 KAR 030:040	349.120	805 KAR 001:050
324A.020	201 KAR 030:070		805 KAR 001:140
	201 KAR 030:110		805 KAR 001:170
324A.030	201 KAR 030:190		805 KAR 001:200
	201 KAR 030:330		805 KAR 009:011
324A.035	201 KAR 030:040	349.155	805 KAR 001:140
	201 KAR 030:110		805 KAR 001:170
	201 KAR 030:130		805 KAR 009:011
	201 KAR 030:190	350	405 KAR 010:001
	201 KAR 030:330		405 KAR 026:011
324A.040	201 KAR 030:110	350.010	400 KAR 001:110
	201 KAR 030:190		405 KAR 005:002
324A.045	201 KAR 030:110		405 KAR 005:032
	201 KAR 030:190		405 KAR 026:011
324A.047	201 KAR 030:110	350.020	405 KAR 007:050
324A.050	201 KAR 030:040		405 KAR 008:010
	201 KAR 030:070		405 KAR 010:050
324A.052	201 KAR 030:070		405 KAR 026:011
	201 KAR 030:190	350.028	400 KAR 001:110
324A.065	201 KAR 030:110		405 KAR 026:011
	201 KAR 030:190	350.050	405 KAR 007:040
324A.075	201 KAR 030:190		405 KAR 026:011
324A.152	201 KAR 030:330	350.055	405 KAR 008:010
324A.154	201 KAR 030:330		405 KAR 026:011
324A.155	201 KAR 030:330	350.057	405 KAR 007:040
324A.163	201 KAR 030:330		405 KAR 026:011
325.240	201 KAR 001:100	350.060	405 KAR 007:040
325.261	201 KAR 001:190		405 KAR 008:010
325.270	201 KAR 001:190		405 KAR 008:030
325.330	201 KAR 001:100		405 KAR 010:050
327.010	902 KAR 020:280		405 KAR 026:011
327.300	201 KAR 022:170	350.062	405 KAR 026:011
334A.020	902 KAR 020:280	350.064	405 KAR 010:050
335.080	902 KAR 020:430		405 KAR 026:011
	907 KAR 015:005	350.070	400 KAR 001:110
335.090	902 KAR 020:280		405 KAR 008:010
335.100	902 KAR 020:430		405 KAR 026:011
	907 KAR 015:005	350.085	405 KAR 008:010
335.300	902 KAR 020:430		405 KAR 026:011
	907 KAR 015:005	350.090	400 KAR 001:110
335.500	201 KAR 036:060		405 KAR 007:050
	902 KAR 020:430		405 KAR 008:010
	907 KAR 015:005		405 KAR 026:011
335.505	201 KAR 036:060	350.093	400 KAR 001:110
335.525	201 KAR 036:060		405 KAR 010:050
337	902 KAR 008:040		405 KAR 016:210
	902 KAR 008:120		405 KAR 018:220
342.020	803 KAR 025:260		405 KAR 026:011
	803 KAR 025:271E	350.095	405 KAR 010:050
342.035	803 KAR 025:260		405 KAR 016:210
	803 KAR 025:271E		405 KAR 018:220
342.640	702 KAR 003:130		405 KAR 026:011
342.0011	803 KAR 025:260	350.100	405 KAR 016:100
	803 KAR 025:271E		405 KAR 016:210
343	787 KAR 003:010		405 KAR 018:100

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	405 KAR 018:220		805 KAR 001:140
	405 KAR 020:040		805 KAR 001:170
	405 KAR 026:011	353.520	805 KAR 001:020
350.110	405 KAR 026:011		805 KAR 001:080
350.113	405 KAR 026:011		805 KAR 001:110
350.130	400 KAR 001:110		805 KAR 001:120
	405 KAR 005:032		805 KAR 001:140
	405 KAR 008:010		805 KAR 001:170
	405 KAR 010:050	353.540	805 KAR 001:080
350.131	405 KAR 010:050	353.550	805 KAR 001:030
350.135	405 KAR 008:010		805 KAR 001:060
	405 KAR 026:011		805 KAR 001:080
350.151	405 KAR 010:050		805 KAR 001:110
	405 KAR 018:100		805 KAR 001:180
	405 KAR 018:220		805 KAR 001:200
	405 KAR 026:011	353.560	805 KAR 001:080
350.240	405 KAR 005:002	353.561 - 353.564	805 KAR 001:140
	405 KAR 005:032		805 KAR 001:170
350.255	400 KAR 001:110	353.570	805 KAR 001:110
350.300	405 KAR 005:002	353.590	805 KAR 001:030
	405 KAR 005:032		805 KAR 001:050
350.405	405 KAR 016:210		805 KAR 001:110
	405 KAR 020:040		805 KAR 001:140
350.410	405 KAR 007:040		805 KAR 001:170
	405 KAR 016:210		805 KAR 001:190
	405 KAR 018:220	353.5901	805 KAR 001:140
350.415	405 KAR 020:040		805 KAR 001:170
350.420	405 KAR 007:050		805 KAR 001:190
	405 KAR 016:100	353.592	805 KAR 001:140
	405 KAR 018:100		805 KAR 001:170
350.445	405 KAR 026:011	353.595	805 KAR 001:170
350.450	405 KAR 007:040	353.597	805 KAR 001:170
	405 KAR 008:010	353.610	805 KAR 001:140
	405 KAR 016:210	353.651	805 KAR 001:140
	405 KAR 018:220		805 KAR 001:170
	405 KAR 020:040	353.652	805 KAR 001:140
	405 KAR 026:011		805 KAR 001:170
350.455	405 KAR 016:100	353.656	805 KAR 001:160
	405 KAR 018:100	353.6601 - 353.6606	805 KAR 001:140
350.465	400 KAR 001:110		805 KAR 001:170
	405 KAR 008:010	353.730	805 KAR 001:140
	405 KAR 008:030		805 KAR 001:170
	405 KAR 010:050	353.735 - 353.747	805 KAR 001:200
	405 KAR 016:100	353.737	805 KAR 001:030
	405 KAR 016:210		805 KAR 001:140
	405 KAR 018:100		805 KAR 001:170
	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

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	902 KAR 045:070		922 KAR 001:565
401	105 KAR 001:149	620.157	922 KAR 001:320
402	105 KAR 001:149	620.170	922 KAR 001:565
403	105 KAR 001:149	620.180	922 KAR 001:320
403.270 - 403.355	922 KAR 001:565		922 KAR 001:330
405.024	922 KAR 001:565	620.230	922 KAR 001:320
422.317	201 KAR 008:540	620.350	922 KAR 001:330
	907 KAR 003:170	620.363	922 KAR 001:320
424	805 KAR 001:140	620.990	922 KAR 001:330
424.110 - 424.120	405 KAR 008:010	625.065	922 KAR 001:560
424.260	702 KAR 003:130		
431.600	922 KAR 001:330		
434.840 – 434.860	907 KAR 003:170	2019 RS HB220	806 KAR 003:240
439	501 KAR 006:060	7 C.F.R.	405 KAR 008:030
	501 KAR 006:110		405 KAR 010:001
	501 KAR 006:140		921 KAR 003:050
	501 KAR 006:160		922 KAR 002:100
439.315	501 KAR 001:040	12 C.F.R.	201 KAR 030:040
439.330	501 KAR 001:040		201 KAR 030:190
	501 KAR 001:071		201 KAR 030:330
439.340	501 KAR 001:071	16 C.F.R.	201 KAR 015:110
439.341	501 KAR 001:040		922 KAR 002:100
	501 KAR 001:071	21 C.F.R.	902 KAR 045:090
439.346	501 KAR 001:040		902 KAR 055:120
	501 KAR 001:071	24 C.F.R.	201 KAR 011:121
439.390	501 KAR 001:040	26 C.F.R.	102 KAR 001:032
439.430	501 KAR 001:040		105 KAR 001:390
	501 KAR 001:071		921 KAR 003:050
439.440	501 KAR 001:040	27 C.F.R.	405 KAR 008:010
439.3401	902 KAR 020:430	28 C.F.R.	201 KAR 011:210
	902 KAR 020:450		902 KAR 045:065
439.3406	501 KAR 001:040		902 KAR 045:070
503.110	922 KAR 001:330	29 C.F.R.	920 KAR 001:070
527.070	922 KAR 002:100		101 KAR 002:102
527.100	922 KAR 001:565		101 KAR 003:015
527.110	922 KAR 001:565		902 KAR 008:040
529.010	922 KAR 001:330		902 KAR 008:120
532.043	501 KAR 001:040		902 KAR 045:065
	501 KAR 001:071		902 KAR 045:070
532.045	922 KAR 001:330	30 C.F.R.	400 KAR 001:110
532.060	501 KAR 001:071		405 KAR 008:010
532.400	501 KAR 001:040		405 KAR 008:030
600.010	922 KAR 001:330		405 KAR 010:001
600.020	922 KAR 001:320		405 KAR 010:050
	922 KAR 001:330		405 KAR 016:100
	922 KAR 001:565		405 KAR 016:210
	922 KAR 002:090		405 KAR 018:100
	922 KAR 002:100		405 KAR 018:220
600 - 645	505 KAR 001:160	40 C.F.R.	302 KAR 031:040
605.090	922 KAR 001:320		401 KAR 010:001
	922 KAR 001:330		401 KAR 010:029
605.120	922 KAR 001:565		401 KAR 051:010
605.130	922 KAR 001:330		401 KAR 052:100
	922 KAR 001:565		401 KAR 058:005
605.150	922 KAR 001:330		405 KAR 008:030
	922 KAR 001:565		405 KAR 010:001
610.010	922 KAR 001:330		805 KAR 001:110
610.110	922 KAR 001:320		805 KAR 001:190
	922 KAR 001:565	42 C.F.R.	900 KAR 002:050
620.010 - 620.050	922 KAR 001:330		902 KAR 020:450
620.020	922 KAR 001:320		907 KAR 003:170
	922 KAR 001:560		907 KAR 005:005
	922 KAR 001:565		907 KAR 010:830
	922 KAR 002:090		907 KAR 010:840
	922 KAR 002:100		907 KAR 015:005
620.030	902 KAR 020:280		907 KAR 015:010
	922 KAR 002:090		907 KAR 015:020
	922 KAR 002:100	44 C.F.R.	201 KAR 011:121
620.070	922 KAR 001:330	45 C.F.R.	902 KAR 020:370
620.072	922 KAR 001:330		902 KAR 020:430
620.090	922 KAR 001:565		902 KAR 020:450
620.140	922 KAR 001:320		907 KAR 015:010
	922 KAR 001:565		907 KAR 015:020
620.142	922 KAR 001:320		920 KAR 001:070

