VOLUME 46, NUMBER 8 LEGISLATIVE RESEARCH COMMISSION FEBRUARY 1, 2020

ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, January 15, 2020

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on February 10, 2020, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - 2195 Updated as needed online

The **Education Assessment and Accountability Review Subcommittee** is **tentatively** scheduled to meet on February 7, 2020, in room 129 Capitol Annex, upon adjournment of both the Senate and House Chambers.

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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, February 10, 2020 1 p.m.
Annex Room 149

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2. **REGULATIONS FOR COMMITTEE REVIEW**

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013 KAR 004:010. State Authorization Reciprocity Agreement.

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

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102 KAR 001:125. Omitted contributions.

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103 KAR 026:080. Dentists and dental laboratories.
103 KAR 026:120. Advertising agencies.

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103 KAR 027:020. Blueprints and copies.
103 KAR 027:120. Photographers, photo finishers, and x-ray labs.

Selective Excise Tax; Motor Fuels
103 KAR 043:101. Repeal of 103 KAR 043:100.

Kentucky Retirement Systems
General Rules
105 KAR 001:149 & E. Quasi-governmental employer cessation window. ("E" expires 07-12-2020)
105 KAR 001:250. Participation of county attorney employees.
105 KAR 001:445. Electronic ballots in Trustee elections.

BOARDS AND COMMISSIONS
Board of Pharmacy
201 KAR 002:020. Examination.

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. (Not Amended After Comments)

DEPARTMENT OF AGRICULTURE
Office of the State Veterinarian
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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 022:040. Carcass transport and composting. (Deferred from December)
302 KAR 022:070. Restrictions on biological materials in Kentucky. (Deferred from January)
302 KAR 022:080. Feed restrictions. (Deferred from December)

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
Permits, Registrations, and Prohibitory Rules
401 KAR 052:100. Public, affected state, and U.S. EPA review.

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401 KAR 063:010. Fugitive emissions.

JUSTICE AND PUBLIC SAFETY CABINET

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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)

Parole Board

501 KAR 001:071E. Repeal of 501 KAR 001:070.

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) (Deferred from January)

COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Fire Commission

739 KAR 002:140. Fire department reporting requirements.

739 KAR 002:150. Alan "Chip" Terry Professional Development and Wellness Program.

LABOR CABINET

Department of Workers' Claims

803 KAR 025:260. Treatment guidelines. (Amended After Comments)

PUBLIC PROTECTION CABINET

Department of Insurance

Health Insurance Contracts

806 KAR 017:480. Uniform evaluation and reevaluation of providers.

Department of Housing, Buildings, and Construction

Plumbing

815 KAR 020:010. Definitions for 815 KAR Chapter 020. (Deferred from January)

815 KAR 020:020. Parts or materials list. (Deferred from January)

815 KAR 020:030. Plumbing licenses. (Not Amended After Comments

815 KAR 020:050. Installation permits. (Deferred from January)

815 KAR 020:055. Water heating devices. (Amended After Comments)

815 KAR 020:060. Quality, weight, installation, and storage of materials. (Deferred from January)

815 KAR 020:070. Plumbing fixtures. (Deferred from January)

815 KAR 020:080. Waste pipe size. (Deferred from January)

815 KAR 020:090. Soil, waste, and vent systems, traps, and clean-outs. (Deferred from January)

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. (Deferred from January)

815 KAR 020:120. Water supply and distribution. (Deferred from January)

815 KAR 020:130. House sewers and storm water piping; methods of installation. (Deferred from January)

815 KAR 020:150. Inspection and tests. (Deferred from January)

815 KAR 020:170. Manufactured home and mobile home community waste system distribution and connections. (Not Amended After Comments)

815 KAR 020:180. Special connections. (Deferred from January)

815 KAR 020:195. Medical gas piping installations. (Deferred from January)

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Department for Public Health

Division of Administration and Financial Management

Local Health Departments

902 KAR 008: 070. Recruitment, examination, and certification of eligible applications for local health departments.

902 KAR 008:090. Promotion, transfer, and demotion of local health department employees.

902 KAR 008:096. Local health department employee performance evaluation program.

902 KAR 008:120. Leave provisions applicable to employees of local health departments.

902 KAR 008:140. Appointment of a health officer or a public health department director of a local health department.

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)

Department for Medicaid Services

Division of Fiscal Management

Hospital Service Coverage and Reimbursement

907 KAR 010:840 & E. Hospital Rate Improvement Program. ("E" expires 06-26-2020)

Office of Human Resource Management
Division of Employee Management
Administration
920 KAR 001:070. Deaf and hard of hearing services.

Department for Community Based Services
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921 KAR 003:050. Claims and additional administrative provisions.

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922 KAR 002:100. Certification of family child-care homes.

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~~**Ad Valorem Tax; State Assessment**~~
~~103 KAR 008:160. Valuation of municipal solid waste landfill facilities. (Withdrawn; SOC not filed by deadline)~~

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

Board of Dentistry
201 KAR 008:550. Anesthesia and sedation. (Comments Received; SOC ext. due 03-13-2020)

Board of Veterinary Examiners
201 KAR 016:500. Code of ethical conduct for veterinarians. (Comments Received; SOC ext., due 02-14-2020)
201 KAR 016:510. Fees for veterinarians. (Comments Received; SOC ext., due 02-14-2020)
201 KAR 016:512. Fees for veterinary technicians. (Comments Received; SOC ext., due 02-14-2020)
201 KAR 016:514. Fees for animal control agencies and animal euthanasia specialists. (Comments Received; SOC ext., due 02-14-2020)
201 KAR 016:516. Fees – other fees. (Comments Received, SOC ext. due 02-14-2020)
201 KAR 016:520. Approved veterinary colleges; approved programs for veterinary technicians. (Comments Received; SOC ext., due 02-14-2020)
201 KAR 016:530. Examination requirements for veterinarians and veterinary technicians. (Comments Received; SOC ext., due 02-14-2020)
201 KAR 016:540. Application requirements for veterinarians and veterinary technicians. (Comments Received; SOC ext., due 02-14-2020)
201 KAR 016:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA. (Comments Received, SOC ext. due 02-14-2020)
201 KAR 016:560. Certification as an animal euthanasia specialist. (Comments Received, SOC ext. due 02-14-2020)
201 KAR 016:570. License renewal for veterinarians and veterinary technicians. (Comments Received, SOC ext. due 02-14-2020)
201 KAR 016:572. License renewal for registered animal control agencies and animal euthanasia specialists; renewal notice. (Comments Received, SOC ext. due 02-14-2020)
201 KAR 016:580. Board issued licenses and certificates, inactive and retired statuses. (Comments Received, SOC ext. due 02-14-2020)
201 KAR 016:590. Continuing education requirements, veterinarians and veterinary technicians. (Comments Received, SOC ext. due 02-14-2020)
201 KAR 016:600. Prescription and dispensation of drugs for animal use. (Comments Received; SOC ext., due 02-14-2020)
201 KAR 016:610. Procedures for grievances, investigations, and administrative charges. (Comments Received; SOC ext., due 02-14-2020)
201 KAR 016:700. Material incorporated by reference. (Comments Received, SOC ext. due 02-14-2020)

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

JUSTICE AND PUBLIC SAFETY CABINET
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501 KAR 001:040 & E. Parole revocation hearing procedures. (Comments Received; SOC due 02-14-2020)

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Water
Water Quality
401 KAR 005:091. Repeal of 401 KAR 005:090. (Comments Received; SOC due 02-14-2020)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Board of Education
Department for Technical Education
Management of the Kentucky TECH System
780 KAR 002:060. Discipline of students. (Comments Received; SOC ext., due 02-14-2020)

CABINET FOR HEALTH AND FAMILY SERVICES
Division of Audits and Investigations
Controlled Substances
902 KAR 055:130. Electronic prescribing of controlled substances. (Comments Received; SOC ext., due 02-14-2020)

Department for Medicaid Services
Division of Provider Integrity
907 KAR 005:005. Health Insurance Premium Payment (HIPP) Program. (Comments Received; SOC ext., due 02-14-2020)

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.

EMERGENCY ADMINISTRATIVE REGULATIONS

COMPILER'S NOTE: 30 KAR 8:005 & E were filed on December 30, 2019, subsequently withdrawn, and were refiled on January 3, 2020. This version of 30 KAR 8:005E was withdrawn by the agency on January 3, 2020 and is being published for informational purposes.

STATEMENT OF EMERGENCY
30 KAR 8:005E

This emergency administrative regulation is being promulgated in order to meet the January 1, 2020 effective date of the electronic and remote (online) notary law, Senate Bill 114, which was passed in Kentucky's 2019 legislative session. Currently there are no administrative regulations in place for electronic and remote (online) registration of notaries public. This is being filed as an emergency administrative regulation pursuant KRS 13A.190(1)(a)3, in order to ensure that Kentuckians may utilize the statutory rights conferred by KRS 423 by the January 1, 2020, effective date. This emergency administrative regulation is being filed simultaneously with and will be replaced by an ordinary administrative regulation to ensure this regulation is ongoing after the expiration of the emergency regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. This emergency administrative regulation differs from any filed within the last nine (9) months.

ANDY BESHEAR, Governor
ALISON LUNDERGAN GRIMES, Secretary of State

SECRETARY OF STATE
(New Emergency Administrative Regulation)

30 KAR 8:005E. Notary Public applications and electronic and online registrations.

RELATES TO: KRS Chapter 423
STATUTORY AUTHORITY: KRS 423.355, 423.390, 423.395, 423.415, 423.455
EFFECTIVE: December 30, 2019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415, KRS 423.390, KRS 423.415 and KRS 423.455 authorize the Secretary of State to promulgate administrative regulations to implement KRS 423.415 to 423.455. This emergency administrative regulation establishes definitions, prescribes the process of granting, renewing, conditioning or denying a notary commission, establishes standards for the performance of notarial acts with respect to electronic records, establishes standards for the performance of online notarial acts, establishes standards for the retention of records and by notaries public authorized to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, and prescribes the manner of performing notarial acts for tangible records.

Section 1. Definitions. Words and terms defined in KRS 423.300 shall have the same meaning in this chapter. For the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

(a) "Digital Certificate" means an electronic record, issued by a third party certificate authority, which certifies the ownership of a public key, rendering an electronic document as tamper-evident.

(b) "Member of the notary public's immediate family" means a spouse, former spouse, a grandparent, a grandchild, a parent, a child, a stepchild or any other person living in the same household.

(c) "Online notarial act" means an electronic notarization performed for a remotely located individual facilitated by communication technology.

(d) "Notary technology" means an electronic device or process that allows a notary public to perform notarial acts with regard to electronic documents with or without the use of communication technology.

Section 2. Notary Public Application, Approval or Denial of Application, Voluntary Termination and Required Notice of Change of Information.

(a) Application. An application for a commission as a notary public shall be submitted on a form provided for that purpose by the Office of the Secretary of State or submitted on an electronic portal established by the Office of the Secretary of State for that purpose. A person who executes an application for filing with the Secretary of State shall be deemed to have declared under penalty of perjury that to the person's knowledge, the contents of the application are true. Every application for a notarial commission must include:

(1) The full legal name of the applicant;
(2) The email address of the applicant;
(3) A telephone number for the applicant;
(4) The signature of the applicant;
(5) The county for which the application is being made;
(6) The physical and mailing address within the county of application where the applicant resides or is employed;
(7) A statement of whether the applicant has previously held a notary commission, the name under which the applicant was previously commissioned and the date at which the most recent commission expired;
(8) A statement that the applicant is at least eighteen years of age;
(9) A statement that the applicant is a citizen or permanent legal resident of the United States;
(10) A statement that the applicant is able to read and write English;
(11) A statement identifying the surety provider from which the applicant intends to obtain surety;
(12) A statement that the applicant is not disqualified from becoming a notary public under the provision of KRS Chapter 423 or this chapter;
(13) A statement that the applicant is not disqualified for any reason under Section 2 (2) (a) - (c); and
(14) Payment of the required fee.

(b) Approval or Denial of Application.

(1) Approval of Application. If the applicant has complied with the provisions of KRS Chapter 423 and this chapter, the application shall be approved. A notary commission is effective as of the date of entry of that commission in the database of notary publics on the Web site of the Secretary of State.

(2) Disapproval of Application. The Secretary of State may disapprove the application for the following reasons:

(i) The notary public's failure to comply with KRS Chapter 423 or the provisions of this chapter or the existence of a pending inquiry regarding the notary public's failure to comply with KRS Chapter 423 and this chapter;

(ii) Any information required under this administrative regulation is missing, inaccurate, incomplete or cannot be independently verified;

(iii) A fraudulent, dishonest or deceitful misstatement or omission of fact in the submitted application;

(iv) A finding against, or admission of liability by the applicant in any legal proceeding or disciplinary action based on the applicant's fraud, dishonesty, or deceit;

(v) The denial, refusal to renew, revocation, or suspension of an applicant's notary commission or registration in another state; or

(vi) Failure of the applicant to maintain an assurance.

(3) If the application or registration is disapproved, the Secretary of State will state the reasons for the disapproval.

(c) Voluntary Termination of Notary Commission. A notary public may terminate a notary commission by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created

by the Office of the Secretary of State for that purpose. Submission of a notification of termination of a notary commission automatically terminates any notary registration.

(d) Change of Information. A notary public must notify the Office of the Secretary of State, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602, of any change of the following information during the period of the notary's commission, within ten days of the change, on a form promulgated by the Office of the Secretary of State for that purpose or on any electronic portal created by the Office of the Secretary of State for that purpose:

(i) A change in the mailing, physical or electronic mail address of the notary public;

(ii) A change in the county of residence of the notary public;

(iii) A change in the legal name of the notary public;

(iv) A change in the notary public's signature;

(v) A change in the notary public's electronic signature, if any; and

(vi) A change in the notary technology used by the notary public.

Section 3. Registration; Electronic and Online notarization.

(a) Authority to perform electronic and online notarial acts.

(1) Electronic notarial acts. An individual is authorized to perform notarial acts with respect to electronic records by:

(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010 and KAR 8:020;

(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform electronic notarial acts; and

(iii) Receiving written authorization to perform electronic notarial acts from the Secretary of State under Section 3 of this administrative regulation.

(2) Online notarial acts. An individual is authorized to perform online notarial acts by:

(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010;

(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform online notarial acts; and

(iii) Receiving written authorization to perform online notarial acts from the Secretary of State under Section 3 of this administrative regulation.

(3) An individual who is authorized to perform online notarial acts under this section is also authorized to perform electronic notarial acts.

(b) Registration procedures.