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	922 KAR 001:320		907 KAR 005:005
	922 KAR 002:090		907 KAR 010:830
49 C.F.R.	922 KAR 002:100		907 KAR 010:840
	302 KAR 031:040		907 KAR 015:010
	702 KAR 005:080		907 KAR 015:015
	805 KAR 001:190		907 KAR 015:020
	922 KAR 002:100		907 KAR 015:022
7 U.S.C.	302 KAR 050:050		907 KAR 015:025
9 U.S.C.	202 KAR 006:010		920 KAR 001:070
	202 KAR 006:050		922 KAR 001:320
	202 KAR 006:080		922 KAR 001:330
	202 KAR 006:090		922 KAR 001:565
12 U.S.C.	201 KAR 030:010		922 KAR 002:090
	201 KAR 030:040	47 U.S.C.	922 KAR 002:100
	201 KAR 030:110		202 KAR 006:010
	201 KAR 030:130		202 KAR 006:020
	201 KAR 030:190		202 KAR 006:030
15 U.S.C.	201 KAR 030:330		202 KAR 006:050
	806 KAR 003:230		202 KAR 006:060
16 U.S.C.	405 KAR 008:010		202 KAR 006:070
	405 KAR 008:030		202 KAR 006:080
18 U.S.C.	501 KAR 006:160		202 KAR 006:090
	601 KAR 002:030E		202 KAR 006:100
20 U.S.C.	013 KAR 001:020	Pub.L. 104-191	920 KAR 001:070
	702 KAR 007:065	Pub.L. 110-325	920 KAR 001:070
	703 KAR 005:270		
	703 KAR 005:280		
	704 KAR 007:090		
	902 KAR 020:430		
	907 KAR 015:010		
	907 KAR 015:020		
	922 KAR 002:100		
21 U.S.C.	902 KAR 045:090		
26 U.S.C.	102 KAR 001:032		
	105 KAR 001:149		
	105 KAR 001:390		
	301 KAR 003:100		
	907 KAR 005:005		
29 U.S.C.	101 KAR 002:102		
	101 KAR 003:015		
	201 KAR 015:110		
	902 KAR 008:040		
	902 KAR 008:120		
	902 KAR 020:430		
	907 KAR 005:005		
	907 KAR 015:005		
	907 KAR 015:010		
	907 KAR 015:020		
	920 KAR 001:070		
30 U.S.C.	400 KAR 001:110		
	401 KAR 010:030		
	405 KAR 008:010		
	405 KAR 008:030		
	405 KAR 010:050		
	405 KAR 016:100		
	405 KAR 016:210		
	405 KAR 018:100		
	405 KAR 018:220		
31 U.S.C.	045 KAR 001:050		
33 U.S.C.	401 KAR 010:029		
38 U.S.C.	902 KAR 008:096		
42 U.S.C.	201 KAR 008:540		
	202 KAR 006:050		
	401 KAR 051:010		
	401 KAR 052:100		
	401 KAR 063:010		
	704 KAR 007:090		
	805 KAR 001:110		
	815 KAR 020:060		
	900 KAR 002:050		
	902 KAR 020:370		
	902 KAR 020:430		
	902 KAR 020:450		
	902 KAR 021:020		

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.

NOTE: Due to the volume of letters filed, it has become necessary to format the certification letter summaries in a more abbreviated manner.

* 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.