(1) Registration format. Registration under this section shall be by electronic registration to the Secretary of State pursuant to KRS 423.390 and shall include the following information:

(i) The individual's full legal name;

(ii) The county in which the individual resides or has his or her place of employment or practice in this Commonwealth;

(iii) The registrant's date of birth;

(iv) The registrant's notary identification number and the expiration date of the registrant's notary commission;

(v) The electronic mail address, physical and mailing address where the registrant resides or is employed;

(vi) An indication of whether the individual is registering to perform electronic notarial acts or online notarial acts, or both;

(vii) A description of the notary technology that the individual intends to use to perform electronic notarial acts and/or online notarial acts, including the technologies or devices to maintain the journal required under KRS 423.380 and to render electronic records tamper-evident after a notarial act is completed;

(viii) A copy of the applicant's electronic signature, the digital certificate required under 30 KAR 8:040, the official stamp, if any, along with any necessary instructions or techniques supplied by a vendor or notary that allows the signature and stamp to be read and authenticated, in a file format acceptable to the Secretary of State;

(ix) The name, address, and Web site URL of any vendors or other persons that will directly supply the notary public with technology that the notary public intends to use;

(x) A statement of whether the notary technology provider has registered with the Secretary of State;

(xi) A copy of any necessary instructions or techniques supplied by a vendor that allow the notary to conduct identity proofing and credential analysis;

(xii) An explanation of the methods or technology by which the notary will maintain and store the journal required by KRS 423.380;

(xiii) A statement that the technologies or devices named in the registration are compliant with KRS Chapter 423 and with this chapter;

(xiv) The county, book and page where the notary's surety bond is recorded;

(xv) A disclosure of any convictions, professional license or commission revocations, professional disciplinary actions or other disqualifying actions or proceedings taken under the laws of any state against the notary public.

(2) Submission of registration form. The registration must be submitted electronically to Secretary of State as provided by information posted on the Secretary of State's Web site at https://sos.ky.gov/.

(3) Use of additional vendors. If, during the term of a notary public's commission, the notary public intends to use the technologies of another vendor or person than those identified in Section (1)(i) of this section, then an additional notification identifying such other vendors or other persons must be submitted to the Secretary of State as provided in this section and in accordance with the manner established by the Secretary of State as posted on the Secretary of State's Web site at https://sos.ky.gov/.

(c) Approval or disapproval by the Secretary of State.

(1) Approval of registration. If the provider of the technology identified by the notary public in the registration required under Section 2 of this administrative regulation has registered with the Secretary of State, and the registrant has complied with the provisions of KRS Chapter 423 and this chapter, the registration to perform notarial acts with respect to electronic records shall be approved. A registration is effective as of the date of entry of that registration in the database of the Secretary of State.

(2) Disapproval of registration. The Secretary of State may disapprove the registration and reject the notary public's registration for the following reasons:

(i) The notary public's failure to comply with KRS Chapter 423 or the provisions of this chapter or a pending inquiry regarding the notary public's failure to comply with KRS Chapter 423 and this chapter;

(ii) Any information required under Section 2 of this administrative regulation is missing, inaccurate, or incomplete;

(iii) A fraudulent, dishonest, or deceitful misstatement or omission in the submitted registration;

(iv) A finding against, or admission of liability by, the registrant in any legal proceeding or disciplinary action based on the registrant's fraud, dishonesty, or deceit;

(v) Denial, refusal to renew, revocation, or suspension of a notary commission or registration in another state;

(vi) Failure of the notary to maintain an assurance; or

(vii) The provider of the technology identified by the notary public has not registered with the Secretary of State.

(3) If the notary public's registration is disapproved, the Secretary of State will state the reasons for the disapproval.

(d) Termination of electronic registration. A notary public may terminate an electronic registration by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose. Termination of a notary public's electronic registration does not terminate a notary public's commission.

(e) Renewal of commission. The renewal of the commission of a notary public who has previously registered to perform notarial

acts with regard to electronic records or online notarizations under Section 1 of this administrative regulation constitutes renewal of the notary public's registration without the necessity of submitting another registration under this administrative regulation.

(f) Updated technology. Nothing herein shall be construed to prohibit a notary public from receiving, installing, or using a hardware or software update to the technologies that the notary public identified under Section 2 of this administrative regulation if the hardware or software update does not result in technologies that are materially different from the technologies that the notary public identified.

Section 4. Standards for Notarization of Electronic Documents.

(a) Tamper-evident technology requirements. A notary public must select one or more tamper-evident technologies to perform notarizations with regard to electronic records. No person may require a notary public to use a technology that the notary public has not selected. The tamper-evident technology must consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology. A notary public must attach or logically associate the notary public's electronic signature and official stamp, if any, to an electronic record that is the subject of a notarial act by use of the digital certificate. A notary public may not perform an electronic notarization if the digital certificate:

(1) Has expired;

(2) Has been revoked or terminated by the issuing or registering authority;

(3) Is invalid; or

(4) Is incapable of authentication.

(b) Requirements of official stamp.

(1) A notary public is not required to use an official stamp when performing notarial acts with respect to electronic records.

(2) A notary public who uses an official stamp must use the same unique official stamp for all notarial acts with respect to electronic records that are performed for an individual that is not remotely located. An official stamp under this section is an official seal of office of the notary public for all purposes. An official stamp must conform to the following requirements:

(i) Required information. An official stamp shall substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public's commission number, and the commission expiration date.

(ii) Format and size. When affixed to an electronic record, an official stamp must be clear, legible, and photographically reproducible. An official stamp is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing notarial acts with respect to electronic records, the certificate of the notarial act on the electronic record must:

(i) Contain the name of the notary public as it appears on the notary public's commission;

(ii) Indicate the title "Notary Public" for any notarial act with respect to electronic records; and

(iii) Indicate the notary public's commission number and the commission expiration date.

(c) Use of electronic signature and stamping device. A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the notary signature and stamping device and shall not disclose any access information used to affix the notary public's electronic signature or official stamp to electronic records, except:

(1) When requested by the Secretary of State or a law enforcement officer;

(2) When required by court order or subpoena; or

(3) Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in 30 KAR 8:050, Section 7.

(d) Protection against theft, alteration or misuse.

(1) A notary public may not allow any other individual to alter or use his or her electronic signature, notary technology, official stamp or stamping device to perform a notarial act.

(2) Upon resignation, revocation, or expiration of the notary's commission, the notary public's notary technology and electronic stamping device (including any coding, disk, digital certificate, card, software, or password that enables the notary public to attach or logically associate the notary's electronic signature or official stamp to an electronic record) must be destroyed or disabled to prohibit its use by any other person. A former notary public whose commission terminated for a reason other than revocation or denial of renewal is not required to destroy the notary public's notary technology or electronic stamping device if the former notary public is recommissioned as a notary public within thirty days after the termination of the notary public's former commission.

(3) A notary public shall promptly notify the Secretary of State on actual knowledge of the theft or vandalism of the notary public's notary technology or electronic stamping device. A notary public shall promptly notify the Secretary of State on actual knowledge of the unauthorized use by another person of the notary public's electronic signature, notary technology or electronic stamping device.

(e) Tangible copies of an electronic record. A notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record if the notary has taken reasonable steps to confirm the accuracy of that certification.

Section 5. Standards for Online Notarial Acts.

(a) Notarial acts with respect to electronic records. In performing online notarial acts with respect to electronic records, an online notary public must comply with the requirements for electronic notarization as provided in 30 KAR 8:030.

(b) Requirements of official stamp.

(1) A notary public is not required to use an official stamp when performing online notarizations.

(2) A notary public who uses an official stamp must use the same unique official stamp for all notarizations involving online notarial acts. An official stamp under this section is an official seal of office of the notary public for all purposes. An official stamp must conform to the following requirements:

(i) Required information. An official stamp shall substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public's commission number, and the commission expiration date.

(ii) Online notarial acts. If an online notary public uses an official stamp to perform online notarial acts, the official stamp must contains the words "Online Notary Public" in lieu of the words "Notary Public." A stamp that contains the words "Online Notary Public" may only be used to perform notarizations with regard to remotely located individuals.

(iii) Format and size. When affixed to an electronic record, an official stamp must be clear, legible, and photographically reproducible. An official stamp is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing online notarial acts the certificate must:

(i) Contain the name of the notary public as it appears on the notary public's commission;

(ii) Indicate the title "Online Notary Public" for any notarial act with respect to a remotely located individual; and

(iii) Indicate the notary public's commission number and the commission expiration date.

(c) Physical location. An online notary public shall be physically located in this Commonwealth at the time of the performance of the online notarization.

(d) Identity proofing. If an online notary public does not have personal knowledge or satisfactory evidence of the identity of a remotely located individual as defined in Section 5, the online notary public must reasonably verify the individual's identity through at least two different types of identity proofing processes or services. Those processes shall include remote presentation of an appropriate identification by the remotely located individual, credential analysis of that credential by a service or process that analyzes the person's identity credential, binds the individual's identity to the individual following a successful dynamic knowledge-based authentication assessment, and permits the notary to visually compare the identity credential and the individual. The analysis of the identity credential and the dynamic knowledge-based authentication assessment shall conform to the following requirements:

(1) Credential analysis. The analysis of an identity credential must use public or private data sources to confirm the validity of the identity credential that is the subject of remote presentation by a remotely located individual and shall, at a minimum:

(i) Use automated software processes to aid the online notary public in verifying the identity of each remotely located individual;

(ii) Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;

(iii) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and

(iv) Enable the online notary public to visually compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the online notary public in real time through communication technology.

(2) Dynamic knowledge-based authentication. A dynamic knowledge-based authentication assessment is successful if it meets the following requirements:

(i) The remotely located individual must answer a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;

(ii) Each question must have a minimum of five possible answer choices;

(iii) At least 80% of the questions must be answered correctly;

(iv) All questions must be answered within two minutes;

(v) If the remotely located individual fails the first attempt, the individual may attempt the authentication assessment one additional time within 24 hours;

(vi) During the second authentication assessment, a minimum of 40% of the prior questions must be replaced;

(vii) If the remotely located individual fails the second authentication assessment, the individual is not allowed to attempt identity authentication with the same online notary public within 24 hours of the second failed authentication assessment; and

(viii) The online notary public must not be able to see or record the questions or answers.

(e) Other methods of identity verification. An online notary public has satisfactory evidence of the identity of a remotely located individual if the online notary public has personal knowledge of the identity of the individual, or if the individual is identified by oath or affirmation of a credible witness, or if the online notary has reasonably verified the identity of the individual by use of a valid public key certificate, with the following requirements:

(1) Personal knowledge. An online notary public has personal knowledge of the identity of the individual appearing before the online notary public if the individual is personally known to the online notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) Credible witness. To be a credible witness, an individual must have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the online notarization. If the credible witness is a remotely located individual, then the online notary public must reasonably verify the credible witness's identity under Section 3 of this administrative regulation or have personal knowledge of the credible witness under subsection 1 of this section. A credible witness may be a remotely located individual if the online notary public, credible witness, and individual whose statement or signature is the subject of the online notarization can communicate by using communication technology.

(3) Public key certificate.

(i) The identity of the individual appearing before the online notary public may be verified by use of a valid public key certificate that meets the requirements of a digital certificate, as that term is defined in 30 KAR 8:010; complies with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology; and is issued by a technology provider or digital certificate service registered with the Secretary of State pursuant to Section 7 of this regulation.

(ii) A public key certificate is not valid for identity verification if the public key certificate has expired, has been revoked or terminated by the issuing or registering authority, is invalid, or is incapable of authentication.

(f) Requirements for communication technology. The communication technology used by an online notary public in the performance of online notarizations must conform to the following requirements:

(1) Audio-video feeds. Communication technology must provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the online notary public and remotely located individual to see and speak with each other. The process must provide a means for the online notary public reasonably to confirm that a record before the online notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(2) Security measures. Communication technology must provide reasonable security measures to prevent unauthorized access to:

(i) The live transmission of the audio-visual feeds;

(ii) The methods used to perform the identify verification process under Sections 3 or 4 of this administrative regulation, as applicable; and

(iii) The record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(3) Work flow. If a remotely located individual must exit the workflow, the individual must restart the identify verification process under Sections 3 or 4 of this administrative regulation, as applicable, from the beginning.

(4) Recording. All notarial acts performed using communication technology must be electronically recorded. The recording shall contain a recitation that the notary has informed the individuals participating in the notarial act that it will be electronically recorded.

(g) Notary technology provider registration.

(1) A provider of technology used in the process of electronic or online notarization must register with Secretary of State in the manner directed by the Secretary of State and provide the following information:

(a) The legal name of the technology provider;

(b) The mailing address of the technology provider;

(c) The physical address of the technology provider;

(d) A designated contact person for that provider;

(e) The phone number, physical address, and email address of the contact person;

(f) The name of the technology provided;

(g) The name of the provider or providers of the knowledge-based authentication, credential analysis, or digital certificate services, if different from the technology provider;

(h) A description of the technology used and the manner in which it complies with KRS Chapter 423 and this chapter;

(i) The process by which the technology provider verifies the identity of the notary public or digital certificate holder using the technology;

(j) A plan for the retention and disposition of records created, generated or retained in conjunction with the use of the technology, including, but not limited to, any electronic journal, recordings or records created or retained during an electronic or online notarization, in the event the technology provider no longer engages in the business of providing electronic or online notary technology; and

(k) An authorized certification that the technology provided complies with KRS Chapter 423 and this chapter.

(2) A registration in compliance with this section is non-transferable and may not be conveyed to any other notary technology provider.

(h) Complaint Against a Notary Technology Provider.

(1) A written complaint may be made against a notary technology provider registered with the Office of the Secretary of State. A complaint that does not comply with the requirements of this section will not be filed, responded to, or acted upon by the Secretary of State.

(2) The Office of the Secretary of State may commence an investigation of a registered notary technology provider as a result of a complaint or upon its own initiative.

(3) An investigation under this section may include:

(a) An initial request for information from the accused provider;

(b) A copy of the complaint forwarded to the registration provider; and

(c) A request for supporting documentation and other sources of information.

(4) A provider shall provide true, accurate, and complete copies of all information requested by the Office of the Secretary of State.

(5) Failure of a provider to comply with an investigation directive may result in revocation of the provider's registration.

(6) A finding that the provider has failed to comply with the provisions of KRS Chapter 423 or this chapter may result in revocation of the provider's registration.

(i) Duties of Notary Technology Provider. A notary technology provider must:

(1) Respond to a request for information from the Office of the Secretary of State within the time directed. Any request for information will be sent to the addresses provided upon registration;

(2) Take reasonable steps to ensure that a notary public or digital certificate holder is able to use the technology provided in accordance with this chapter; and

(3) Suspend the use of any technology for any notary or digital certificate holder whose commission, registration, or digital certificate has expired, been revoked or been suspended.

Section 6. Electronic and Online Record Retention Requirements

(a) Record retention.

(1) A notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals using communication technology must maintain one or more journals in a permanent, tamper-evident electronic format to chronicle those notarizations.

(2) A journal entry shall be made contemporaneously with the performance of the notarial act and contain:

(a) The date and time of the notarial act;

(b) A brief description of the record, if any and the type of notarial act;

(c) The full name and address of each individual for whom a notarial act is performed;

(d) A statement of how identification was established and a description of any identification credential presented including the type of credential and dates of issuance and expiration of the credential;

(e) The fee charged, if any; and

(f) For a notarial act involving remotely located individuals using communication technology, an audio-visual recording (or a link thereto) of the performance of the notarial act that complies with KRS Chapter 423 and this chapter.

(3) A journal must be created and stored in a computer or other electronic storage device or process that protects the electronic journal and any audio-visual recording against unauthorized access by password or cryptographic process. A recording must be created in an industry-standard audio-visual file format and must not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature.

(4) An electronic journal must be retained for at least ten (10) years after the last notarial act chronicled in the journal. An audio-visual recording must be retained for at least ten (10) years after the recording is made.

(5) A journal entry shall not record an identification numbers assigned to an individual by a governmental agency or any biometric identifier.

(6) A notary public must take reasonable steps to ensure that a backup of the journal and audio-visual recording exists and is secure from unauthorized use.

(7) On the death or adjudication of incompetency of a current or former notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals, the online notary public's personal representative or guardian or any other person knowingly in possession of a journal or audio-visual recording must:

(i) Comply with the retention requirements of this subsection;

(ii) Transmit the journal and recording to one or more repositories under Section 2 of this administrative regulation; or

(iii) Transmit the journal and recording in an industry-standard readable data storage device to his/her notary technology provider.

(b) Repositories. A notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals, a guardian, conservator, or agent of such a notary public, or a personal representative of such a deceased online notary public may, by written contract, engage a third person to act as a repository to provide the storage required by Section 1 of this administrative regulation. A third person under contract under this section shall be deemed a repository or custodian under KRS 423.380 (8) or KRS 423.455(5), as applicable. The contract shall:

(1) Enable the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public to comply with the retention requirements of Section 1 of this administrative regulation even if the contract is terminated; or

(2) Provide that the information will be transferred to the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public if the contract is terminated.

(c) Lost, Stolen or Improperly Accessed Journal.

(1) A notary public is responsible for the security of the notary public's journal and may not allow another individual to use the journal to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the journal and shall not allow access to the notary public's journal, except:

(i) When requested by the Secretary of State or a law enforcement officer;

(ii) When required by court order or subpoena; or

(iii) Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in 30 KAR 8:050, Section 6.

(2) A notary public shall promptly notify the Secretary of State of a lost or stolen journal upon discovering the journal is lost or stolen.

(d) Disposition of Notarial Records upon Termination of Commission or Registration. Upon the revocation, resignation, termination or suspension of the commission of the notary public or the revocation, resignation, termination or suspension of the registration of the notary public to perform notarial acts with

respect to electronic records and notarial acts involving remotely located individuals using communication technology, the notary public shall retain the journal in accordance with the provisions of Section 1 of this regulation.

Section 7. Notary Discipline

(a) Prohibited Conduct. Failure to comply with a provision of KRS 423.395 may result in the denial, refusal to renew, revocation, suspension or conditioning of a notary commission and may result in disciplinary action.

(b) Conviction, Finding or Admission. Denial, refusal to renew, revocation, suspension or conditioning of a notary commission shall result upon notification to the Secretary of State of:

(1) A conviction of felony or crime involving fraud, dishonesty or deceit;

(2) A finding against, or admission of liability by, the notary public in any legal proceeding or disciplinary action alleging fraud, dishonesty or deceit by the notary; or

(3) A judicial determination of liability in a suit for fraud, misrepresentation or for failure to discharge the duties of a notary public.

(c) A notary public shall promptly notify the Secretary of State, in writing, of a conviction, finding, admission of liability, or judicial determination of liability as defined in this section.

(d) Complaint Against a Notary Public. A person that knows of a violation of Section 1 or 2 may file a complaint against a notary public with the Secretary of State. A complaint shall be in writing, dated, and signed by the person making the complaint. A complaint that does not comply with the requirements of this section will not be filed, responded to or acted upon by the Secretary of State.

(e) Any condition, restriction, suspension or revocation of a notary commission will automatically have the same effect on the electronic or online registration the notary public holds.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: December 30, 2019

FILED WITH LRC: December 30, 2019 at 2 p.m.

CONTACT PERSON: Michael Wilson, Director of Business and Deputy general Counsel, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687; email sos.secretary@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions under which notary public officers may be approved by the Office of the Secretary of State. Additionally, it establishes procedures for electronic and online notary applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for approving notary public officers and electronic and online notary publics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Office of the Secretary of State to fulfill its duties under KRS 423, this administrative regulation is necessary to establish the procedures for approving notary public applications and registrations for electronic and online notaries public.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for approving notary public applications and registrations for electronic and online notaries public.

(2) N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects individual notaries public and those who voluntarily apply to be electronic and online notaries public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals identified in question (3) will have to familiarize themselves with this administrative regulation.

(b) In complying with this administrative regulation, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur minimal costs in order to submit an application and/or registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals identified in question (3) will obtain the rights of a notary public and/or electronic and online notary public.

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

(a) Initially: The application for notary public costs $10; registration for electronic or online costs $10.

(b) On a continuing basis: There is no cost to implement this administrative regulation at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source funding at this time since there is no cost to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: A fee for registration as an electronic and/or remote (online) notary is established at $10; additional funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees for notary public applications is unchanged; fees for registration for electronic or online notary public is $10.

(9) TIERING: Is tiering applied? 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 administrative regulation will impact the Office of the Secretary of State and county clerks offices.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS Chapter 423.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate additional fees for the Office of Secretary of State of $10 per electronic notary registration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate additional fees for the Office of Secretary of State of $10 per electronic notary registration.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

COMPILER'S NOTE: 30 KAR 8:005 & E were originally filed on December 30, 2019, subsequently withdrawn, and were refiled on January 3, 2020. This version of 30 KAR 8:005E was filed by the agency on January 3, 2020.

STATEMENT OF EMERGENCY
30 KAR 8:005E

This emergency administrative regulation is being promulgated in order to meet the January 1, 2020 effective date of the electronic and remote (online) notary law, Senate Bill 114, which was passed in Kentucky's 2019 legislative session. Currently there are no administrative regulations in place for electronic and remote (online) registration of notaries public. This is being filed as an emergency administrative regulation pursuant KRS 13A.190(1)(a)3, in order to ensure that Kentuckians may utilize the statutory rights conferred by KRS 423 by the January 1, 2020, effective date. This emergency administrative regulation is being filed simultaneously with and will be replaced by an ordinary administrative regulation to ensure this regulation is ongoing after the expiration of the emergency regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. This emergency administrative regulation differs from any filed within the last nine (9) months.

ANDY BESHEAR, Governor
ALISON LUNDERGAN GRIMES, Secretary of State

SECRETARY OF STATE
(New Emergency Administrative Regulation)

30 KAR 8:005E. Notary Public applications and electronic and online registrations.

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.355, 423.390, 423.395, 423.415, 423.455

EFFECTIVE: January 3, 2020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415, KRS 423.390, 423.415, and 423.455 authorize the Secretary of State to promulgate administrative regulations to implement KRS 423.415 to 423.455. This emergency administrative regulation establishes definitions, prescribes the process of granting, renewing, conditioning or denying a notary commission, establishes standards for the performance of notarial acts with respect to electronic records, establishes standards for the performance of online notarial acts, establishes standards for the retention of records and by notaries public authorized to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, and prescribes the manner of performing notarial acts for tangible records.

Section 1. Definitions. Words and terms defined in KRS 423.300 shall have the same meaning in this chapter. For the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

(a) "Digital Certificate" means an electronic record, issued by a third party certificate authority, which certifies the ownership of a public key, rendering an electronic document as tamper-evident.

(b) "Member of the notary public's immediate family" means a spouse, former spouse, a grandparent, a grandchild, a parent, a child, a stepchild or any other person living in the same household.

(c) "Online notarial act" means an electronic notarization performed for a remotely located individual facilitated by communication technology.

(d) "Notary technology" means an electronic device or process that allows a notary public to perform notarial acts with regard to electronic documents with or without the use of communication technology.

Section 2. Notary Public Application, Approval or Denial of Application, Voluntary Termination and Required Notice of Change of Information.

(a) Application. An application for a commission as a notary public shall be submitted on a form provided for that purpose by the Office of the Secretary of State or submitted on an electronic portal established by the Office of the Secretary of State for that purpose. A person who executes an application for filing with the Secretary of State shall be deemed to have declared under penalty of perjury that to the person's knowledge, the contents of the application are true. Every application for a notarial commission must include:

(1) The full legal name of the applicant;

(2) The email address of the applicant;

(3) A telephone number for the applicant;

(4) The signature of the applicant;

(5) The county for which the application is being made;

(6) The physical and mailing address within the county of application where the applicant resides or is employed;

(7) A statement of whether the applicant has previously held a notary commission, the name under which the applicant was previously commissioned and the date at which the most recent commission expired;

(8) A statement that the applicant is at least eighteen years of age;

(9) A statement that the applicant is a citizen or permanent legal resident of the United States;

(10) A statement that the applicant is able to read and write English;

(11) A statement identifying the surety provider from which the applicant intends to obtain surety;

(12) A statement that the applicant is not disqualified from becoming a notary public under the provision of KRS Chapter 423 or this chapter;

(13) A statement that the applicant is not disqualified for any reason under Section 2(2)(a) - (c); and

(14) Payment of the required fee.

(b) Approval or Denial of Application.

(1) Approval of Application. If the applicant has complied with the provisions of KRS Chapter 423 and this chapter, the application shall be approved. A notary commission is effective as of the date of entry of that commission in the database of notary publics on the website of the Secretary of State.

(2) Disapproval of Application. The Secretary of State may disapprove the application for the following reasons:

(i) The notary public's failure to comply with KRS Chapter 423 or the provisions of this chapter or the existence of a pending inquiry regarding the notary public's failure to comply with KRS Chapter 423 and this chapter;

(ii) Any information required under this administrative regulation is missing, inaccurate, incomplete or cannot be independently verified;

(iii) A fraudulent, dishonest or deceitful misstatement or omission of fact in the submitted application;

(iv) A finding against, or admission of liability by the applicant in any legal proceeding or disciplinary action based on the applicant's fraud, dishonesty, or deceit;

(v) The denial, refusal to renew, revocation, or suspension of an applicant's notary commission or registration in another state; or

(vi) Failure of the applicant to maintain an assurance.

(3) If the application or registration is disapproved, the Secretary of State will
state the reasons for the disapproval.

(c) Voluntary Termination of Notary Commission. A notary public

may terminate a notary commission by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose. Submission of a notification of termination of a notary commission automatically terminates any notary registration.

(d) Change of Information. A notary public must notify the Office of the Secretary of State, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602, of any change of the following information during the period of the notary's commission, within ten days of the change, on a form promulgated by the Office of the Secretary of State for that purpose or on any electronic portal created by the Office of the Secretary of State for that purpose:

(i) A change in the mailing, physical or electronic mail address of the notary public;

(ii) A change in the county of residence of the notary public;

(iii) A change in the legal name of the notary public;

(iv) A change in the notary public's signature;

(v) A change in the notary public's electronic signature, if any; and

(vi) A change in the notary technology used by the notary public.

Section 3. Registration; Electronic and Online notarization.

(a) Authority to perform electronic and online notarial acts.

(1) Electronic notarial acts. An individual is authorized to perform notarial acts with respect to electronic records by:

(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010 and KAR 8:005 Section 2;

(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform electronic notarial acts; and

(iii) Receiving written authorization to perform electronic notarial acts from the Secretary of State under Section 3 of this administrative regulation.

(2) Online notarial acts. An individual is authorized to perform online notarial acts by:

(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010;

(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform online notarial acts; and

(iii) Receiving written authorization to perform online notarial acts from the Secretary of State under Section 3 of this administrative regulation.

(3) An individual who is authorized to perform online notarial acts under this section is also authorized to perform electronic notarial acts.

(b) Registration procedures.

(1) Registration format. Registration under this section shall be by electronic registration to the Secretary of State pursuant to KRS 423.390 and shall include the following information:

(i) The individual's full legal name;

(ii) The county in which the individual resides or has his or her place of employment or practice in this Commonwealth;

(iii) The registrant's date of birth;

(iv) The registrant's notary identification number and the expiration date of the registrant's notary commission;

(v) The electronic mail address, physical and mailing address where the registrant resides or is employed;

(vi) An indication of whether the individual is registering to perform electronic notarial acts or online notarial acts, or both;

(vii) A description of the notary technology that the individual intends to use to perform electronic notarial acts and/or online notarial acts, including the technologies or devices to maintain the journal required under KRS 423.380 and to render electronic records tamper-evident after a notarial act is completed;

(viii) A copy of the applicant's electronic signature, the digital certificate required under 30 KAR 8:005 Section 4 the official stamp, if any, along with any necessary instructions or techniques supplied by a vendor or notary that allows the signature and stamp to be read and authenticated, in a file format acceptable to the Secretary of State;

(ix) The name, address, and Web site URL of any vendors or other persons that will directly supply the notary public with technology that the notary public intends to use;

(x) A statement of whether the notary technology provider has registered with the Secretary of State;

(xi) A copy of any necessary instructions or techniques supplied by a vendor that allow the notary to conduct identity proofing and credential analysis;

(xii) An explanation of the methods or technology by which the notary will maintain and store the journal required by KRS 423.380;

(xiii) A statement that the technologies or devices named in the registration are compliant with KRS Chapter 423 and with this chapter;

(xiv) The county, book and page where the notary's surety bond is recorded;

(xv) A disclosure of any convictions, professional license or commission revocations, professional disciplinary actions or other disqualifying actions or proceedings taken under the laws of any state against the notary public.

(2) Submission of registration form. The registration must be submitted electronically to Secretary of State as provided by information posted on the Secretary of State's Web site at https://sos.ky.gov/.

(3) Use of additional vendors. If, during the term of a notary public's commission, the notary public intends to use the technologies of another vendor or person than those identified in Section (1)(i) of this section, then an additional notification identifying such other vendors or other persons must be submitted to the Secretary of State as provided in this section and in accordance with the manner established by the Secretary of State as posted on the Secretary of State's Web site at https://sos.ky.gov/.

(c) Approval or disapproval by the Secretary of State.

(1) Approval of registration. If the provider of the technology identified by the notary public in the registration required under Section 2 of this administrative regulation has registered with the Secretary of State, and the registrant has complied with the provisions of KRS Chapter 423 and this chapter, the registration to perform notarial acts with respect to electronic records shall be approved. A registration is effective as of the date of entry of that registration in the database of the Secretary of State.