Reg Number	Letter filed	Action	Reg Number	Letter filed	Action
012 KAR 001:120	06-06-2019	To be amended	102 KAR 001:039	07-03-2019	Remain in Effect w/o Amendment
012 KAR 001:125	06-06-2019	To be amended	102 KAR 001:045	07-03-2019	Remain in Effect w/o Amendment
012 KAR 001:130	06-06-2019	To be amended	102 KAR 001:050	07-03-2019	Remain in Effect w/o Amendment
012 KAR 001:160	06-06-2019	To be amended	102 KAR 001:057	07-03-2019	Remain in Effect w/o Amendment
012 KAR 001:170	06-06-2019	To be amended	102 KAR 001:060	07-03-2019	Remain in Effect w/o Amendment
012 KAR 001:175	06-06-2019	To be amended	102 KAR 001:070	07-03-2019	Remain in Effect w/o Amendment
012 KAR 004:080	06-06-2019	To be amended	102 KAR 001:100	07-03-2019	Remain in Effect w/o Amendment
012 KAR 004:090	06-06-2019	To be amended	102 KAR 001:105	07-03-2019	Remain in Effect w/o Amendment
012 KAR 004:100	06-06-2019	To be amended	102 KAR 001:110	07-03-2019	Remain in Effect w/o Amendment
012 KAR 004:110	06-06-2019	To be amended	102 KAR 001:130	07-03-2019	Remain in Effect w/o Amendment
012 KAR 004:120	06-06-2019	To be amended	102 KAR 001:140	07-03-2019	Remain in Effect w/o Amendment
012 KAR 004:130	06-06-2019	To be amended	102 KAR 001:145	07-03-2019	Remain in Effect w/o Amendment
012 KAR 004:140	06-06-2019	To be amended	102 KAR 001:150	07-03-2019	Remain in Effect w/o Amendment
012 KAR 004:160	06-06-2019	To be amended	102 KAR 001:155	07-03-2019	Remain in Effect w/o Amendment
012 KAR 004:170	06-06-2019	To be amended	102 KAR 001:163	07-03-2019	Remain in Effect w/o Amendment
012 KAR 005:010	06-06-2019	To be amended	102 KAR 001:165	07-03-2019	Remain in Effect w/o Amendment
012 KAR 005:020	06-06-2019	To be amended	102 KAR 001:168	07-03-2019	Remain in Effect w/o Amendment
012 KAR 005:030	06-06-2019	To be amended	102 KAR 001:170	07-03-2019	Remain in Effect w/o Amendment
012 KAR 005:040	06-06-2019	To be amended	102 KAR 001:175	07-03-2019	Remain in Effect w/o Amendment
012 KAR 005:050	06-06-2019	To be amended	102 KAR 001:178	07-03-2019	Remain in Effect w/o Amendment
012 KAR 005:060	06-06-2019	To be amended	102 KAR 001:180	07-03-2019	Remain in Effect w/o Amendment
012 KAR 005:070	06-06-2019	To be amended	102 KAR 001:185	07-03-2019	Remain in Effect w/o Amendment
020 KAR 001:010	06-07-2019	Remain in Effect w/o Amendment	102 KAR 001:195	07-03-2019	Remain in Effect w/o Amendment
020 KAR 001:020	06-07-2019	Remain in Effect w/o Amendment	102 KAR 001:210	07-03-2019	Remain in Effect w/o Amendment
020 KAR 001:030	06-07-2019	Remain in Effect w/o Amendment	102 KAR 001:220	07-03-2019	Remain in Effect w/o Amendment
020 KAR 001:040	06-07-2019	Remain in Effect w/o Amendment	102 KAR 001:225	07-03-2019	Remain in Effect w/o Amendment
020 KAR 001:050	06-07-2019	Remain in Effect w/o Amendment	102 KAR 001:230	07-03-2019	Remain in Effect w/o Amendment
020 KAR 001:060	06-07-2019	Remain in Effect w/o Amendment	102 KAR 001:240	07-03-2019	Remain in Effect w/o Amendment
020 KAR 001:070	06-07-2019	Remain in Effect w/o Amendment	102 KAR 001:245	07-03-2019	Remain in Effect w/o Amendment
020 KAR 001:080	06-07-2019	Remain in Effect w/o Amendment	102 KAR 001:250	07-03-2019	Remain in Effect w/o Amendment
020 KAR 001:090	06-07-2019	Remain in Effect w/o Amendment	102 KAR 001:270	07-03-2019	Remain in Effect w/o Amendment
020 KAR 001:100	06-07-2019	Remain in Effect w/o Amendment	102 KAR 001:280	07-03-2019	Remain in Effect w/o Amendment
032 KAR 001:080	09-27-2019	Remain in Effect w/o Amendment	102 KAR 001:290	07-03-2019	Remain in Effect w/o Amendment
032 KAR 001:090	09-27-2019	Remain in Effect w/o Amendment	102 KAR 001:300	07-03-2019	Remain in Effect w/o Amendment
032 KAR 001:100	09-27-2019	To be amended	102 KAR 001:310	07-03-2019	Remain in Effect w/o Amendment
032 KAR 001:190	09-27-2019	To be amended	102 KAR 001:320	07-03-2019	Remain in Effect w/o Amendment
032 KAR 002:020	09-27-2019	Remain in Effect w/o Amendment	102 KAR 001:330	07-03-2019	Remain in Effect w/o Amendment
032 KAR 002:030	09-27-2019	Remain in Effect w/o Amendment	102 KAR 001:340	07-03-2019	Remain in Effect w/o Amendment
032 KAR 002:040	09-27-2019	Remain in Effect w/o Amendment	102 KAR 001:350	07-03-2019	Remain in Effect w/o Amendment
032 KAR 002:050	09-27-2019	Remain in Effect w/o Amendment	102 KAR 002:010	07-03-2019	Remain in Effect w/o Amendment
032 KAR 002:060	09-27-2019	Remain in Effect w/o Amendment	102 KAR 002:025	07-03-2019	Remain in Effect w/o Amendment
032 KAR 002:070	09-27-2019	Remain in Effect w/o Amendment	103 KAR 001:070	06-07-2019	Remain in Effect w/o Amendment
032 KAR 002:080	09-27-2019	Remain in Effect w/o Amendment	103 KAR 001:092	06-07-2019	Remain in Effect w/o Amendment
032 KAR 002:100	09-27-2019	Remain in Effect w/o Amendment	103 KAR 001:150	06-07-2019	Remain in Effect w/o Amendment
032 KAR 002:110	09-27-2019	Remain in Effect w/o Amendment	103 KAR 002:020	06-07-2019	Remain in Effect w/o Amendment
032 KAR 002:130	09-27-2019	Remain in Effect w/o Amendment	103 KAR 005:180	06-07-2019	Remain in Effect w/o Amendment
032 KAR 002:170	09-27-2019	Remain in Effect w/o Amendment	103 KAR 005:190	06-07-2019	Remain in Effect w/o Amendment
032 KAR 002:180	09-27-2019	Remain in Effect w/o Amendment	103 KAR 005:220	06-07-2019	Remain in Effect w/o Amendment
032 KAR 002:190	09-27-2019	Remain in Effect w/o Amendment	103 KAR 005:230	06-07-2019	Remain in Effect w/o Amendment
032 KAR 002:200	09-27-2019	Remain in Effect w/o Amendment	103 KAR 027:030	06-07-2019	Remain in Effect w/o Amendment
032 KAR 002:210	09-27-2019	Remain in Effect w/o Amendment	103 KAR 027:040	06-07-2019	Remain in Effect w/o Amendment
032 KAR 002:220	09-27-2019	Remain in Effect w/o Amendment	103 KAR 027:130	09-04-2019	Remain in Effect w/o Amendment
040 KAR 001:010	08-23-2019	Remain in Effect w/o Amendment	103 KAR 027:240	06-07-2019	Remain in Effect w/o Amendment
040 KAR 001:020	08-23-2019	Remain in Effect w/o Amendment	103 KAR 028:020	06-07-2019	Remain in Effect w/o Amendment
040 KAR 001:030	08-23-2019	Remain in Effect w/o Amendment	103 KAR 028:030	11-06-2019	Remain in Effect w/o Amendment
040 KAR 005:010	08-23-2019	Remain in Effect w/o Amendment	103 KAR 028:051	06-07-2019	Remain in Effect w/o Amendment
045 KAR 001:060	06-10-2019	Remain in Effect w/o Amendment	103 KAR 028:130	06-07-2019	Remain in Effect w/o Amendment
045 KAR 001:080	06-10-2019	Remain in Effect w/o Amendment	103 KAR 030:160	06-07-2019	Remain in Effect w/o Amendment
102 KAR 001:010	07-03-2019	Remain in Effect w/o Amendment	103 KAR 030:235	06-07-2019	Remain in Effect w/o Amendment
102 KAR 001:030	07-03-2019	Remain in Effect w/o Amendment	103 KAR 030:280	06-07-2019	Remain in Effect w/o Amendment
102 KAR 001:038	07-03-2019	Remain in Effect w/o Amendment	103 KAR 031:011	06-07-2019	Remain in Effect w/o Amendment

CERTIFICATION LETTER SUMMARIES

Reg Number	Letter filed	Action
601 KAR 009:040	11-26-2019	Remain in Effect w/o Amendment
601 KAR 009:045	11-26-2019	Remain in Effect w/o Amendment
601 KAR 009:115	09-09-2019	Remain in Effect w/o Amendment
601 KAR 009:140	09-25-2019	Remain in Effect w/o Amendment
601 KAR 011:040	11-26-2019	Remain in Effect w/o Amendment
601 KAR 014:010	11-12-2019	Remain in Effect w/o Amendment
601 KAR 035:060	11-26-2019	Remain in Effect w/o Amendment
601 KAR 035:060	03-18-2019	Remain in Effect w/o Amendment
601 KAR 040:020	11-26-2019	Remain in Effect w/o Amendment
603 KAR 003:030	03-18-2019	Remain in Effect w/o Amendment
603 KAR 005:066	11-26-2019	Remain in Effect w/o Amendment
603 KAR 005:071	11-26-2019	Remain in Effect w/o Amendment
603 KAR 005:320	11-26-2019	Remain in Effect w/o Amendment
603 KAR 007:020	11-26-2019	Remain in Effect w/o Amendment
603 KAR 040:020	03-18-2019	Remain in Effect w/o Amendment
702 KAR 003:100	06-28-2019	Remain in Effect w/o Amendment
702 KAR 003:110	06-28-2019	Remain in Effect w/o Amendment
702 KAR 003:120	06-28-2019	Remain in Effect w/o Amendment
702 KAR 003:220	06-28-2019	Remain in Effect w/o Amendment
702 KAR 005:030	06-28-2019	Remain in Effect w/o Amendment
702 KAR 005:110	06-28-2019	Remain in Effect w/o Amendment
702 KAR 006:110	06-28-2019	Remain in Effect w/o Amendment
703 KAR 005:140	06-28-2019	Remain in Effect w/o Amendment
704 KAR 003:095	12-09-2019	Remain in Effect w/o Amendment
704 KAR 007:160	12-09-2019	Remain in Effect w/o Amendment
704 KAR 019:002	12-09-2019	Remain in Effect w/o Amendment
705 KAR 002:140	06-28-2019	Remain in Effect w/o Amendment
707 KAR 001:002	06-28-2019	Remain in Effect w/o Amendment
707 KAR 001:310	06-28-2019	Remain in Effect w/o Amendment
707 KAR 001:340	06-28-2019	Remain in Effect w/o Amendment
770 KAR 001:010	06-21-2019	Remain in Effect w/o Amendment
770 KAR 001:020	06-21-2019	Remain in Effect w/o Amendment
770 KAR 001:030	06-21-2019	Remain in Effect w/o Amendment
770 KAR 001:040	06-21-2019	Remain in Effect w/o Amendment
770 KAR 001:050	06-21-2019	Remain in Effect w/o Amendment
770 KAR 001:060	06-21-2019	Remain in Effect w/o Amendment
770 KAR 001:070	06-21-2019	Remain in Effect w/o Amendment
772 KAR 001:010	07-01-2019	Remain in Effect w/o Amendment
772 KAR 001:020	07-01-2019	Remain in Effect w/o Amendment
772 KAR 001:030	07-01-2019	Remain in Effect w/o Amendment
772 KAR 001:040	07-01-2019	Remain in Effect w/o Amendment
772 KAR 001:050	07-01-2019	Remain in Effect w/o Amendment
772 KAR 001:060	07-01-2019	Remain in Effect w/o Amendment
772 KAR 001:070	07-01-2019	Remain in Effect w/o Amendment
780 KAR 002:040	06-28-2019	Remain in Effect w/o Amendment
780 KAR 002:060	06-28-2019	Remain in Effect w/o Amendment
780 KAR 002:140	06-28-2019	Remain in Effect w/o Amendment
780 KAR 003:050	06-28-2019	Remain in Effect w/o Amendment
780 KAR 003:120	06-28-2019	Remain in Effect w/o Amendment
780 KAR 003:130	06-28-2019	Remain in Effect w/o Amendment
780 KAR 003:140	06-28-2019	Remain in Effect w/o Amendment
780 KAR 007:010	06-28-2019	Remain in Effect w/o Amendment
803 KAR 025:015	08-20-2019	To be amended
803 KAR 025:021	08-20-2019	To be amended
803 KAR 025:220	08-20-2019	To be amended
804 KAR 007:020	03-26-2019	To be amended. Amendment filed 4-15-19, effective 8-2-2019.
815 KAR 020:071	10-14-2019	Remain in Effect w/o Amendment
815 KAR 020:072	10-14-2019	Remain in Effect w/o Amendment
815 KAR 020:073	10-14-2019	Remain in Effect w/o Amendment
815 KAR 020:074	10-14-2019	Remain in Effect w/o Amendment
815 KAR 020:078	10-14-2019	Remain in Effect w/o Amendment
815 KAR 020:110	10-14-2019	Remain in Effect w/o Amendment
815 KAR 020:150	10-14-2019	To be amended. Amendment filed 10-14-19.
902 KAR 001:400	10-15-2019	Remain in Effect w/o Amendment
902 KAR 002:030	10-18-2019	Remain in Effect w/o Amendment
902 KAR 002:040	10-18-2019	Remain in Effect w/o Amendment
902 KAR 002:050	10-18-2019	Remain in Effect w/o Amendment
902 KAR 002:065	10-18-2019	To be amended
902 KAR 002:080	10-15-2019	Remain in Effect w/o Amendment
902 KAR 002:090	10-15-2019	Remain in Effect w/o Amendment
902 KAR 002:140	11-26-2019	Remain in Effect w/o Amendment