(2) Disapproval of registration. The Secretary of State may disapprove the registration and reject the notary public's registration for the following reasons:

(i) The notary public's failure to comply with KRS Chapter 423 or the provisions of this chapter or a pending inquiry regarding the notary public's failure to comply with KRS Chapter 423 and this chapter;

(ii) Any information required under Section 2 of this administrative regulation is missing, inaccurate, or incomplete;

(iii) A fraudulent, dishonest, or deceitful misstatement or omission in the submitted registration;

(iv) A finding against, or admission of liability by, the registrant in any legal proceeding or disciplinary action based on the registrant's fraud, dishonesty, or deceit;

(v) Denial, refusal to renew, revocation, or suspension of a notary commission or registration in another state;

(vi) Failure of the notary to maintain an assurance; or

(vii) The provider of the technology identified by the notary public has not registered with the Secretary of State.

(3) If the notary public's registration is disapproved, the Secretary of State will state the reasons for the disapproval.

(d) Termination of electronic registration. A notary public may terminate an electronic registration by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose. Termination of a notary public's electronic registration does not terminate a notary public's commission.

(e) Renewal of commission. The renewal of the commission of a notary public who has previously registered to perform notarial acts with regard to electronic records or online notarizations under

Section 1 of this administrative regulation constitutes renewal of the notary public's registration without the necessity of submitting another registration under this administrative regulation.

(f) Updated technology. Nothing herein shall be construed to prohibit a notary public from receiving, installing, or using a hardware or software update to the technologies that the notary public identified under Section 2 of this administrative regulation if the hardware or software update does not result in technologies that are materially different from the technologies that the notary public identified.

Section 4. Standards for notarization of electronic documents.

(a) Tamper-evident technology requirements. A notary public must select one or more tamper-evident technologies to perform notarizations with regard to electronic records. No person may require a notary public to use a technology that the notary public has not selected. The tamper-evident technology must consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology. A notary public must attach or logically associate the notary public's electronic signature and official stamp, if any, to an electronic record that is the subject of a notarial act by use of the digital certificate. A notary public may not perform an electronic notarization if the digital certificate:

(1) Has expired;

(2) Has been revoked or terminated by the issuing or registering authority;

(3) Is invalid; or

(4) Is incapable of authentication.

(b) Requirements of official stamp.

(1) A notary public is not required to use an official stamp when performing notarial acts with respect to electronic records.

(2) A notary public who uses an official stamp must use the same unique official stamp for all notarial acts with respect to electronic records that are performed for an individual that is not remotely located. An official stamp under this section is an official seal of office of the notary public for all purposes. An official stamp must conform to the following requirements:

(i) Required information. An official stamp shall substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public's commission number, and the commission expiration date.

(ii) Format and size. When affixed to an electronic record, an official stamp must be clear, legible, and photographically reproducible. An official stamp is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing notarial acts with respect to electronic records, the certificate of the notarial act on the electronic record must:

(i) Contain the name of the notary public as it appears on the notary public's commission;

(ii) Indicate the title "Notary Public" for any notarial act with respect to electronic records; and

(iii) Indicate the notary public's commission number and the commission expiration date.

(c) Use of electronic signature and stamping device. A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the notary signature and stamping device and shall not disclose any access information used to affix the notary public's electronic signature or official stamp to electronic records, except:

(1) When requested by the Secretary of State or a law enforcement officer;

(2) When required by court order or subpoena; or

(3) Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in 30 KAR 8:005, Section 5(g).

(d) Protection against theft, alteration or misuse.

(1) A notary public may not allow any other individual to alter or use his or her electronic signature, notary technology, official stamp or stamping device to perform a notarial act.

(2) Upon resignation, revocation, or expiration of the notary's commission, the notary public's notary technology and electronic stamping device (including any coding, disk, digital certificate, card, software, or password that enables the notary public to attach or logically associate the notary's electronic signature or official stamp to an electronic record) must be destroyed or disabled to prohibit its use by any other person. A former notary public whose commission terminated for a reason other than revocation or denial of renewal is not required to destroy the notary public's notary technology or electronic stamping device if the former notary public is recommissioned as a notary public within thirty days after the termination of the notary public's former commission.

(3) A notary public shall promptly notify the Secretary of State on actual knowledge of the theft or vandalism of the notary public's notary technology or electronic stamping device. A notary public shall promptly notify the Secretary of State on actual knowledge of the unauthorized use by another person of the notary public's electronic signature, notary technology or electronic stamping device.

(e) Tangible copies of an electronic record. A notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record if the notary has taken reasonable steps to confirm the accuracy of that certification.

Section 5. Standards for online notarial acts.

(a) Notarial acts with respect to electronic records. In performing online notarial acts with respect to electronic records, an online notary public must comply with the requirements for electronic notarization as provided in 30 KAR 8:005 Section 3.

(b) Requirements of official stamp.

(1) A notary public is not required to use an official stamp when performing online notarizations.

(2) A notary public who uses an official stamp must use the same unique official stamp for all notarizations involving online notarial acts. An official stamp under this section is an official seal of office of the notary public for all purposes. An official stamp must conform to the following requirements:

(i) Required information. An official stamp shall substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public's commission number, and the commission expiration date.

(ii) Online notarial acts. If an online notary public uses an official stamp to perform online notarial acts, the official stamp must contains the words "Online Notary Public" in lieu of the words "Notary Public." A stamp that contains the words "Online Notary Public" may only be used to perform notarizations with regard to remotely located individuals.

(iii) Format and size. When affixed to an electronic record, an official stamp must be clear, legible, and photographically reproducible. An official stamp is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing online notarial acts the certificate must:

(i) Contain the name of the notary public as it appears on the notary public's commission;

(ii) Indicate the title "Online Notary Public" for any notarial act with respect to a remotely located individual; and

(iii) Indicate the notary public's commission number and the commission expiration date.

(c) Physical location. An online notary public shall be physically located in this Commonwealth at the time of the performance of the online notarization.

(d) Identity proofing. If an online notary public does not have personal knowledge or satisfactory evidence of the identity of a remotely located individual as defined in Section 5, the online notary public must reasonably verify the individual's identity through at least two different types of identity proofing processes or services. Those processes shall include remote presentation of an appropriate

identification by the remotely located individual, credential analysis of that credential by a service or process that analyzes the person's identity credential, binds the individual's identity to the individual following a successful dynamic knowledge-based authentication assessment, and permits the notary to visually compare the identity credential and the individual. The analysis of the identity credential and the dynamic knowledge-based authentication assessment shall conform to the following requirements:

(1) Credential analysis. The analysis of an identity credential must use public or private data sources to confirm the validity of the identity credential that is the subject of remote presentation by a remotely located individual and shall, at a minimum:

(i) Use automated software processes to aid the online notary public in verifying the identity of each remotely located individual;

(ii) Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;

(iii) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and

(iv) Enable the online notary public to visually compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the online notary public in real time through communication technology.

(2) Dynamic knowledge-based authentication. A dynamic knowledge-based authentication assessment is successful if it meets the following requirements:

(i) The remotely located individual must answer a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;

(ii) Each question must have a minimum of five possible answer choices;

(iii) At least 80% of the questions must be answered correctly;

(iv) All questions must be answered within two minutes;

(v) If the remotely located individual fails the first attempt, the individual may attempt the authentication assessment one additional time within twenty-four (24) hours;

(vi) During the second authentication assessment, a minimum of forty (40) percent of the prior questions must be replaced;

(vii) If the remotely located individual fails the second authentication assessment, the individual is not allowed to attempt identity authentication with the same online notary public within twenty-four (24) hours of the second failed authentication assessment; and

(viii) The online notary public must not be able to see or record the questions or answers.

(e) Other methods of identity verification. An online notary public has satisfactory evidence of the identity of a remotely located individual if the online notary public has personal knowledge of the identity of the individual, or if the individual is identified by oath or affirmation of a credible witness, or if the online notary has reasonably verified the identity of the individual by use of a valid public key certificate, with the following requirements:

(1) Personal knowledge. An online notary public has personal knowledge of the identity of the individual appearing before the online notary public if the individual is personally known to the online notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) Credible witness. To be a credible witness, an individual must have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the online notarization. If the credible witness is a remotely located individual, then the online notary public must reasonably verify the credible witness's identity under Section 3 of this administrative regulation or have personal knowledge of the credible witness under subsection 1 of this section. A credible witness may be a remotely located individual if the online notary public, credible witness, and individual whose statement or signature is the subject of the online notarization can communicate by using communication technology.

(3) Public key certificate.

(i) The identity of the individual appearing before the online notary public may be verified by use of a valid public key certificate that meets the requirements of a digital certificate, as that term is defined in 30 KAR 8:005 Section 1; complies with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology; and is issued by a technology provider or digital certificate service registered with the Secretary of State pursuant to Section 7 of this regulation.

(ii) A public key certificate is not valid for identity verification if the public key certificate has expired, has been revoked or terminated by the issuing or registering authority, is invalid, or is incapable of authentication.

(f) Requirements for communication technology. The communication technology used by an online notary public in the performance of online notarizations must conform to the following requirements:

(1) Audio-video feeds. Communication technology must provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the online notary public and remotely located individual to see and speak with each other. The process must provide a means for the online notary public reasonably to confirm that a record before the online notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(2) Security measures. Communication technology must provide reasonable security measures to prevent unauthorized access to:

(i) The live transmission of the audio-visual feeds;

(ii) The methods used to perform the identify verification process under Sections 3 or 4 of this administrative regulation, as applicable; and

(iii) The record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(3) Work flow. If a remotely located individual must exit the workflow, the individual must restart the identify verification process under Sections 3 or 4 of this administrative regulation, as applicable, from the beginning.

(4) Recording. All notarial acts performed using communication technology must be electronically recorded. The recording shall contain a recitation that the notary has informed the individuals participating in the notarial act that it will be electronically recorded.

(g) Notary technology provider registration.

(1) A provider of technology used in the process of electronic or online notarization must register with Secretary of State in the manner directed by the Secretary of State and provide the following information:

(i) The legal name of the technology provider;

(ii) The mailing address of the technology provider;

(iii) The physical address of the technology provider;

(iv) A designated contact person for that provider;

(v) The phone number, physical address, and email address of the contact person;

(vi) The name of the technology provided;

(vii) The name of the provider or providers of the knowledge-based authentication, credential analysis, or digital certificate services, if different from the technology provider;

(viii) A description of the technology used and the manner in which it complies with KRS Chapter 423 and this chapter;

(ix) The process by which the technology provider verifies the identity of the notary public or digital certificate holder using the technology;

(x) A plan for the retention and disposition of records created, generated or retained in conjunction with the use of the technology, including, but not limited to, any electronic journal, recordings or records created or retained during an electronic or online notarization, in the event the technology provider no longer engages in the business of providing electronic or online notary technology; and

(xi) An authorized certification that the technology provided complies with KRS Chapter 423 and this chapter.

(2) A registration in compliance with this section is non-transferable and may not be conveyed to any other notary technology provider.

(h) Complaint Against a Notary Technology Provider.

(1) A written complaint may be made against a notary technology provider registered with the Office of the Secretary of State. A complaint that does not comply with the requirements of this section will not be filed, responded to, or acted upon by the Secretary of State.

(2) The Office of the Secretary of State may commence an investigation of a registered notary technology provider as a result of a complaint or upon its own initiative.

(3) An investigation under this section may include:

(i) An initial request for information from the accused provider;

(ii) A copy of the complaint forwarded to the registration provider; and

(iii) A request for supporting documentation and other sources of information.

(4) A provider shall provide true, accurate, and complete copies of all information requested by the Office of the Secretary of State.

(5) Failure of a provider to comply with an investigation directive may result in revocation of the provider's registration.

(6) A finding that the provider has failed to comply with the provisions of KRS Chapter 423 or this chapter may result in revocation of the provider's registration.

(i) Duties of Notary Technology Provider. A notary technology provider must:

(1) Respond to a request for information from the Office of the Secretary of State within the time directed. Any request for information will be sent to the addresses provided upon registration;

(2) Take reasonable steps to ensure that a notary public or digital certificate holder is able to use the technology provided in accordance with this chapter; and

(3) Suspend the use of any technology for any notary or digital certificate holder whose commission, registration, or digital certificate has expired, been revoked or been suspended.

Section 6. Electronic and Online Record Retention Requirements

(a) Record retention.

(1) A notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals using communication technology must maintain one or more journals in a permanent, tamper-evident electronic format to chronicle those notarizations.

(2) A journal entry shall be made contemporaneously with the performance of the notarial act and contain:

(i) The date and time of the notarial act;

(ii) A brief description of the record, if any and the type of notarial act;

(iii) The full name and address of each individual for whom a notarial act is performed;

(iv) A statement of how identification was established and a description of any identification credential presented including the type of credential and dates of issuance and expiration of the credential;

(v) The fee charged, if any; and

(vi) For a notarial act involving remotely located individuals using communication technology, an audio-visual recording (or a link thereto) of the performance of the notarial act that complies with KRS Chapter 423 and this chapter.

(3) A journal must be created and stored in a computer or other electronic storage device or process that protects the electronic journal and any audio-visual recording against unauthorized access by password or cryptographic process. A recording must be created in an industry-standard audio-visual file format and must not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature.

(4) An electronic journal must be retained for at least ten (10) years after the last notarial act chronicled in the journal. An audio-visual recording must be retained for at least ten (10) years after the recording is made.

(5) A journal entry shall not record an identification numbers assigned to an individual by a governmental agency or any biometric identifier.

(6) A notary public must take reasonable steps to ensure that a backup of the journal and audio-visual recording exists and is secure from unauthorized use.

(7) On the death or adjudication of incompetency of a current or former notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals, the online notary public's personal representative or guardian or any other person knowingly in possession of a journal or audio-visual recording must:

(i) Comply with the retention requirements of this subsection;

(ii) Transmit the journal and recording to one or more repositories under Section 2 of this administrative regulation; or

(iii) Transmit the journal and recording in an industry-standard readable data storage device to his/her notary technology provider.

(b) Repositories. A notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals, a guardian, conservator, or agent of such a notary public, or a personal representative of such a deceased online notary public may, by written contract, engage a third person to act as a repository to provide the storage required by Section 1 of this administrative regulation. A third person under contract under this section shall be deemed a repository or custodian under KRS 423.380(8) or KRS 423.455(5), as applicable. The contract shall:

(1) Enable the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public to comply with the retention requirements of Section 1 of this administrative regulation even if the contract is terminated; or

(2) Provide that the information will be transferred to the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public if the contract is terminated.

(c) Lost, Stolen or Improperly Accessed Journal.