[illegible]

CERTIFICATION LETTER SUMMARIES

[illegible]

Reg Number	Letter filed	Action
922 KAR 002:240	11-26-2019	To be amended
922 KAR 002:250	11-26-2019	To be amended
922 KAR 005:020	11-26-2019	To be amended
922 KAR 006:040	11-26-2019	Remain in Effect w/o Amendment
922 KAR 006:045	11-26-2019	Remain in Effect w/o Amendment
922 KAR 008:010	11-26-2019	To be amended

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the *2017 Kentucky Administrative Regulations Service*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Copies of the technical amendments are usually posted on the Legislative Research Commission Web site for a short time before they are finalized. Regulations are available for viewing on the Legislative Research Commission Web site at <https://legislature.ky.gov/law/kar/pages/default.aspx>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
103 KAR 028:150	10-31-2019		
103 KAR 030:290	10-10-2019		
103 KAR 031:180	10-10-2019		
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 048:090	10-03-2019		
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		
	10-03-2019		
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		
900 KAR 006:125	10-02-2019		
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		

SUBJECT INDEX

ACCOUNTANCY

- Continuing professional education requirements; 201 KAR 001:100
- Examination sections, applications, and procedures; 201 KAR 001:190

AGING AND INDEPENDENT LIVING

- Guardianship
 - Referral process for adult guardianship; 910 KAR 002:020
 - Service provisions for adult guardianship; 910 KAR 002:040

AGRICULTURE

- Amusement Rides
 - Business identification number for amusement rides or attractions required; 302 KAR 016:010
 - Correction of safety violations and right to re-inspection; 302 KAR 016:040
 - Inflatable amusement rides or attractions; 302 KAR 016:121
 - Inspection and operation of amusement rides or amusement attractions; 302 KAR 016:020
 - Maintenance and repair of amusement rides or attractions; 302 KAR 016:131
 - Operate amusement ride or device defined; 302 KAR 016:101
 - Reports of injuries involving amusement rides and amusement attractions; 302 KAR 016:070
 - Rides and attractions not included in the definition of amusement ride or attraction; 302 KAR 016:091
 - Violations, civil penalties, revocations, and suspensions of business identification number for amusement rides or attractions; 302 KAR 016:111
- Bond and Grain Fund Distribution
 - Repeal of 302 KAR 036:010; 302 KAR 036:011
- Fairs and Shows
 - Administration; state aid to local fairs; 302 KAR 015:010
 - Beef cattle shows and sales; 302 KAR 015:030
 - Dairy cattle shows and sales; 302 KAR 015:020
- Grain Storage
 - Repeal of 302 KAR 035:020, 302 KAR 035:030, 302 KAR 035:040, 302 KAR 035:050, 302 KAR 035:060, and 302 KAR 035:070; 302 KAR 035:011
- Hay Grading
 - Forage Testing Program; 302 KAR 037:010
- Industrial Hemp
 - THC sampling and testing, post-testing actions; 302 KAR 050:050
- Kentucky Grain Insurance and Grain Dealers
 - Repeal of 302 KAR 034:010, 302 KAR 034:020, 302 KAR 034:030, 302 KAR 034:040, 302 KAR 034:050 and 302 KAR 034:060; 302 KAR 034:011
- Livestock
 - Repeal of 302 KAR 021:005; 302 KAR 021:011
- Livestock Sanitation
 - Repeal of 302 KAR 020:030, 302 KAR 020:050, 302 KAR 020:052, 302 KAR 020:090, 302 KAR 020:100, 302 KAR 020:150; 302 KAR 020:011
 - Repeal of 302 KAR 020:030, 302 KAR 020:050, 302 KAR 020:052, 302 KAR 020:66, 302 KAR 020:090, 302 KAR 020:100, and 302 KAR 020:150; 302 KAR 020:012
- Office of the State Veterinarian
 - Authority to inspect, test, identify, remove and dispose of livestock, poultry, and fish; 302 KAR 022:010.
 - Carcass transport and composting; 302 KAR 022:040
 - Cervids; 302 KAR 022:150
 - Feed restrictions; 302 KAR 022:080
 - Livestock, poultry, and fish diseases to be reported; 302 KAR 022:030
 - Restriction of transportation of livestock, poultry, and fish; 302 KAR 022:020
 - Restrictions on biological materials in Kentucky; 302 KAR 022:070
- Pesticides
 - Storage and handling of pesticides and bulk fertilizer; 302 KAR 031:040

- Regulation and Inspection; Commercial Weighing and Measuring Devices
 - Technical requirements for commercial weighing and measuring devices; 302 KAR 081:010
- Regulation and Inspection; Method of Sale
 - Method of sale; 302 KAR 076:100
- Regulation and Inspection; Packaging and Labeling
 - Packaging and labeling; 302 KAR 075:130
- Regulation and Inspection; Scanner
 - Examination procedure for price verification; 302 KAR 080:010

AIR QUALITY

- Asbestos
 - Accreditation of asbestos professionals; 401 KAR 058:005
- General Standards of Performance
 - Fugitive emissions Permits, Registrations, and Prohibitory Rules; 401 KAR 063:010
 - Public, affected state, and U.S. EPA review; 401 KAR 052:100

ALCOHOLIC BEVERAGE CONTROL

- Local Administrators
 - Cities with quotas for quota retail package licenses in excess of statutory default quotas; 804 KAR 010:040

AUCTIONEERS

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

AUDITOR OF PUBLIC ACCOUNTS

- Audits
 - Audits of fiscal courts; 045 KAR 001:050

BEHAVIORAL HEALTH, DEVELOPMENTAL AND INTELLECTUAL DISABILITIES

- Substance Abuse
 - Licensing procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities; 908 KAR 001:370
 - Licensure of nonhospital-based outpatient alcohol and other drug treatment entities; 908 KAR 001:374
 - Licensure of residential alcohol and other drug treatment entities; 908 KAR 001:372
 - Repeal of 908 KAR 001:340; 908 KAR 001:341

BOARDS AND COMMISSIONS

- See also Occupations and Professions
- See listing below for specific subject headings:
- Accountancy; 201 KAR Chapter 001
- Boxing and Wrestling Commission; 201 KAR Chapter 027
- Cosmetology; 201 KAR Chapter 012
- Chiropractic Examiners; 201 KAR Chapter 021
- Dentistry; 201 KAR Chapter 008
- Landscape Architects; 201 KAR Chapter 010
- Licensed Professional Counselors; 201 KAR 036
- Licensure for Long-Term Care Administrators; Chapter 006
- Licensure for Marriage and Family Therapists; Chapter 032
- Medical Imaging and Radiation Therapy; 201 KAR Chapter 047
- Medical Licensure; 201 KAR Chapter 009
- Nursing; 201 KAR Chapter 020
- Occupational Therapy; 201 KAR Chapter 028
- Ophthalmic Dispensers; 201 KAR Chapter 013
- Optometric Examiners; 201 KAR Chapter 005
- Pharmacy; 201 KAR Chapter 002
- Physical Therapy; 201 KAR Chapter 022
- Podiatry; 201 KAR Chapter 025
- Private Investigators; Chapter 041
- Psychology; 201 KAR Chapter 026
- Real Estate Appraisers Board; 201 KAR Chapter 030
- Real Estate Commission; 201 KAR Chapter 011
- Respiratory Care; 201 KAR Chapter 029