(1) A notary public is responsible for the security of the notary public's journal and may not allow another individual to use the journal to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the journal and shall not allow access to the notary public's journal, except:

(i) When requested by the Secretary of State or a law enforcement officer;

(ii) When required by court order or subpoena; or

(iii) Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in 30 KAR 8:005, Section 5.

(2) A notary public shall promptly notify the Secretary of State of a lost or stolen journal upon discovering the journal is lost or stolen.

(d) Disposition of Notarial Records upon Termination of Commission or Registration. Upon the revocation, resignation, termination or suspension of the commission of the notary public or the revocation, resignation, termination or suspension of the registration of the notary public to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, the notary public shall retain the journal in accordance with the provisions of Section 1 of this regulation.

Section 7. Notary Discipline.

(a) Prohibited Conduct. Failure to comply with a provision of KRS 423.395 may result in the denial, refusal to renew, revocation, suspension or conditioning of a notary commission and may result in disciplinary action.

(b) Conviction, Finding or Admission. Denial, refusal to renew, revocation, suspension or conditioning of a notary commission shall result upon notification to the Secretary of State of:

(1) A conviction of felony or crime involving fraud, dishonesty or deceit;

(2) A finding against, or admission of liability by, the notary public

in any legal proceeding or disciplinary action alleging fraud, dishonesty or deceit by the notary; or

(3) A judicial determination of liability in a suit for fraud, misrepresentation or for failure to discharge the duties of a notary public.

(c) A notary public shall promptly notify the Secretary of State, in writing, of a conviction, finding, admission of liability, or judicial determination of liability as defined in this section.

(d) Complaint Against a Notary Public. A person that knows of a violation of Section 1 or 2 may file a complaint against a notary public with the Secretary of State. A complaint shall be in writing, dated, and signed by the person making the complaint. A complaint that does not comply with the requirements of this section will not be filed, responded to or acted upon by the Secretary of State.

(e) Any condition, restriction, suspension or revocation of a notary commission will automatically have the same effect on the electronic or online registration the notary public holds.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: December 30, 2019

FILED WITH LRC: January 3, 2020 at 2 p.m.

CONTACT PERSON: Michael Wilson, Director of Business and Deputy general Counsel, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687; email sos.secretary@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions under which notary public officers may be approved by the Office of the Secretary of State. Additionally, it establishes procedures for electronic and online notary applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for approving notary public officers and electronic and online notary publics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Office of the Secretary of State to fulfill its duties under KRS 423, this administrative regulation is necessary to establish the procedures for approving notary public applications and registrations for electronic and online notaries public.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for approving notary public applications and registrations for electronic and online notaries public.

(2) N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects individual notaries public and those who voluntarily apply to be electronic and online notaries public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals identified in question (3) will have to familiarize themselves with this administrative regulation.

(b) In complying with this administrative regulation, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur minimal costs in order to submit an application and/or registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals identified in question (3) will obtain the rights of a notary public and/or electronic and online notary public.

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

(a) Initially: The application for notary public costs $10; registration for electronic or online costs $10.

(b) On a continuing basis: There is no cost to implement this administrative regulation at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source funding at this time since there is no cost to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: A fee for registration as an electronic and/or remote (online) notary is established at $10; additional funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees for notary public applications is unchanged; fees for registration for electronic or online notary public is $10.

(9) TIERING: Is tiering applied? 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 administrative regulation will impact the Office of the Secretary of State and county clerks offices.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS Chapter 423.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate additional fees for the Office of Secretary of State of $10 per electronic notary registration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate additional fees for the Office of Secretary of State of $10 per electronic notary registration.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
895 KAR 1:002E

This emergency administrative regulation is being promulgated to repeal the administrative regulations relating to the Kentucky HEALTH program. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal and state funds. This emergency administrative regulation shall not be replaced by an ordinary administrative regulation as the repeals will be effective upon the filing of this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC FRIEDLANDER, Acting Secretary

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

895 KAR 1:002E. Repeal of 895 KAR 1:001, 895 KAR 1:010, 895 KAR 1:015, 895 KAR 1:020, 895 KAR 1:025, 895 KAR 1:030, 895 KAR 1:035, 895 KAR 1:040, 895 KAR 1:045, 895 KAR 1:050, and 895 KAR 1:055.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 194A.050(1) authorizes the cabinet secretary to promulgate, administer, and enforce administrative regulations necessary for the proper administration of the cabinet and its programs. The Kentucky HEALTH program and related 1115 Waiver has twice been remanded to the federal department for Health and Human Services for further consideration by a federal court, and has now been rescinded by gubernatorial executive order. Therefore, this administrative regulation repeals Title 895 KAR.

Section 1. The following administrative regulations are hereby repealed:
(1) 895 KAR 1:001, Definitions for 895 KAR Chapter 1;
(2) 895 KAR 1:010, Eligibility for Kentucky HEALTH program;
(3) 895 KAR 1:015, Premium payments within the Kentucky HEALTH program;
(4) 895 KAR 1:020, PATH requirement for the Kentucky HEALTH program;
(5) 895 KAR 1:025, Beneficiary premiums;
(6) 895 KAR 1:030, Establishment and use of the MyRewards program;
(7) 895 KAR 1:035, Covered services within the Kentucky HEALTH program;
(8) 895 KAR 1:040, Deductible accounts within the Kentucky HEALTH program;
(9) 895 KAR 1:045, Accommodations, modifications, and appeals for beneficiaries participating in the Kentucky HEALTH program;
(10) 895 KAR 1:050, Enrollment and reimbursement for providers in the Kentucky HEALTH program; and
(11) 895 KAR 1:055, Designation or determination of medically frail status or accommodation due to temporary vulnerability in the Kentucky HEALTH program.

STEPHANIE M. BATES, Acting Commissioner
ERIC FRIEDLANDER, Acting Secretary
APPROVED BY AGENCY: December 27, 2019
FILED WITH LRC: December 27, 2019 at 2 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 23, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until March 31, 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: Donna Little, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Donna Little

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 895 KAR Chapter 1.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal eleven (11) existing administrative regulations due to the rescission of the federal 1115 waiver establishing the Kentucky HEALTH program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by ensuring that there is federal and state legal authority for department programs.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer administrative regulation will assist in the effective administration of the statutes by repealing eleven (11) nonfunctioning administrative regulations.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a repealer administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a repealer administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a repealer administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Anyone affected by the Kentucky HEALTH program, including approximately 750,000 Medicaid recipients and 46,000 Medicaid providers, Medicaid managed care organizations, and the department.
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None of the above parties will need to take any additional action to comply with this repealer administrative regulation.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The program established in the

administrative regulations is not effective, and therefore this repealer administrative regulation will enhance the readability and clarity of the administrative regulations that are under the purview of the Department for Medicaid Services.

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

(a) Initially: There are no costs to this repeal.

(b) On a continuing basis: There are no costs to this repeal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding needed to implement this repeal.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this repeal.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administration regulation simply repeals eleven (11) administrative regulations.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Only the Department for Medicaid Services will be impacted by this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520(3).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation is not expected to have any costs for its administration.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to have any costs for its administration.

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

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: ____

STATEMENT OF EMERGENCY
900 KAR 6:075E

This emergency administrative regulation is being promulgated in accordance with KRS 13A.190(1)(a), to prevent a loss of federal or state funds. The previous administration declared that a public health crisis existed in counties without adequate ambulance services to treat medical emergencies with urgency and with respect to patient choice. However, there is not a lack of access or issue with patient choice. The formal review process is more appropriate than the nonsubstantive review process for applications to establish a Class I ground ambulance service. If the prior action is not reversed by this emergency administrative regulation, there will be a loss of state funds due to litigation regarding that prior action. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC FRIEDLANDER, Acting Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Emergency Amendment)

900 KAR 6:075E. Certificate of need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.062, 216B.090, 216B.095, 216B.115, 216B.455, 216B.990[~~, 311A.030(1)(b)~~]

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1., 216B.095[~~, EO 2018-325~~]

EFFECTIVE: January 2, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1. requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. [~~EO 2018-325 abolished the Office of Health Policy and created the Division of Certificate of Need within the Office of Inspector General.~~] This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) [~~"Base station" means the primary physical location of an ambulance service.~~

~~(3)~~] "Cabinet" is defined by KRS 216B.015(6).

(3)[~~(4)~~] "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx.

(4)[~~(5)~~] "Days" means calendar days, unless otherwise specified.

(5)[~~(6)~~] "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6)[~~(7)~~] "Nonsubstantive review" is defined by KRS 216B.015(18).

(7)[~~(8)~~] "Public notice" means notice given through the cabinet's Certificate of Need Newsletter.[

~~(9) "Satellite location" means a physical location with a street address from where an ambulance is based on a twenty-four (24) hour basis.~~]

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric

residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(3)(f), the Office of Inspector General shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital and was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate of need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service that the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours; <u>or</u>

(c)1. The proposal involves an application to establish an ambulatory surgical center that does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation[~~; or~~

~~(d)1. The proposal involves an application to establish a Class I ground ambulance service;~~

~~2. The applicant's proposed service area is limited to a county with a population of 50,000 or more;~~

~~3. There is no more than one (1) licensed Class I ground ambulance service that has both a license to serve the entire county that the applicant is proposing to serve and that has a base station or a satellite location, or both, located in the county that the applicant is proposing to serve; and~~

~~4. The current Class I ground ambulance service provider serving the county as specified in subparagraph 3. of this paragraph is not owned or operated by a public organization~~].

(4) A certificate of need approved for an application submitted under subsection (3)(c) of this section shall state the limitations specified under subsection (3)(c)1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by the Office of Inspector General, the application shall automatically be placed in the formal review process.

(6) If an application is granted nonsubstantive review status by the Office of Inspector General, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)(a) If an application is granted nonsubstantive review status by the Office of Inspector General, any affected person who believes that the application is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2. of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications may be consolidated for hearing purposes.

(8) If an application for certificate of need is granted nonsubstantive review status by the Office of Inspector General, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan.

(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(10) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Inspector General shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply.

(11) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8) of this section has been rebutted by clear and convincing evidence by an affected party.

(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing that is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the reconsideration decision or decision following a court ruling.

(14) A decision to approve or disapprove an application that has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted.

(15) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

ADAM D. MATHER, Inspector General
ERIC FRIEDLANDER, Acting Secretary

APPROVED BY AGENCY: December 30, 2019

FILED WITH LRC: January 2, 2020 at 4 p.m.

CONTACT PERSON: Donna Little, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation addresses the nonsubstantive review of certificate of need applications. Nonsubstantive review is an expedited review process granted to certain applications pursuant to KRS 216B.095. 900 KAR 6:075 expands upon the types of applications qualified for nonsubstantive review per the statute.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(18), and 216B.095.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by adding types of certificate of need applications that qualify for nonsubstantive review status and setting forth the procedure for granting nonsubstantive review status and performing the expedited review as well as the procedure for affected parties to request a hearing to dispute the review status or application.

(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 adding types of certificate of need applications qualified for nonsubstantive review status and setting forth the procedure for granting nonsubstantive review status and performing the expedited review as well as the procedure for affected parties to request a hearing to dispute the review status or application.

(2) If 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 statutory citations to the RELATES TO paragraph to comply with KRS 13A.220(4)(e); removes references to EO 2018-325, which was codified by 2019 Ky. Acts ch. 90 (Senate Bill 167); deletes the definitions of "base station" and satellite location"; and removes the authorization for nonsubstantive review for proposals involving an application to establish a Class I ground ambulance service.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reverse action taken by the prior administration, which claimed there was a public health emergency created by lack of access to Class I ambulances in Kentucky's larger counties and patient choice. There is not a lack of access or issue with patient choice, and the formal review process is more appropriate than the nonsubstantive review process for applications to establish a Class I ground ambulance service.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute by revising the list of nonsubstantive review categories established by the cabinet in accordance with KRS 216B.095(3)(f).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by reversing a prior determination that there was a public health emergency created by a lack of access and issues with patient choice.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects certificate of need applicants proposing Class I ambulance services and affected parties. It is not known how many applicants will propose a Class I ambulance service.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A certificate of need application proposing to establish a Class I ambulance service in certain counties will no longer be permitted to use the nonsubstantive review process. Instead, those applications will be reviewed by the formal review process governed by 900 KAR 6:060, Certificate of need considerations for formal review.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment other than the certificate of need application filing fee, which is determined using a methodology calculated using the capital expenditure of the proposed service. The certificate of need application filing fee is the same for nonsubstantive review and formal review and is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Returning the proposals to establish a Class I ground ambulance service to the formal review process will ensure that the nonsubstantive review process is reserved for a very limited number of exceptions authorized by KRS 216B.095. There is not a public health emergency or a lack of access to, or issue of patient choice with, Class I ambulances in Kentucky's larger counties. The formal review process is more appropriate than the nonsubstantive review process for applications to establish a Class I ground ambulance service.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding needed to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is used as certificate of need applications are reviewed using either a formal review process (under 900 KAR 6:070) or nonsubstantive review process (this administrative regulation). The applications that qualify for nonsubstantive review are being amended to remove one category of applications previously authorized to proceed under the nonsubstantive category.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and any government owned or operated ambulance providers.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(18), and 216B.095.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation is not expected to have any costs for its administration.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to have any costs for its administration.

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

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: ____

STATEMENT OF EMERGENCY
921 KAR 2:015E

This emergency administrative regulation is necessary to increase the standards of need for all levels of care in the state Supplementation Program for persons who are aged, blind, or have a disability due to the federal and state agreement to pass through the Supplemental Security Income 2020 cost of living adjustment. Failure to comply with this agreement jeopardizes the state's Medicaid funds pursuant to 20 C.F.R. 416.2099. The Social Security Administration notified the Department for Community Based Services of the Supplemental Security Income cost of living adjustment in October 2019. An ordinary administrative regulation would not allow the agency sufficient time to have an administrative regulation in place in order to revise the payment standards effective January 1, 2020. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Acting Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS Chapter 194A, 202A.011(12), 205.245, 209.020(4), 216.530, 216.557(1), 216.750(2), 216.765(2), Chapter 216B, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

EFFECTIVE: December 27, 2019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.

(4) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative regulation.

(5) "Department" means the Department for Community Based Services or its designee.

(6) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(7) "Instrumental activities of daily living" is defined by KRS 194A.700(9).

(8) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(9) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 20:001.

(10) "Qualified mental health professional" is defined by KRS 202A.011(12).

(11) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.

(12) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b)1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 7, 8, and 9 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations

of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 12;

(c) 907 KAR 20:020, Section 2(4)(a);

(d) 907 KAR 20:025; or

(e) 907 KAR 20:040, Section 1.