SUBJECT INDEX

Social Work; 201 KAR Chapter 023
Veterinary Examiners, 201 KAR Chapter 016

COMMUNITY & TECHNICAL COLLEGE SYSTEM

Board organization; 202 KAR 007:020
Ground vehicle staff; 202 KAR 007:560
Kentucky Fire Commission
Fire department reporting requirements; 739 KAR 002:140
Alan "Chip" Terry Professional Development and Wellness Program; 739 KAR 002:150

COMMUNITY BASED SERVICES

Child Care
Child-care center licensure; 922 KAR 002:090
Certification of family child-care homes; 922 KAR 002:100
Child Welfare
Authorization for disclosure of protection and permanency records; 922 KAR 001:510
Child protective services; 922 KAR 001:330
Central registry; 922 KAR 001:470
Putative father registry and operating procedures; 922 KAR 001:560
Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers; 922 KAR 001:350
Service array for a relative or fictive kin caregiver; 922 KAR 001:565
Standards for child-placing agencies; 922 KAR 001:310
Training requirements for foster parents, adoptive parents, and respite care providers for children in the custody of the cabinet; 922 KAR 001:495
Family Support
Child Support Enforcement Program application and intergovernmental process; 921 KAR 001:380
Supplemental Nutrition Assistance Program
Claims and additional administrative provisions; 921 KAR 003:050

CORRECTIONS

Office of the Secretary
Bell County Forestry Camp; 501 KAR 006:140
Correctional Industries; 501 KAR 006:160
Northpoint Training Center; 501 KAR 006:060
Roederer Correctional Complex; 501 KAR 006:110
Parole Board
Parole revocation hearing procedures; 501 KAR 001:040
Repeal of 501 KAR 001:070; 501 KAR 001:071

COSMETOLOGY

Licensing, permits, and examinations; 201 KAR 012:030

DENTISTRY

Anesthesia and sedation; 201 KAR 008:550
Dental practices and prescription writing; 201 KAR 008:540

EDUCATION

Assessment and Accountability
Accountability administrative procedures and guidelines; 703 KAR 005:240
Kentucky's accountability system; 703 KAR 005:270
Required academic standards in career studies and financial literacy; 704 KAR 008:080
Requirements for school and district report cards; 703 KAR 005:140
School improvement procedures; 703 KAR 005:280
Management of the Kentucky TECH System
Live work projects; 780 KAR 002:040
Discipline of students; 780 KAR 002:060
Office of Chief State School Officer
Teacher disciplinary hearings; 701 KAR 005:090
Office of Employment and Training
Registration of apprenticeship programs; 787 KAR 003:010
Office of Instruction
Required academic standards; 704 KAR 003:303

Kentucky framework for personnel evaluation; 704 KAR 003:370
Office of Learning Support Services
Homeless children and youth education program and ensuring educational stability of children in foster care; 704 KAR 007:090
Pupil Transportation
Bus drivers' qualifications, responsibilities, and training; 702 KAR 005:080
School Administration and Finance
Internal accounting; 702 KAR 003:130
School Terms, Attendance, and Operation
Designation of agent to manage middle and high school interscholastic athletics; 702 KAR 007:065
Pupil attendance; 702 KAR 007:125

EDUCATION AND WORKFORCE DEVELOPMENT

For Education, see listing below:
Board of Education; KAR Title 701, 702
Education Professional Standards Board; KAR Title 16
Education; KAR Title 704 (See Education)
Higher Education Assistance Authority; KAR Title 11 (See Higher Education Assistance Authority)
Technical Education, Department for; KAR Title 780
Workforce Development, KAR Title 787 (See Workforce Development)
For Workforce Development, see listing below:
Workplace Standards; KAR Title 803 (See Workplace Standards)

EDUCATION PROFESSIONAL STANDARDS BOARD

Alternative Routes to Certification
The direct training program for preparation of candidates for initial teacher certification; 016 KAR 009:060
Repeal of 016 KAR 009:050 and 009:070; 016 KAR 009:071
Assessment
Repeal of 006:030; 016 KAR 006:031

ELECTIONS

Forms and Procedures
Additional and emergency; 031 KAR 004:120
Reports and Forms
Repeal of 032 KAR 001:060; 032 KAR 001:061

EMBALMERS AND FUNERAL DIRECTORS

Apprenticeship and supervision requirements; 201 KAR 015:050
Complaints; 201 KAR 015:080
Examination; 201 KAR 015:040
Definitions; 201 KAR 015:010
Fees; 201 KAR 015:030
Funeral establishment criteria; 201 KAR 015:110
Per Diem compensation of board members; 201 KAR 015:015
Requirements for applicants holding a license in another state; 201 KAR 015:120
Surface Transportation Permit; 201 KAR 015:125

ENERGY AND ENVIRONMENT CABINET

Environmental Protection, KAR Title 401
Kentucky Nature Preserves, KAR Title 400, 418
Natural Resources; KAR Title 405
Public Service Commission, KAR Title 807

ENVIRONMENTAL PROTECTION

Water Quality
401 KAR Chapters 5, 8, and 11 (See Water Quality)

EXECUTIVE BRANCH ETHICS COMMISSION

Executive agency lobbyist, employer of executive agency lobbyist, and real party in interest registration and expenditure statements; financial transactions and termination forms; and enforcement; 009 KAR 001:040
Statement of financial disclosure; 009 KAR 001:010

SUBJECT INDEX

FACILITIES AND SUPPORT SERVICES

State-Owned Buildings and Grounds
Use of State-Owned facilities and grounds; 200 KAR 003:020

FINANCIAL INSTITUTIONS

Administration
Licensing and registration; 808 KAR 001:170
Check Cashing
Licensee change of control; 808 KAR 009:050

FISH AND WILDLIFE

Fish
Harvest and sale of Asian carp; 301 KAR 001:152
Pay lakes; 301 KAR 001:185
Taking of fish by nontraditional fishing methods; 301 KAR 001:410
Taking of fish by traditional fishing methods; 301 KAR 001:201

Game

Black bear seasons and requirements; 301 KAR 002:300
Falconry, raptor take, and raptor propagation; 301 KAR 002:195
Hunter education; 301 KAR 002:185
Hunting and trapping seasons and limits for furbearers; 301 KAR 002:251
Means by which migratory game birds may be taken; 301 KAR 002:090
Small game and furbearer hunting and trapping on public areas; 301 KAR 002:049
Waterfowl seasons and limits; 301 KAR 002:221
Waterfowl hunting requirements on public land; 301 KAR 002:222

Hunting and Fishing

Special commission permits; 301 KAR 003:100

Wildlife

Taxidermy, cervid meat processors, and the buying and selling of inedible wildlife parts; 301 KAR 004:090

FOOD STAMPS

Now called Supplemental Nutrition Assistance Program
See Community Based Services; 921 KAR Chapter 3

HEALTH AND FAMILY SERVICES

See listing below for specific subject headings:
Aging and Independent Living; KAR Title 910
Behavioral Health, Developmental and Intellectual Disabilities; KAR Title 908
Community Based Services; KAR Title 921
Inspector General (Health); KAR Title 900, 902, 906
Medicaid Services; KAR Title 895 and 907
Office for Children with Special Health Care Needs; KAR Title 911
Office of Human Resource Management; KAR Title 920

HOMELAND SECURITY

911 Services Board
Definitions for 202 KAR Chapter 006; 202 KAR 006:010
CMRS provider cost recovery; 202 KAR 006:020
CMRS surcharge remittance and reporting; 202 KAR 006:080
Confidential and proprietary information; m
Permitted uses by PSAPs and CMRS funds; 202 KAR 006:090
PSAP certification; 202 KAR 006:050
PSAP Phase II certification; 202 KAR 006:100. PSAP pro data fund disbursement; 202 KAR 006:060
PSAP workload fund disbursement; 202 KAR 006:070

HOUSING, BUILDINGS, AND CONSTRUCTION

Plumbing
Definitions for 815 KAR Chapter 020; 815 KAR 020:010
House sewers and storm water piping; methods of installation; 815 KAR 020:130
Inspection and tests; 815 KAR 020:150
Installation permits; 815 KAR 020:050
Manufactured home and mobile home community waste

system distribution and connections; 815 KAR 020:170
Parts or materials list; 815 KAR 020:020
Medical gas piping installations; 815 KAR 020:195
Plumbing fixtures; 815 KAR 020:070
Plumbing licenses; 815 KAR 020:030
Repeal of 815 KAR 020:071, 815 KAR 020:072, 815 KAR 020:073, 815 KAR 020:074, 815 KAR 020:078, 815 KAR 020:084, 815 KAR 020:100, and 815 KAR 020:110; 815 KAR 020:111
Soil, waste, and vent systems, traps, and clean-outs; 815 KAR 020:090
Special connections; 815 KAR 020:180
Quality, weight, installation, and storage of materials; 815 KAR 020:060
Waste pipe size; 815 KAR 020:080
Water heating devices; 815 KAR 020:055
Water supply and distribution; 815 KAR 020:120

INSURANCE

Agents, Consultants, Solicitors, and Adjusters
Adjuster licensing restrictions; 806 KAR 009:030
Agent licensing process; 806 KAR 009:025
Agent's rights after contract termination; 806 KAR 009:110
Disclosure requirements for financial institutions authorized to engage in insurance agency activities; 806 KAR 009:190
Examinations; 806 KAR 009:070
False or deceptive names, titles, prohibited; 806 KAR 009:020
Life settlement licenses; 806 KAR 009:310
Prelicensing courses of study; 806 KAR 009:001
Recognition of financial planning certification and designation for receipt of fees and commissions; 806 KAR 009:350
Rental vehicle agent license; 806 KAR 009:265
Repeal of 806 KAR 009:001, 806 KAR 009:070, and 806 KAR 009:220; 806 KAR 009:221
Repeal of 806 KAR 009:060; 806 KAR 009:061
Repeal of 806 KAR 009:320; 806 KAR 009:321
Repeal of 806 KAR 009:341; 806 KAR 009:341
Volume of insurance agent exchange of business; 806 KAR 009:200
Authorization of Insurers and General Requirements
Corporate Governance Annual Disclosure Insurance Fraud; 806 KAR 003:240
Fraud prevention; 806 KAR 047:010
Repeal of 806 KAR 047:020 and 806 KAR 047:030. Kinds of Insurance; Limits of Risk; Reinsurance; 806 KAR 047:021
Standards for safeguarding customer information;
Health Insurance Contracts
Uniform evaluation and reevaluation of providers; 806 KAR 017:480
Insurance Contract 806 KAR 003:230
Repeal of 806 KAR 014:060; 806 KAR 014:061
Investments
Notice of rights as an owner of a life insurance policy; 806 KAR 015:090
Repeal of 806 KAR 007:020; 806 KAR 007:021
Repeal of 806 KAR 007:030. Life Insurance and Annuity Contracts; 806 KAR 007:031
Repeal of 806 KAR 015:080; 806 KAR 015:081
Kinds of Insurance; Limits of Risk; Reinsurance
Registration of service contracts for consumer products; 806 KAR 005:060
Rates and Rating Organizations;
Automobile fleet insurance defined; 806 KAR 013:040
Repeal of 806 KAR 013:070; 806 KAR 013:071
Repeal of 806 KAR 013:101; 806 KAR 013:101
Workers' compensation deductible policies; 806 KAR 013:120
Surplus Lines
Repeal of 806 KAR 010:060; 806 KAR 010:061

INSPECTOR GENERAL (HEALTH)

Controlled Substances
Disposal of prescription controlled substances; 902 KAR 055:120
Electronic prescribing of controlled substances; 902 KAR

SUBJECT INDEX

- 055:130
- Health Services and Facilities
 - Ambulatory infusion agencies; 902 KAR 020:450
 - Facilities specifications, operation and services; behavioral health services organizations for mental health treatment; 902 KAR 020:430
 - Operation and services; personal care homes; 902 KAR 020:036
 - Operations and services; private duty nursing agencies; 902 KAR 020:370
 - Prescribed pediatric extended care centers; 902 KAR 020:280
- Long-Term Care
 - Transfer and discharge rights; 900 KAR 002:050
- JUSTICE AND PUBLIC SAFETY
- Asset Forfeiture
 - Repeal of 500 KAR 009:010, 500 KAR 009:020, 500 KAR 009:030, and 500 KAR 009:040; 500 KAR 009:011
- Corrections, KAR Title 501
- Juvenile Justice; KAR Title 505
- Kentucky Community Corrections Grant Program
 - Administration and application procedure for community corrections grant program; 500 KAR 010:020
 - Community Corrections Board and Grant Recipient Requirements; 500 KAR 010:030
 - Definitions for 500 KAR 010; 500 KAR 010:001
 - Prison Industry Enhancement Certification Program; 500 KAR 010:050
 - Review for compliance; 500 KAR 010:040
- Motorcycle Safety Education Commission
 - Motorcycle safety education program; 500 KAR 015:010
- JUVENILE JUSTICE
- Child Welfare
 - Department of Juvenile Justice Policy and Procedures Manual: juvenile sexual offender treatment program; 505 KAR 001:160
- LABOR
 - See listing below for specific subject headings:
 - Occupational Safety and Health Review Commission; 803 KAR Chapter 050
 - Workplace Standards; KAR Title 803
 - Workers' Claims; 803 KAR Chapter 025
 - Workers' Compensation Funding Commission, 803 KAR Chapter 030
- LANDSCAPE ARCHITECTS
 - Continuing education; 201 KAR 010:080
 - Fees; 201 KAR 010:050
- LICENSED PROFESSIONAL COUNSELORS
 - Qualifying experience under supervision; 201 KAR 036:060
- LICENSURE FOR LONG-TERM CARE ADMINISTRATORS
 - Renewal, reinstatement, and reactivation of license; 201 KAR 006:040
 - Temporary permits; 201 KAR 006:030
- KENTUCKY LOTTERY CORPORATION
 - Code of ethics; 202 KAR 003:010
- MEDICAID SERVICES
- Behavioral Health
 - 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 015:010
 - Coverage provisions and requirements regarding services provided by behavioral health services organizations for mental health treatment; 907 KAR 015:020
 - Coverage provisions and requirements regarding services provided by behavioral health services organizations for substance use disorder treatment and co-occurring disorders;
- Definitions for 907 KAR Chapter 015; 907 KAR 015:005
- 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 015:015
- Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations; 907 KAR 015:025
- Hospital Service Coverage and Reimbursement
 - Acute care inpatient hospital reimbursement; 907 KAR 010:830
 - Hospital Rate Improvement Program. Payments and Services; 907 KAR 010:840
 - Telehealth service coverage and reimbursements; 907 KAR 003:170
- Provider Integrity
 - Health Insurance Premium Payment (HIPP) Program; 907 KAR 005:005
- MINE RECLAMATION AND ENFORCEMENT
 - Explosives and Blasting
 - Records; 805 KAR 004:050
 - Miner Training, Education and Certification
 - Repeal of 805 KAR 007:100; 805 KAR 007:101
- MINE SAFETY
 - Mining Safety Standards
 - Employees' personal protection; 805 KAR 003:110
- NATURAL RESOURCES
 - Coal Bed Methane; 805 KAR Chapter 009
 - Forestry, KAR Title 402
 - Mining
 - Permits; KAR Title 405
 - Mine Safety; 805 KAR Chapters 003, 007 & 008
 - Natural Resources; 805 KAR Chapter 003
 - Oil and Gas; 805 KAR Chapter 001
- NATURAL RESOURCES, DEPARTMENT FOR
 - Bond and Insurance Requirements
 - Bond forfeiture; 405 KAR 010:050
 - Conservation
 - Administration of Kentucky Soil Erosion and Water Quality Cost-Share Fund; 416 KAR 001:010
 - General Provisions
 - Coal processing waste disposal sites; 405 KAR 007:050
 - General obligations of operators and permittees; 405 KAR 007:040
 - Operation of Two (2) Acres or Less
 - Repeal of 405 KAR 026:001; 405 KAR 026:011
 - Performance Standards for Surface Mining Activities
 - Permanent and temporary impoundments; 405 KAR 016:100
 - Post mining land use capability; 405 KAR 016:210
 - Performance Standards for Underground Mining Activities
 - Permanent and temporary impoundments; 401 KAR 018:100
 - Post mining land use capability; 401 KAR 018:220
 - Permits
 - General provisions for permits; 405 KAR 008:010
 - Surface coal mining permits; 405 KAR 008:030
 - Special Performance Standards
 - 405 KAR 020:040. Prime farmland.
 - Surface Effects of Noncoal Mining
 - Definitions for 405 KAR Chapter 005; 405 KAR 005:002
 - Permit requirements; 405 KAR 005:032
- NURSING
 - Applications for licensure; 201 KAR 020:370
 - Approval process for training programs for licensed certified professional midwives; 201 KAR 020:610
 - Disciplinary actions for licensed certified professional midwives; 201 KAR 020:630
 - Licensed certified professional midwives client records; 201 KAR 020:680

SUBJECT INDEX

- Licensed certified professional midwives consultation, collaboration, and referral provisions; 201 KAR 020:670
- Licensed certified professional midwives duty to report; 201 KAR 020:660
- Licensed certified professional midwives permitted medical tests and formulary; 201 KAR 020:650
- Licensed certified professional midwives transfer guidelines; 201 KAR 020:690
- Licensing requirements for licensed certified professional midwives; 201 KAR 020:620
- Nurse licensure compact; 201 KAR 020:506
- Requirements for informed consent for licensed certified professional midwives; 201 KAR 020:640
- Standards for training programs for licensed certified professional midwives; 201 KAR 020:600

- OFFICE OF HUMAN RESOURCE MANAGEMENT**
 - Division of Employee Management
 - Administration
 - Deaf and hard of hearing services; 920 KAR 001:070