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and

(c)1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);

3. Receives caretaker services and is at least eighteen (18) years of age; or

4.a. Resides in a private residence;

b. Is at least eighteen (18) years of age; and

c. Has SMI.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131;

(c) A situation in which a caretaker is required to be hired to provide care other than room and board; or

(d) A private residence, which shall:

1. Be permanent housing with:

a. Tenancy rights; and

b. Preference given to single occupancy; and

2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or

b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department [~~office~~] within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of the Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2. of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation. (1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

(a) Not include a primary diagnosis of Alzheimer's disease or dementia;

(b) Be described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), fourth (4th) edition or edition currently in use;

(c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and

(d) Be unlikely to improve without treatment, services, or supports.

(2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant, recipient, or care coordinator to establish how:

(a) Often services, including those that address subsection (1)(c) of this section, are provided;

(b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and

(c) Payment is made for the services.

(3) Unless criteria in Section 10 of this administrative regulation

are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:

(a) Licensed or registered in accordance with KRS Chapter 216B; or

(b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration. (1) Except as provided [~~stated~~] in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:020, Section 2(4)(a);

(c) 907 KAR 20:025; and

(d) 907 KAR 20:040, Section 1.

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) $2,000 for an individual; or

(b) $3,000 for a couple.

Section 8. Income Considerations. (1) Except as provided [~~noted~~] in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:020, Section 2(4)(a);

(c) 907 KAR 20:025; and

(d) 907 KAR 20:040, Section 1.

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable income of the applicant or recipient, or applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1. and 2. of this subsection from the standard of need in Section 9 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. The applicant or recipient; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollar general exclusion shall not be an allowable deduction from income.

Section 9. Standard of Need. (1) To the extent funds are available, the standard of need shall be the amount listed in this subsection in addition to all cost of living adjustments determined by the Social Security Administration that have taken place since 2019 pursuant to 42 U.S.C. 415(i) and published at https://www.ssa.gov/cola/[~~is as follows~~]:

(a) For a resident of a personal care home [~~on or after January 1, 2019~~], $1,291;

(b) For a resident of a family care home [~~on or after January 1, 2019~~], $943;

(c) For an individual [~~individuals~~] who receives [~~receive~~] caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability [~~on or after January 1, 2019~~], $833;

2. An eligible couple, both aged, blind, or having a disability and one (1) requiring care [~~on or after January 1, 2019~~], $1,218; or

3. An eligible couple, both aged, blind, or having a disability and both requiring care [~~on or after January 1, 2019~~], $1,272; or

(d) For an individual who resides in a private residence and has SMI [~~on or after January 1, 2019~~], $1,291.

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollar personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollar personal needs allowance that shall be retained by the client.

Section 10. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 11. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 12. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13. Mental Illness or Intellectual Disability (MI/ID) Supplement Program. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;

(b) Shall not be eligible for a payment for a Type A Citation that is not abated; and

(c) Shall meet the following certification criteria for eligibility to participate in the MI/ID Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a population that is at least thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and who have a:

a. Primary or secondary diagnosis of intellectual disability including mild or moderate, or other ranges of intellectual disability whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician or Kentucky medication aide training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of the Inspector General in accordance with Section 15(2) through (4) of this administrative regulation; and

6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July, and October.

b. Unless mental illness or intellectual disability supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

(a) Receipt of verification from the Office of the Inspector General as specified in Section 15(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form, that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the last four (4) digits only of the resident's Social Security Number;

3. Lists the resident's date of birth; and

4. Is marked appropriately for each resident to indicate the resident:

a. Has a mental illness diagnosis;

b. Has an intellectual disability diagnosis; or

c. Receives state supplementation; and

(b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:

1. Mail;

2. Fax; or

3. Electronically.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 14. Mental Illness or Intellectual Disability (MI/ID) Training. (1)(a) A personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall complete the personal care home mental illness or intellectual disability training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities, once every two (2) years.

(b) Other staff may complete the training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The personal care home mental illness or intellectual disability training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) SMI;

(e) SMI recovery;

(f) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability;

(g) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability;

(h) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability;

(i) Activities of daily living and instrumental activities of daily living;

(j) Adult learning principles; and

(k) Information about 908 KAR 2:065 and the process for community transition for individuals with SMI.

(3) Initial training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician or Kentucky medication aide training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4)(a) A personal care home shall have at least one (1) direct care staff member who has received training.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician or Kentucky medication aide training; and

2.a. Has received mental illness or intellectual disability training; or

b. Is enrolled in the next scheduled mental illness or intellectual disability training workshop.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the training workshop; and

(b) Listing to the department of staff who completed the training workshop.

(6) The department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/ID Supplement Program; and

(b) For each staff member receiving training up to a maximum of five (5) staff per year.

Section 15. MI/ID Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program.

(a) The personal care home's initial MI/ID Supplement Program Certification Survey:

1. May be separate from an inspection conducted in

accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial MI/ID Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2. of this subsection.

(c) The department shall notify the Office of the Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of the Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Certification is on file at the personal care home to verify staff's completion of training, as specified in Section 14(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability training workshop; and

b. Maintains documentation of completion at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training:

a. Demonstrates a knowledge of psychotropic drug side effects; and

b. Is on duty as specified in Section 13(1)(c)3. of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of the Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID Supplement Program Certification Survey process.

(4) If at least thirty-five (35) percent of the population is mental illness or intellectual disability clients, as specified in Section 13(1)(c)2. of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with the month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or intellectual disability population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a) of this administrative regulation.

(6) The Office of the Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of the Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is issued.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(c)6. of this administrative regulation, for the next following quarter.

Section 16. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits", 01/15;

(b) "STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home", 01/15;

(c) "STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form", 01/19; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/19.

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

ERIC C. FRIEDLANDER, Acting Secretary

APPROVED BY AGENCY: December 18, 2019

FILED WITH LRC: December 27, 2019 at 2 p.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons who are aged, blind, or have a disability in accordance with KRS 205.245 and the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(b) The necessity of this administrative regulation: The administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the MI/ID Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program of persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration, formerly a part of the U. S. Department of Health, Education, and Welfare, to maintain the state's eligibility for federal Medicaid funding.

(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 eligibility requirements and standards of need for the State Supplemental Program for persons who are aged, blind, or have a disability.

(2) If 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 lists the standards of need for individuals receiving Supplemental Security Income (SSI) as of 2019 and the amendment to this administrative regulation cites the federal language pertaining to Social Security Administration SSI cost of living adjustments and the website where the cost of living adjustment (COLA) is issued so that affected entities may be able to find the COLA for each subsequent year. In addition to this information being contained in the administrative regulation, the cabinet notifies affected entities whenever a COLA is issued and the amount that will be provided. Subsequent COLA increases will be consistent with federal adjustments, if any. This amendment eliminates the need for future regulatory amendments only to pass on the federal COLA each year as ongoing annual increases will follow annual federal adjustments as they occur.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation incorporates the federal citation and website where future COLAs will be published by the Social Security Administration. In this manner, the cabinet will continue to provide standard of need COLAs consistent with federal adjustments without ongoing amendment to the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration. The amendment continues to pass on federal standard of need COLAs, as determined by the Social Security Administration, without the need for emergency regulatory action to incorporate updated amounts.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by passing along the future cost of living adjustments for the Supplemental Security Income benefit by modifying the standard of need for all levels of care for the State Supplementation Program and reduce future regulatory amendments as ongoing annual increases will follow annual federal adjustments, if any.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In SFY 19, there were 37,785 individuals who received State Supplementation Program benefits. As of November 2019, there were 22 personal care homes participating in the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required 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): There are no new costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A cost of living increase for Supplemental Security Income recipients.

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

(a) Initially: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through adjustment, which would jeopardize the state's federal Medicaid funding if not accomplished.

(b) On a continuing basis: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the annual SSI cost of living adjustments. Not complying with the federal pass-through mandate would jeopardize the state's federal Medicaid funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds and agency funds are used to implement and enforce the State Supplementation Program.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish 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. 20 C.F.R. Part 416, 42 U.S.C. 1382e-g

2. State compliance standards. KRS 194.050(1), 205.245

3. Minimum or uniform standards contained in the federal mandate. 20 C.F.R. Part 416, 42 U.S.C. 1382 e-g

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 a stricter requirement, or additional or different responsibilities or requirements, than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter requirement, or additional or different responsibilities or requirements, than those required by federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, 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 194.050(1), 205.245, 42 U.S.C.1328e-g, 20 C.F.R. Part 416.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are projected to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are projected to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, January 13, 2020)

102 KAR 1:035. Employment by retired members; calculation of the Daily Wage Threshold and Average Daily Rate.

RELATES TO: KRS 161.500, 161.605
STATUTORY AUTHORITY: KRS 161.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Teachers' Retirement System of the State of Kentucky to promulgate administrative regulations for the administration of retirement system funds and for the transaction of business. This administrative regulation establishes procedures necessary to administer KRS 161.605, concerning income limitations required for employment by retired members.

Section 1. Definitions. (1) "Average Daily Rate (ADR)" means the average daily rate of pay a retired member returning to work receives over a fiscal year as calculated under this administrative regulation.

(2) "Daily Wage Threshold (DWT)" means the limitations of seventy-five (75) percent or sixty-five (65) percent of a member's last annual compensation measured on a daily rate as prescribed in KRS 161.605(1) and (2).

(3) "Extra Service" means service that is not part of, and is provided outside of, the service provided for Position Contract Days and does not earn service credit. It includes, ***[~~but is not limited to,~~]*** service for which compensation is paid from the district's supplemental or extra service salary schedules, coaching, professional development, and summer school.

(4) "Position Contract Days" means days during the regular school or fiscal year that are part of the normal school calendar and are performed during regular school hours that, standing alone without any other worked service, earn service credit in TRS. It includes service performed on these days through full-time employment as defined in KRS 161.220(21), part-time employment, and substitute teaching. It does not include extra service as defined by this section.[~~For purposes of KRS 161.605, any period of substitute or part-time teaching of three and one-half (31/2) hours or less shall be considered one-half (1/2) day and any period greater than three and one-half (31/2) hours shall be considered one (1) full day. Part-time employment in a nonteaching capacity shall not exceed:~~

~~(1) Fifty-four (54) percent of a full-time member's weekly schedule for the equivalent of a regular school term (nine and one-fourth (9 1/4) months); and~~

~~(2) Thirty-nine (39) percent of a full-time member's weekly schedule for the equivalent of a twelve (12) month school term.~~]

Section 2. To determine the DWT of a retiring member, TRS shall first divide the member's last annual compensation, as defined under KRS 161.220(23), by the number of Position Contract Days worked by the member immediately prior to the member's initial retirement that provided the member with one (1) full year of service credit. This number shall then be multiplied by either sixty-five (65) percent or seventy-five (75) percent pursuant to KRS 161.605(1) and (2), the product of which is the DWT.

Section 3. (1) The ADR shall be measured by adding the total annual compensation for all services performed by the retired member for the fiscal year and dividing that compensation over the number of Position Contract Days worked by the retired member. The total annual compensation for this calculation shall include all forms of remuneration and benefits, except for health insurance coverage generally provided to all eligible employees by the employer, reimbursement for travel expense at the rates approved for state employees, and professional dues. All remuneration of a retiring member returning to work shall be evaluated to determine whether his or her ADR exceeded the DWT for each fiscal year worked. If the ADR exceeds the DWT, the amount of that excess shall be multiplied by the Position Contract Days worked by the retired member for that year to determine the total reduction in the retired member's benefits required under KRS 161.605(6).

(2) Days worked in Position Contract Days shall be calculated on a full-time equivalent basis. Any day in which the retired member works less than a full day as defined by school district or employer policy shall be measured on a pro rata basis so that the retired member is accredited with a partial day based on the ratio of the hours worked during the day divided by the district's or employer's definition of a full day. Full and partial days worked shall be added to calculate the full-time equivalent number of days worked.

(3) Compensation earned in extra services will be included in total annual compensation for ADR calculation purposes if accompanied with any Position Contract Days worked by the retired member. Extra service shall earn only salary credit.

(4) If extra service is not accompanied by Position Contract Days worked by the retired member, no salary or service credit will be awarded. The retirement contributions forwarded to TRS on that service shall be refunded to the member at the completion of the fiscal year, and any salary credit awarded to the member for that service shall be removed.

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

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, January 13, 2020)

102 KAR 1:037. Administrative staff membership.

RELATES TO: KRS 161.220
STATUTORY AUTHORITY: KRS ***161.220,*** 161.310
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.220(4)(d) ***authorizes*** ***[~~provides that~~]*** the Board of Trustees ***to*** ***[~~may~~]*** designate by administrative regulation the members of the staff of the Teachers' Retirement System who shall be members of the system. This administrative regulation sets out the positions which shall[~~will~~] be covered by this section.

Section 1. Any position requiring graduation from a four (4) year college or university[~~The executive secretary, the deputy executive secretaries, and other staff employees requiring a professional level of training~~] as a condition of employment shall be included in the membership of the Teachers' Retirement System.

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

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, January 13, 2020)

102 KAR 1:100. Insurance.

RELATES TO: KRS161.675
STATUTORY AUTHORITY: KRS 161.310***, 161.675***
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.675 ***authorizes*** ***[provides that]*** the trustees ***[are authorized]*** to enter into contracts with insurance carriers to provide hospital-medical insurance for members retired for service or disability and for certain dependents of retirees. This administrative regulation sets out procedures under which this coverage shall be provided.

Section 1. The Board of Trustees of the Teachers' Retirement System shall provide for members retired for service; members retired for disability; eligible spouses and eligible[minor] children of retired members as provided in KRS 161.675; and spouses receiving monthly benefits under the provisions of KRS 161.525[; and minor children of members deceased prior to retirement if the member was eligible for retirement as provided in KRS 161.600], a medical benefit program ***that includes[including but not limited to]*** hospital room and board, drugs and medicines, doctor fees, nursing care, and convalescent hospital care.

Section 2. Specific material provisions and exclusions shall be provided in the blanket contract with the insurance carrier selected by the board of trustees, the master policy issued under the contract, and any modifications to the contract or master policy approved by the board of trustees.

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

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, January 13, 2020)

102 KAR 1:125. Omitted contributions.

RELATES TO: KRS 161.560
STATUTORY AUTHORITY: KRS 161.310***, 161.560***
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.560 ***requires[provides that]*** each agency employing members of the Teachers' Retirement System ***to[shall]*** deduct the appropriate member contributions and forward the contributions to the system on a monthly basis. This administrative regulation sets out the conditions under which these required contributions shall be paid in the event the employing agency fails to deduct these amounts from the member's salary and forward the contributions to the retirement system.

Section 1. In every case where a properly certified[certificated] member entitled to membership under KRS 161.470 was employed, or is employed in the future, and the employer[board of education] fails for any reason to deduct the retirement contribution due under the retirement Act, the employee if a member of the retirement system, and not retired, may pay the retirement contributions which should have been deducted by the employer plus eight (8) percent compound interest from the end of the year in which the service was performed to date of payment, and receive credit for those years, provided the teacher was not at fault in creating this delinquency.

Section 2. Members of the retirement system who have previously withdrawn their contributions, may reinstate these accounts by complying with the requirements of KRS 161.470(3), and by repaying the amount refunded plus interest at the rate of eight (8) percent compounded annually from the date of withdrawal to date of repayment.

Section 3. Payment may be made directly to the retirement system. Payments shall not be made in installments. A receipt shall be given to the member making a payment.

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

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(As Amended at ARRS, January 13, 2020)

102 KAR 1:135. Interest credited to accounts.

RELATES TO: KRS 161.440, 161.580, 161.705
STATUTORY AUTHORITY: KRS 161.310***, 161.440, 161.580***
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.440 ***requires[provides for]*** crediting interest, as defined in KRS 161.220(13), to the various funds of the Teachers' Retirement System, and KRS 161.580 requires that individual accounts be maintained for each member of the system. This administrative regulation sets out the procedures to be followed in crediting interest to each member's account.

Section 1. For individuals who became members prior to July 1, 2008, interest at the rate of three (3) percent shall be credited to the member's account[all member accounts] as long as the member is in active status with the retirement system. For individuals who become members on or after July 1, 2008, interest at the rate of two and one-half (2.5) percent shall be credited to the member's account as long as the member is in active status with the retirement system.

Section 2. For purposes of this administrative regulation "active status" means the status of a member who has vested with at least five (5) years of[that time during which the member has valid] service credit with the retirement system. Members with less than five (5) years of service credit shall be deemed to be in active status if they have had any service in the most recent three (3) years.

Section 3. No interest shall be credited to member accounts during the first fiscal year of membership. Subsequent to the first fiscal year of membership, interest shall be credited as of June 30 of each year of active status.

Section 4.[Interest shall be assigned from the guarantee fund to each of the other funds, except the expense fund, at the end of each fiscal year.] At the end of each fiscal year, interest shall be assigned from the guarantee fund to individual funds as follows:

(1) The teachers' savings fund and the state accumulation fund shall be assigned equal amounts of interest in accordance with Sections 1, 2, and 3 of this administrative regulation.

(2) The allowanced reserve fund[The voluntary fund shall be assigned interest in accordance with 102 KAR 1:122.

(3) All other funds, except the expense fund,] shall be assigned interest based upon the average month end balance of the fund for each fiscal year.

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, January 13, 2020)

103 KAR 1:120. Employee access to Federal Tax Information (FTI).

RELATES TO: KRS 18A.095, 131.032, 131.081, 131.130, 131.190, 131.990

STATUTORY AUTHORITY: KRS 42.014, 131.032(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.014 requires the Office of the Secretary to establish internal organization, functions and duties as necessary to fulfill the duties of the cabinet. KRS 131.032(2) requires the Department of Revenue to promulgate administrative regulations to establish requirements concerning criminal background investigations for employees, including contract staff, with access to or use of federal tax information (FTI). This administrative regulation establishes the guidelines to implement the requirements set forth in KRS 131.032 and Internal Revenue Service (IRS) Publication 1075.

Section 1. Definitions. (1) "Applicant" means an individual who applies for employment with the Finance and Administration Cabinet, Department of Revenue, or a contractor working on behalf of those agencies who have, or will likely have, access to federal tax information in their regular course of business.

(2) "Classified employee" is defined by KRS 18A.005(7).

(3) "Contract Staff" means an individual employed with the Finance and Administration Cabinet, Department of Revenue, or a contractor working on behalf of those agencies ***who*** ***[~~that~~]*** does not meet the definition of a classified employee with KRS Chapter 18A status.

(4) "Criminal background investigation" means a local, state, or national fingerprint-supported criminal history background investigation performed in accordance with KRS 131.032.

(5) "Department" is defined by KRS 131.010(2).

(6) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor, or offense the nature of which indicates that the employee constitutes an unreasonable and immediate risk to the security of FTI or confidential taxpayer information, unless the department determines there are mitigating circumstances that sufficiently remediate the existing risks.

(7) "Federally funded time-limited employee" is defined by KRS 18A.005(15).

(8) "Federal tax information" or "FTI" means a return or return information received directly from the IRS or obtained through an authorized secondary source, such as the Social Security Administration (SSA) or any entity acting on behalf of the IRS pursuant to an Internal Revenue Code (IRC) Section 6103 (p)(2)(B) Agreement.

(9) "Responsible agency" means an office within the Cabinet, Department, or an entity under contract with the cabinet or department, that employs or offers employment to an individual in a position for which the job duties include access to FTI.

(10) "Unclassified employee" means an employee ***who*** ***[~~that~~]*** meets the criteria established in KRS 18A.115.

Section 2. Requirement for Criminal Background Investigations. (1) The cabinet, department, or responsible agency shall require prospective or current employees, including contract staff, whose job duties include access to FTI, to submit to a fingerprint-based local, state, or national criminal background investigation as a condition of initial or continued employment:

(a) After the individual is offered a job but before they begin working; and

(b) At least one (1) time every five (5)[~~ten (10)~~] years thereafter.

(2) The cabinet, department, or responsible agency that requests a fingerprint-based local, state, or national criminal background investigation on behalf of a prospective or current employee shall incur all fees associated with the cost of each background investigation requested.

(3) The cabinet, department, or responsible agency shall not employ any person in a position for which job duties include access to FTI or confidential taxpayer information if the individual refuses to consent to a fingerprint-based state or national criminal background investigation.

(4) The cabinet, department, or responsible agency shall notify each prospective or current employee determined to have a disqualifying offense.

Section 3. Disqualification. The cabinet, department, or responsible agency shall not employ or offer employment to an individual with a disqualifying offense listed in Section 1 of this administrative regulation or whose background investigation reveals any factor that bears upon the fitness of the individual to work in a position with access to FTI or confidential taxpayer information. The department shall have the sole discretion to determine if a prospective or current employee of the department is suitable to work in a position with access to FTI or confidential taxpayer information to ensure its protection and security in accordance with KRS 131.190, IRS Publication 1075, and Finance and Administration Cabinet Standard Procedure 6.1.2 entitled "Confidentiality of State and Federal Information".

Section 4. Individuals Ineligible to be Hired. The cabinet, department, or responsible agency may refuse to employ, contract with, or permit to work as an employee, any applicant that submits to a background investigation if one (1) or more of the following conditions apply:

(1) The applicant refuses to provide photo identification;

(2) The applicant fails to submit their fingerprints at an authorized collection site as directed, within five (5) business days of being offered employment;

(3) Upon completion of the criminal background investigation, the cabinet or department receives notice that the applicant is found to have a disqualifying offense; or

(4) Final and acceptable disposition of a criminal charge or offense related to a disqualifying offense is not provided to the department within sixty (60) days of fingerprint submission.

Section 5. Notice of a Disqualifying Offense and Appeals - Applicants. (1) The cabinet, department, or responsible agency shall notify applicants determined to have a disqualifying offense.

(2) If an applicant wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background investigation, the department shall refer the individual to the appropriate state or federal law enforcement agency.

Section 6. Notice of a Disqualifying Offense and Appeals – Current Employees. (1) A current employee with classified status found to have a disqualifying offense upon completion of the criminal background investigation may be:

(a) Immediately removed from duties with access to FTI or confidential taxpayer information;

(b) Immediately placed on administrative leave pending an internal review of the disqualifying offense; or

(c) Dismissed from employment if the nature of the disqualifying offense presents an immediate, serious, and irreparable risk to FTI or confidential taxpayer information if the employee's job duties require access to FTI or confidential taxpayer information.

(2) A cabinet or department classified employee whose background investigation reveals a disqualifying offense shall be eligible for reconsideration under an internal department review process and determination in accordance with KRS Chapter 18A.

(3) A cabinet or department classified employee may submit a written request for an internal employment reconsideration review to the Division of Human Resources no later than fourteen (14) calendar days from the date of notice of a disqualifying offense issued pursuant to Section 2 of this administrative regulation.

(4) A cabinet or department classified employee who requests a reconsideration of dismissal may be retained on staff during the

review process subject to the following factors:

(a) The nature and severity of the disqualifying offense;

(b) The disposition of the offense;

(c) The time elapsed since the disqualifying offense;

(d) The employee's personnel history; and

(e) Whether the employee is assigned duties that require access to FTI or confidential taxpayer information.

(5) The request for an internal employment reconsideration review shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;

2. The number of years since the occurrence of the disqualifying offense;

3. The age of the offender at the time of the disqualifying offense; and

4. Any other relevant and mitigating circumstances regarding the offense;

(b) Official documentation showing that all fines, including court-imposed fines, costs, or restitution, have been paid, or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

(6) After review, the department may reverse the dismissal if the department determines that the disqualifying offense, along with any mitigating circumstances, does not bear upon the fitness of the individual to work in a position with access to FTI or confidential taxpayer information.

(7) No later than thirty (30) calendar days from receipt of the written request for the reconsideration review, the cabinet, department, or responsible agency shall notify the employee of the final determination of the reconsideration review by the department.

(8) The employee may appeal the results of a reconsideration review to the Personnel Board in accordance with KRS 18A.095.

Section 7. Challenges to Criminal History Record Information. An individual subject to a criminal background investigation required by KRS 131.032 and this administrative regulation shall have the right to request and inspect his or her criminal history record and to request correction of any inaccurate information.

Section 8. Pardons, Diversions, and Expungements. An applicant, classified employee, unclassified employee, federally funded time-limited employee, or contract employee who has received a pardon for a disqualifying offense, has had a disqualifying offense dismissed after successful completion of a diversion program, or has had a disqualifying offense expunged, shall not be barred from employment in a position with job duties that include access to or use of FTI or confidential taxpayer information, for reasons related to the underlying disqualifying offense(s).

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

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
Office of Property Valuation
(As Amended at ARRS, January 13, 2020)

103 KAR 8:170. Pollution control facilities exemption.

RELATES TO: KRS 13B, 132.020, 132.200, 224.01-300, 224.1-310

STATUTORY AUTHORITY: KRS 131.130, 224.1-310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes the administrative process for obtaining and using the pollution control tax exemption certification pursuant to KRS 224.1-310.

Section 1. Definitions. (1) "Date of the making of the application" means the postmark date, electronic submission date, or date hand-stamped by the department for the "Application for Pollution Control Tax Exemption Certificate", Form 61A216.

(2) "Pollution control facility" is defined by KRS 224.1-300(1).

Section 2. Application Process for Certification. (1) An applicant shall:

(a) File an "Application for Pollution Control Tax Exemption Certificate", Form 61A216;

(b) Submit a copy of the plans or blueprints and a materials and equipment listing with the application;

(c) Provide a detailed explanation of what types of pollution control (water, waste, noise, air, or substance removal) a project addresses and how the primary function of the property installed is to control pollution as required under KRS 224.1-300;

(d) Provide costs of the materials and equipment that the exemption is requested; and

(e) Provide any other information required or requested by the department based on the nature of the project to ensure compliance with KRS 132.020, 132.200, and 224.1-300.

(2) Each "Application for Pollution Control Certificate" shall be specific to a project and location and shall not be a blanket certification for all operations of the applicant.

Section 3. Certificate Issuance, Denial, and Revocation Procedures. (1) Issuance, denial, or revocation of pollution control tax exemption.

(a) Before the department issues or denies, in whole or in part, the "Application for Pollution Control Tax Exemption Certificate," the department shall issue a written notice with an explanation of the issuance or denial to the applicant and the Secretary of the Energy and Environment Cabinet.

(b) If the department revokes a pollution control exemption tax certificate, the department shall issue a written notice with an explanation of the revocation to the holder of the certificate and the Secretary of the Energy and Environment Cabinet.

(c) If aggrieved by the issuance, denial, or revocation of pollution control tax exemption, the Energy and Environment Cabinet, the applicant for the pollution control exemption certificate, or the holder of the pollution exemption certificate may request a hearing before the department pursuant to Section 4.

(2) Certificate issuance.

(a) The department shall issue a qualifying applicant a "Pollution Control Tax Exemption Certificate", Form 61A217, upon final approval. The effective date of the certificate shall be the date of making the application to the department pursuant to KRS 224.1-310(1).

(b) "Pollution Control Tax Exemption Certificate", Form 61A217, shall replace "Pollution Control Tax Exemption Certificate", Form 51A226.

1. "Pollution Control Tax Exemption Certificate", Form 51A226 issued prior to January 1, 2019, shall be a valid pollution control tax exemption certificate for purposes of KRS 224.1-300, 132.020,

and 132.200 unless either of the following applies:

a. The certificate is revoked by the department; or

b. The pollution control facility ***[that an exemption certificate]*** is no longer primarily used for pollution control.

2. Beginning January 1, 2019, a valid pollution control tax exemption certificate for purposes of KRS 224.1-300, 132.020, and 132.200 shall be issued on the "Pollution Control Tax Exemption Certificate", Form 61A217.

Section 4. Administrative Hearing Procedures. (1) If aggrieved by the notice of acceptance; denial, in whole or in part; or revocation of a pollution control exemption tax certification, the Energy and Environment Cabinet, the applicant for the pollution control exemption certificate, or the holder of the pollution exemption certificate may file a written request for a hearing pursuant to KRS 224.1-310 with the commissioner of the department of Revenue within thirty (30) days from the date the notice was mailed.

(2) If a timely written request for ***a*** hearing is received by the Commissioner of the Department of Revenue, the commissioner shall assign a time and place for the hearing and shall appoint a hearing officer to conduct the hearing, receive evidence, and hear arguments pursuant to the requirements of KRS Chapter 13B.

(3) The hearing officer shall file a written recommended order pursuant to KRS 13B.110 with the Commissioner of the Department of Revenue no later than sixty (60) days after receiving a copy of the official record of the proceeding. The recommended order shall contain a recommendation for the issuance, revocation, or denial, in whole or in part, of the pollution control tax exemption certificate.

(4) The Commissioner of the Department of Revenue shall issue a final order pursuant to KRS 13B.120 within ninety (90) days after the submission of the hearing officer's recommended order, issuing, denying in whole or in part, or revoking the pollution control tax exemption certificate.

(5) Any party to the hearing aggrieved by the issuance of the department's final order may appeal the issuance, revocation, or denial, in whole or in part, of the pollution control tax exemption certificate within thirty (30) days from the date of the mailing of the department's final order to the Kentucky Claims Commission pursuant to KRS 49.220.

Section 5. Forms. (1) The "Application for Pollution Control Tax Exemption Certificate", Form 61A216, listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(b) At a Kentucky Taxpayer Service Center during business hours; or

(c) On the department Web site at http://revenue.ky.gov.