- OFFICE OF THE SECRETARY, ENERGY AND ENVIRONMENT**
 - Administration
 - Administrative hearings relating to matters brought under KRS Chapter 350 or KRS 351.310 through 351.357; 400 KAR 001:110

- OFFICE OF THE SECRETARY, FINANCE AND ADMINISTRATION**
 - Property
 - Real property inventories; 200 KAR 006:015

- OIL AND GAS**
 - Bonds, requirements, cancellation; 805 KAR 001:050
 - Content of the operations and reclamation plan; 805 KAR 001:170
 - Definitions for 805 KAR Chapter 001; 805 KAR 001:001
 - Directional and horizontal wells; 805 KAR 001:140
 - Gas storage reservoirs; drilling, plugging in vicinity; 805 KAR 001:080
 - Gathering lines; 805 KAR 001:190
 - General information associated with oil and gas permits; 805 KAR 001:200
 - Operating or deepening existing wells and drilling deeper than the permitted depth; 805 KAR 001:120
 - Plugging wells; 805 KAR 001:060
 - Posting of an identification sign and a danger sign on a crude oil tank battery site; 805 KAR 001:160
 - Production reporting; 805 KAR 001:180
 - Protection of fresh water zones; 805 KAR 001:020
 - Underground injection control; 805 KAR 001:110
 - Well location and as-drilled location plat, preparation, form and contents; 805 KAR 001:030
 - Sanctions and Penalties
 - Repeal of 805 KAR Chapter 009; 805 KAR 009:011

- OPHTHALMIC DISPENSERS**
 - Apprentices; 201 KAR 013:050
 - Continuing education requirements; 201 KAR 013:055
 - Licensing; 201 KAR 013:040
 - Military service; reciprocity; endorsement; 201 KAR 013:060

- PERSONNEL CABINET**
 - Classified
 - Classified leave general requirements; 101 KAR 002:102
 - Compensation; 101 KAR 002:034
 - Employee performance evaluation system; 101 KAR 002:180
 - Employee performance management system; 101 KAR 002:190
 - Kentucky Employee Mediation and Workplace Resolution Programs; 101 KAR 002:230
 - Incentive programs; 101 KAR 002:120
 - Plan Year Handbook for the Public Employee Health Insurance Program; 101 KAR 002:210
 - Personnel Cabinet, Unclassified
 - Leave requirements for unclassified service; 101 KAR 003:015

- PHARMACY**
 - Compounding for a veterinarian's office or institutional administration for veterinary use; 201 KAR 002:310
 - Examination; 201 KAR 002:020
 - Expungement; 201 KAR 002:270
 - Pharmacist interns; 201 KAR 002:095
 - Reference material and prescription equipment; 201 KAR 002:090
 - Schools approved by the board; 201 KAR 002:010
 - Security and control of drugs and prescriptions; 201 KAR 002:100
 - Special limited pharmacy permit – charitable; 201 KAR 002:240
 - Special limited pharmacy permit – clinical practice; 201 KAR 002:340
 - Special limited pharmacy permit – medical gas; 201 KAR 002:225
 - Substitution of drugs, biologics and biosimilar products; 201 KAR 002:116
 - Transfer of prescription information; 201 KAR 002:165

- PHYSICAL THERAPY**
 - Physical Therapy Compact Commission; 201 KAR 022:170

- PODIATRY**
 - Prescribing and dispensing controlled substances; 201 KAR 025:090

- POST SECONDARY EDUCATION**
 - Interstate Reciprocity Agreements
 - State Authorization Reciprocity Agreement; 013 KAR 004:010
 - Nonpublic Colleges
 - Private College licensing; 013 KAR 001:020

- PUBLIC HEALTH**
 - Controlled Substances
 - Emergency medication kits in long-term care facilities; 902 KAR 055:070.
 - Epidemiology and Health Planning
 - Rabies control; 902 KAR 002:070
 - Food and Cosmetics
 - Body piercing and ear piercing; 902 KAR 045:070
 - Home-based processors and farmers market home-based microprocessors; 902 KAR 045:090
 - Inspection and permit fees for recreational vehicle communities, youth camps, and private water supplies; 902 KAR 045:120
 - Tattooing; 902 KAR 045:065
 - Training facilities; 902 KAR 045:075
 - Local Health Departments
 - Appointment of a health officer or a public health department director of a local health department; 902 KAR 008:140
 - Definitions for 902 KAR Chapter 008; 902 KAR 008:040
 - Disciplinary appeal process applicable for local health department employees; 902 KAR 008:110
 - Disciplinary procedures applicable for local health department employees; 902 KAR 008:100
 - Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments; 902 KAR 008:080
 - Leave provisions applicable to employees of local health departments; 902 KAR 008:120
 - Local health department employee performance evaluation program; 902 KAR 008:096
 - Promotion, transfer, and demotion of local health department employees; 902 KAR 008:090
 - Recruitment, examination, and certification of eligible applications for local health departments; 902 KAR 008:070
 - Salary adjustments for local health departments; 902 KAR

SUBJECT INDEX

- 008:060
- Maternal and Child Health
 - Cost reimbursement for specialized food products; 902 KAR 004:035
 - Newborn screening program; 902 KAR 004:030
- Milk and Products
 - Milk Advisory Committee; 902 KAR 050:005
 - Repeal of 902 KAR 050:002; 902 KAR 050:003
- Mobile Homes and Recreational Vehicles Parks; Facilities Standards
 - Manufactured and mobile homes; 902 KAR 015:010
- Programs for the Underserved
 - Kentucky Colon Screening Program; 902 KAR 021:020
- Public Accommodations
 - Hotel and motel code; 902 KAR 007:010
- State and Local Confinement Facilities
 - Environmental health; 902 KAR 009:010
- PUBLIC PROTECTION CABINET**
 - See listing below for specific subject headings:
 - Alcoholic Beverage Control; KAR Title 804 (See Alcoholic Beverage Control)
 - Professional Licensing; KAR Title 830 (See Professional Licensing)
 - Secondary Metals Recyclers; 830 KAR Chapter 1
 - Charitable Gaming; KAR Title 820
 - Claims Commission; KAR Title 107
 - Financial Institutions; KAR Title 808
 - Horse Racing Commission; KAR Title 810
 - Housing, Buildings and Construction; KAR Title 815 (See Housing, Buildings and Construction)
 - Insurance; KAR Title 806 (See Insurance)
- PRIVATE INVESTIGATORS**
 - Application for licensure; 201 KAR 041:020
 - Compliant procedure; 201 KAR 041:080
 - Continuing professional education requirements; 201 KAR 041:070
 - Examination; 201 KAR 041:030
 - Fees; 201 KAR 041:040
 - Inactive status; 201 KAR 041:060
 - Renewal and reinstatement procedures; 201 KAR 041:065
- REAL ESTATE AUTHORITY**
 - Auctioneers (See Auctioneers, Kentucky Board of)
- REAL ESTATE APPRAISERS BOARD**
 - Appraiser roster and fees; 201 KAR 030:110
 - Certification and licensing requirements; 201 KAR 030:190
 - Definitions for 201 KAR Chapter 030; 201 KAR 030:010
 - Education provider, instructor, and course; 201 KAR 030:130
 - Grievances; 201 KAR 030:070
 - Professional standards of practice and conduct; 201 KAR 030:040
 - Repeal of 201 KAR 030:020, 201 KAR 030:030, 201 KAR 030:050, 201 KAR 030:060, 201 KAR 030:120, 201 KAR 030:125, 201 KAR 030:150, 201 KAR 030:160, 201 KAR 030:170, 201 KAR 030:180, 201 KAR 030:200, 201 KAR 030:310, 201 KAR 030:315, 201 KAR 030:360, 201 KAR 030:375, and 201 KAR 030:380.
 - Registration and supervision of appraisal management companies; 201 KAR 030:330
- REAL ESTATE AUTHORITY**
 - Real Estate Commission
 - Consumer and administrative complaints; discipline; administrative hearings; 201 KAR 011:190
 - Education provider requirements; 201 KAR 011:170
 - Errors and omissions insurance requirements; 201 KAR 011:220
 - Licensing, education, and testing requirements; 201 KAR 011:210
 - 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 011:002
 - Standards of professional conduct; 201 KAR 011:121
- REAL ESTATE COMMISSION**
 - Advertising; 201 KAR 011:105
 - Definitions for 201 KAR Chapter 011; 201 KAR 011:011
 - Repeal of 201 KAR 011:420; 201 KAR 011:461
- RESPIRATORY CARE**
 - Fees; 201 KAR 029:015
- RETIREMENT SYSTEMS**
 - General Rules
 - Electronic ballots in Trustee elections; 105 KAR 001:445
 - Employment after retirement; 105 KAR 001:390
 - Participation of county attorney employees; 105 KAR 001:250
 - Quasi-governmental employer cessation window; 105 KAR 001:149
 - Retirement procedures and forms; 105 KAR 001:200
- REVENUE**
 - Ad Valorem Tax, Administration
 - Property valuation administrator office employees: payment of leave upon separation; 103 KAR 005:160
 - Repeal of 103 KAR 005:150; 103 KAR 005:151
 - Ad Valorem Tax; Local Assessment
 - Repeal of 103 KAR 007:030; 103 KAR 007:031
 - Ad Valorem Tax; State Assessment
 - Ad valorem taxation of machinery actually engaged in the manufacturing of coal, crushed stone, sand, gravel and hot asphalt; 103 KAR 008:130
 - Apportioned vehicles; 103 KAR 008:110
 - Pollution control facilities exception; 103 KAR 008:170
 - Repeal of 103 KAR 008:010; 103 KAR 008:011
 - Repeal of 103 KAR 008:140 and 103 KAR 008:150; 103 KAR 008:141
 - Valuation of municipal solid waste landfill facilities; 103 KAR 008:160
 - General Administration
 - Electronic fund transfer; 103 KAR 001:060
 - Employee access to federal tax information (FTI); 103 KAR 001:120.
 - Protests; 103 KAR 001:010
 - Income Tax; Individual
 - Repeal of 103 KAR 017:120; 103 KAR 017:121
 - Income Tax; Corporations
 - Combined Unitary Kentucky corporation income tax return; 103 KAR 016:400
 - Consolidated Kentucky corporation income tax return; 103 KAR 016:200
 - Net operating loss computation and deduction for corporations; 103 KAR 016:250
 - Income Tax; General Administration
 - Filing dates and extensions; 103 KAR 015:050
 - Repeal of 103 KAR 015:060; 103 KAR 015:061
 - Income Tax; Withholding
 - Employer's withholding reporting requirements; 103 KAR 018:150
 - Inheritance Tax
 - Life Mortality Table; 103 KAR 002:005
 - Policies and circulars relating to inheritance tax; 103 KAR 002:030
 - Sales and Use Tax; Administration and Accounting
 - Coupons or redemption certificates; 103 KAR 031:080
 - Direct pay authorization; 103 KAR 031:030
 - Energy efficiency projects; 103 KAR 031:200

SUBJECT INDEX

Records; 103 KAR 031:020
Sales and purchases for resale; 103 KAR 031:111
Tax-paid purchases resold; 103 KAR 031:090
Sales and Use Tax; General Exemptions
Containers, wrapping, and packing materials; 103 KAR 030:170
Oil and gas extraction machinery; 103 KAR 030:270
Repeal of 103 KAR 030:260; 103 KAR 030:261
Sales and Use Tax; Miscellaneous Retailer Occupations
Blueprints and copies; 103 KAR 027:020
Meals served by railroads, airlines, and other transportation companies; 103 KAR 027:080
Motor vehicles, manufactured homes, mobile homes, and trailers; 103 KAR 027:100
Photographers, photo finishers, and x-ray labs; 103 KAR 027:120
Publishers of newspapers, magazines and periodicals; 103 KAR 027:140
Restaurant transactions; 103 KAR 027:220
Vending machines; 103 KAR 027:180
Sales and Use Tax; Miscellaneous Retail Transactions
Admissions; 103 KAR 028:010
Tangible personal property; security instrument enforcement; 103 KAR 028:090
Sales and Use Tax; Registration and Collection
Current month accelerated payment of sales and use taxes by larger taxpayers; 103 KAR 025:131
Factors and agents; 103 KAR 025:050
Temporary vendors and transient merchants; 103 KAR 025:060
Sales and Use Tax; Service and Professional Occupations
Advertising agencies; 103 KAR 026:120
Common carriers; 103 KAR 026:050
Contractors; 103 KAR 026:070
Dentists and dental laboratories; 103 KAR 026:080
Motor carrier repair and replacement parts; 103 KAR 026:110
Nontaxable service enterprises; 103 KAR 026:010
Optometrists, oculists and opticians; 103 KAR 026:030
Veterinarians and pet care service providers; 103 KAR 026:090
Selective Excise Tax; Alcoholic Beverages
Maintaining records; 103 KAR 040:010
Repeal of 103 KAR 040:091; 103 KAR 040:091
Transporter's reports; 103 KAR 040:050
Selective Excise Tax; Cigarettes
Applications, stamp orders, returns, reports, and statements to be filed electronically – waiver; 103 KAR 041:220
Cigarette vending machine operators; 103 KAR 041:040
Repeal of 103 KAR 041:030, 103 KAR 041:050, 103 KAR 041:060, and 103 KAR 041:200; 103 KAR 041:031.
Sample of cigarettes; 103 KAR 041:110
Segregation of cigarettes; 103 KAR 041:100
Selective Excise Tax; Motor Fuels
Accountable losses; 103 KAR 043:010
Repeal of 103 KAR 043:050; 103 KAR 043:051
Repeal of 103 KAR 043:100; 103 KAR 043:101

TRANSPORTATION

Vehicle Regulation; KAR Title 601 (See Vehicle Regulation)
Motorcycle Safety Education Commission
See Justice and Public Safety

TRAVEL DEVELOPMENT

Procedure for Tourism Marketing Incentive Program; 300 KAR 001:010

UTILITIES

See Public Service Commission; KAR Title 807

TEACHERS' RETIREMENT SYSTEM

General Rules
Administrative staff memberships; 102 KAR 001:037
Bona Fide Retirement; 102 KAR 001:032
Employment by retired members; calculation of the daily wage

threshold and average daily rate; 102 KAR 001:035
Insurance; 102 KAR 001:100
Interest credited to accounts; 102 KAR 001:135
Omitted contributions; 102 KAR 001:125
Part-time service for university, college and community college members; 102 KAR 001:036

TRANSPORTATION

Driver Improvement
Medical Review Board; basis for examination, evaluation, tests; 601 KAR 013:090
Medical standards for operators of motor vehicles; 601 KAR 013:100
Motor Vehicle Tax
Motor vehicle registration; 601 KAR 009:130
Traffic
Encroachment permits; 603 KAR 005:150.

VEHICLE REGULATION

Motor Carriers
Ignition interlock; 601 KAR 2:030

VETERINARY EXAMINERS

Application requirements for veterinarians and veterinary technicians; 201 KAR 016:540
Approved veterinary colleges; approved programs for veterinary technicians; 201 KAR 016:520
Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA; 201 KAR 016:550
Board issued licenses and certificates, inactive and retired statuses; 201 KAR 016:580
Certification as an animal euthanasia specialist; 201 KAR 016:560
Code of ethical conduct for veterinarians; 201 KAR 016:500
Continuing education requirements, veterinarians and veterinary technicians; 201 KAR 016:590
Examination requirements for veterinarians and veterinary technicians; 201 KAR 016:530
Fees for animal control agencies and animal euthanasia specialists; 201 KAR 016:514
Fees – other fees; 201 KAR 016:516
Fees for veterinarians; 201 KAR 016:510
Fees for veterinary technicians; 201 KAR 016:512
License renewal for registered animal control agencies and animal euthanasia specialists; renewal notice; 201 KAR 016:572
License renewal for veterinarians and veterinary technicians; 201 KAR 016:570
Material incorporated by reference; 201 KAR 016:700
Prescription and dispensation of drugs for animal use; 201 KAR 016:600
Procedures for grievances, investigations, and administrative charges; 201 KAR 016:610
Repeal of 201 KAR 016:010, 201 KAR 016:015, 201 KAR 016:020, 201 KAR 016:030, 201 KAR 016:040, 201 KAR 016:050, 201 KAR 016:060, 201 KAR 016:080, 201 KAR 016:090, 201 KAR 016:100, and 201 KAR 016:110; 201 KAR 016:012

WATER QUALITY

Attainment and Maintenance of the National Ambient Air Quality Standards
Attainment status designations; 401 KAR 051:010
Certified Operators
Definitions for 401 KAR Chapter 011; 401 KAR 011:001
Operator and training provider certification; 401 KAR 011:050
Operator and training provider certification fees; 401 KAR 011:060
Wastewater treatment and collection system operators; classification and qualifications; 401 KAR 011:030
Water treatment and distribution system operators; classification and qualifications; 401 KAR 011:040
Water Quality

SUBJECT INDEX

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

Repeal of 401 KAR 005:090; 401 KAR 005:091

Water Quality Certification

Drinking water program fees; 401 KAR 008:050

Water treatment plant and water distribution system
classification and staffing; 401 KAR 008:030

Water Quality Standards

Antidegradation policy implementation methodology; 401 KAR
010:030

Definitions for 401 KAR Chapter 010; 401 KAR 010:001

Designation of uses of surface waters; 401 KAR 010:026

General provisions; 401 KAR 010:029

Surface water standards; 401 KAR 010:031

Water Wells

Certification of water well drillers and water well driller
assistants; 401 KAR 006:320

Definitions for 401 KAR Chapter 006; 401 KAR 006:001

Monitoring well construction practices and standards; 401 KAR
006:35

Repeal of 401 KAR 006:200; 401 KAR 006:211

Water supply well construction practices and standards; 401
KAR 006:310

WORKERS' CLAIMS

Pharmaceutical formulary; 803 KAR 025:271E

Treatment guidelines; 803 KAR 025:260

SUBJECT INDEX