(2) The "Pollution Control Tax Exemption Certificate", Form 61A217, shall be issued by the department upon final approval of the application.

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, January 13, 2020)

103 KAR 31:080. Coupons or redemption certificates.

RELATES TO: KRS 139.010, 139.200

STATUTORY AUTHORITY: KRS 131.130

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

Section 1. Definitions. (1) "Cash discounts" means the exchange value of coupons or redemption certificates issued by the retailer, not a wholesaler or other third party, and are taken by the retailer from customers.

(2) "Coupon" and "redemption certificate"[~~Definition. As used in this administrative regulation, a coupon or redemption certificate (excluding premium or trading stamps)~~] means a certificate[~~in writing~~] vesting in a customer, upon the purchase of certain tangible personal property, digital property, or services included in KRS 139.200, the right to a reduction in the sales price of the property or service.

Section 2. A retailer shall include within their[~~his~~] gross receipts the exchange value of coupons or redemption certificates taken from their[~~his~~] customers if the retailer redeems such certificates from their[~~his~~] wholesaler or other third party[~~person~~].The exchange value shall be included in gross receipts under either of the following methods:

(1) The retailer may include the exchange value in their[~~his~~] gross receipts for the period during which the coupons or redemption certificates were taken from their[~~his~~] customers; or

(2) The retailer may include the exchange value in ***their[~~his~~]*** gross receipts for the period during which the coupons or redemption certificates are redeemed from ***their[~~his~~]*** wholesaler or other third party[~~person~~].

(3) In either event, the retailer shall collect from customers the tax applicable to the coupon or redemption certificate exchange value.

Section 3. Cash discounts shall[~~The exchange value of coupons or redemption certificates issued by the retailer (and not by his wholesaler or other person) and which are taken by the retailer from his customers are "cash discounts" and will~~] not be included in the retailer's gross receipts. The retailer shall not collect tax from customers on the exchange value of such coupons or redemption certificates.

Section 4. Coupons or redemption certificates that[~~which~~] represent combinations of those described in Sections 2 and 3 of this administrative regulation shall be taxable on that portion of the coupon or redemption certificate value that[~~which~~] may be redeemed from the retailer's wholesaler or other third party[~~person~~]. The ["]cash discount["] portion of such coupons or redemption certificates shall not be[~~is not~~] subject to tax.

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 or Revenue
(As Amended at ARRS, January 13, 2020)

103 KAR 31:200. Energy efficiency projects.

RELATES TO: KRS 139.010, 139.518, 139.720

STATUTORY AUTHORITY: KRS 131.130[~~(1)~~], 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) ***requires[~~authorizes~~]*** the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. KRS 139.710 authorizes the department to administer the provisions of KRS Chapter 139, relating to the assessment, collection, refund, and administration of taxes. KRS 139.518 establishes the sales and use tax refund provisions for energy efficiency products used

at manufacturing plants. This administrative regulation establishes requirements for a sales and use tax refund relating to an energy efficiency project.

Section 1. Definitions. (1) "Energy efficiency project" is defined by KRS 139.518(1).

(2) "Manufacturing" is defined by KRS 139.010(20)[~~(16)~~].

(3) "Plant facility" is defined by KRS 139.010(28)[~~(21)~~].

Section 2. Efficiency Requirements. To determine if an energy efficiency project reduces the consumption of energy or energy-producing fuels in the manufacturing process at a plant facility in this state by at least fifteen (15) percent, the manufacturer shall:

(1) Determine the total energy or energy-producing fuels consumed within all combined manufacturing at one (1) plant facility during the twelve (12) month period immediately after the new or replacement machinery or equipment is placed in service;

(2) Subtract the total energy or energy-producing fuels amounts determined in subsection (1) from the total energy or energy-producing fuels amounts submitted with the application for preapproval as required in KRS 139.518(4); and

(3) Divide any reduction in energy or energy-producing fuels calculated in subsection (2) by the total amount of energy or energy-producing fuels consumed within all combined manufacturing at the single plant facility submitted with the application for preapproval as required in KRS 139.518(4).[~~To calculate the fifteen (15) percent reduction of energy or energy-producing fuels, the decrease in energy consumption shall be based on the total energy consumed within all combined manufacturing at one (1) plant facility.~~]

Section 3. Refund Application Requirements. (1) The applicant shall file a completed Application for Preapproval for Energy Efficiency Machinery or Equipment, Form 51A300, with the Department of Revenue along with energy and energy producing fuel consumption and units of production documentation within the timeframe required under KRS 139.518(4).

(2) Requests for the sales and use tax incentive shall be filed within the timeframe required by KRS 139.518(6)(a). The following completed documentation demonstrating achievement of the fifteen (15) percent energy efficiency threshold shall be submitted:

(a) Application for Energy Efficiency Machinery or Equipment Sales and Use Tax Incentive, Form 51A351;

(b) Information Sharing and Assignment Agreement for Energy Efficiency Project Incentive, Form 51A350. This agreement shall be completed and signed by the manufacturer, the vendor, and the contractor as applicable; and

(c) Purchase invoices for the machinery and equipment for which a refund is being requested.

(3) To be considered valid, all applications and other documents required shall be post-marked, electronically submitted, or if delivered by messenger, hand-stamped by the department by the date required.

(4) The applicant shall keep adequate and complete records supporting its refund request for periods not less than four (4) years as provided for in KRS 139.720. The department may audit part or all of the records of all parties involved as necessary to verify the refund request and to ensure compliance with KRS 139.518.

Section 4. Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601[~~40620~~];

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

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

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, January 13, 2020)

103 KAR 40:010. Maintaining records.

RELATES TO: KRS 244.150

STATUTORY AUTHORITY: KRS 131.130[~~(1)~~], 244.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation, under the authority of KRS 244.150,[~~is authorized by KRS 244.150 and~~] specifies the length of time that records must be accessible[~~maintained on the premises~~].

Section 1. All records of a licensee trafficking in alcoholic beverages ***shall*** ***[must]*** be accessible upon demand for inspection by agents of the Department of Revenue[~~maintained on the immediate premises of the licensee~~] for a period of at least four (4)[~~three (3)~~] years.

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, January 13, 2020)

103 KAR 41:040. Cigarette[~~Subjobbers,~~] vending machine operators[~~and unclassified acquirers~~].

RELATES TO: KRS 138.130, 138.195

STATUTORY AUTHORITY: KRS 131.130[~~(1)~~], 138.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation, under authority of KRS 138.195, outlines license requirements for cigarette vending machine operators[~~interprets the statute and outlines procedures for securing cigarette subjobber license, cigarette vending machine operator license and cigarette unclassified acquirer license~~].

Section 1.[~~Application for Cigarette Subjobber License. (1) Any person desiring to secure a license as a subjobber of cigarettes on which tax evidence has been previously affixed must file an application with the Department of Revenue, Frankfort, Kentucky, on forms prescribed by the de- partment. A separate application must be filed for each place of business from which tax-paid cigarettes are made available to retailers. The application must state the name and address of the business, the nature of the business, the owners or principal officers, the names of other states in which the applicant intends to distribute cigarettes, and include a list of at least five (5) Kentucky retail locations with whom the applicant has made firm arrangements to regularly supply Kentucky tax-paid cigarettes for resale in the regular course of business. If the applicant is a nonresident of the state, the name of a process agent must be designated.~~

~~(2) Upon issuance by the Department of Revenue, the license must be displayed in the place of business for which the license was issued.~~

~~Section 2. Application for Cigarette Vending Machine Operator License. (1) Any person responsi- ble for stocking a vending machine with cigarettes and accounting for receipts from the sale thereof must file an application for a license as a vending machine operator. The application must be filed with the Department of Revenue, Frankfort, Kentucky, and must state the name and~~

~~principal ad- dress of the business, the nature of the business, the owners or principal officers, the approximate number of machines to be operated, the area of Kentucky in which the machines will be operated, and the names of other states in which cigarettes are to be distributed by the applicant.~~

~~(2)~~] Upon issuance of a cigarette vending machine operator's license by the Department of Revenue, the license shall[~~must~~] be retained at the principal address of the vending machine operator. If a change of address occurs, written notification shall[~~must~~] be given ***to*** the department. The license number along with the name and address of the operator shall[~~must~~] be affixed to each machine in operation in such a manner as to be visible at the time of the purchase of cigarettes.[

~~Section 3. Application for Cigarette Unclassified Acquirer License. (1) Any person desiring to secure a license as an unclassified acquirer of cigarettes must file an application with the Department of Revenue, Frankfort, Kentucky, on forms prescribed by the department. The application must state the name and address of the person receiving the untax-paid cigarettes, the nature of the business conducted by the applicant, the anticipated source of supply for cigarettes, and the intended distribution of any cigarettes to be received.~~

~~(2) Upon issuance by the Department of Revenue, the license must be retained at the address given on the application. If the unclassified acquirer has a change of address, written notification must be given the cabinet.~~]

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, January 13, 2020)

103 KAR 41:100. Segregation of cigarettes.

RELATES TO: KRS 138.146
STATUTORY AUTHORITY: KRS 131.130(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets KRS 138.146 as it applies to the segregation of cigarettes and the maintaining of records by persons licensed as cigarette dealers under KRS 138.195.

Section 1. Inventories of cigarettes held by persons licensed under KRS 138.195 ***shall*** ***[~~must~~]*** be maintained in the following manner:

(1) Untax-paid cigarettes ***shall*** ***[~~must~~]*** be stored in a separate area from cigarettes bearing tax evidence. Kentucky tax evidence, or that of another state ***shall*** ***[~~must~~]*** be affixed to all packages within the required time, pursuant to KRS 138.146(2), unless the cigarettes are distributed within the same period of time into states not using tax evidence. Any receipt and distribution records deemed necessary by the Department of Revenue ***shall*** ***[~~must~~]*** be established and maintained by all licensees authorized to receive untax-paid cigarettes.

(2) Cigarettes stamped with the tax evidence of another state ***shall*** ***[~~must~~]*** be stored in a separate and distinct area from cigarettes bearing Kentucky tax evidence. These tax paid cigarettes ***shall*** ***[~~must~~]*** be either shipped by the wholesaler directly into the state for which the packages were stamped or transferred to persons licensed to receive and distribute cigarettes for resale into the said state.

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.

BOARDS AND COMMISSIONS
Board of Landscape Architects
(As Amended at ARRS, January 13, 2020)

201 KAR 10:080. Continuing education.

RELATES TO: KRS 323A.100(1), 323A.210(2)(a)
STATUTORY AUTHORITY: KRS 323A.100(1), 323A.210(2)(a), (b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.100(1) requires a landscape architect to complete the approved continuing education hours established by an administrative regulation promulgated by the board. KRS 323A.210(2)(a) authorizes the board to promulgate administrative regulations to establish a program of continuing education for licensees[~~registrants~~]. This administrative regulation establishes the continuing education requirements for a landscape architect.

Section 1. Definitions. (1) "Annually" or "continuing education year" means a twelve (12) month period from July 1 of a calendar year through June 30 of the following calendar year.

(2) "Board" is defined ***by*** ***[~~as~~]***[~~by~~] KRS 323A.010(1).

(3) "Continuing education hour" means a minimum of fifty (50) minutes of actual instruction.

(4) "Self-directed study" means a course of study in which a licensee[~~registrant~~] takes and passes ***any*** ***[~~an~~]*** examination offered by the sponsor ***[~~after the licensee~~]***[~~registrant~~][***~~reviews material including the Internet, views a video, or listens to an audio tape~~***].

(5) "Sponsor" means an individual, organization, association, institution, or other entity that provides educational activity for the purpose of fulfilling the continuing education requirements of this administrative regulation.

(6) "Tour" means a review or inspection of a landscape architectural element specified in the definition of "practice of landscape architecture" established by KRS 323A.010(3).

Section 2. General Statement. Continuing education obtained by a licensee[~~registrant~~] shall maintain, improve***,*** or expand skills and knowledge obtained prior to initial licensure or develop new and relevant skills and knowledge.

Section 3. Continuing Education Requirements. (1) A licensee[~~registrant~~] shall acquire twelve (12)[~~fifteen (15)~~] hours of continuing education annually.

(2) A licensee[~~registrant~~] may be credited for a maximum of six ***(6)*** ***[~~6~~]***[~~seven and one-half (7 1/2)~~] hours of continuing education for a tour annually.

(3) A licensee[~~registrant~~] may carry forward a maximum of twelve (12)[~~fifteen (15)~~] hours of continuing education to meet the subsequent year's requirements. Tour hours may[~~shall not~~] be carried forward into subsequent years.

Section 4. Approval of Continuing Education Programs. (1) The board shall:

(a) Approve a continuing education program that it determines:

1. Is relevant to the practice of landscape architecture; and

2. Furthers the competence of a licensee[~~registrant~~]; and

(b) Determine the number of continuing education hours allowed.

(2)(a) Before the continuing education program is offered, a sponsor shall submit a Continuing Education Preapproval Request and Affidavit (Form #CE-2) with a copy of the hand-out materials and agenda and a description of the presenter, teacher, or speaker.

(b) A sponsor shall not offer, present, or advertise a program as a continuing education program that meets the continuing education requirements for a licensee[~~registrant~~] unless it has

obtained the approval of the board.

(3) A licensee[~~registrant~~] who completes an educational program that has not been submitted to the board for prior approval shall receive continuing education credit if:

(a) The licensee[~~registrant~~] submits to the board a Continuing Education Preapproval Request and Affidavit (Form #CE-2) with a copy of the course materials, agenda, a description of the course, qualifications of the presenter, examination if one (1) was given; and

(b) The board determines that the program meets the requirements of a continuing education program.

(4) ***Self-directed courses, including those completed online, audibly, or by video, that meet the requirements of this administrative regulation shall be accepted.***

(5) Continuing education credits shall be given for one-half (1/2) the number of hours, not to exceed six ***(6)*** [~~seven and a half (7 1/2)~~] hours, of a tour if the licensee[~~registrant~~] has ***submitted to the board a description of the tour and the board determines that the tour meets the requirements of a continuing education program[~~:~~***

~~(a) Submitted to the board:~~

~~1. A description of the tour; and~~

~~2. The board determines that the tour meets the requirements of a continuing education program~~].

Section 5. (1) Continuing education activities may include a college or university course:

(a) The conversion of university credits to continuing education hours shall be:

1. One (1) university quarter hour of credit shall equal thirty (30) continuing education hours.

2. One (1) university semester hour of credit shall equal forty-five (45) continuing education hours.

(2)(a) A landscape architect who prepares and teaches a continuing education course shall be credited with twice the number of hours equal to the time spent teaching the course.

(b) Credit shall not be given for repeated instruction of the same course.

Section 6. Reporting of Continuing Education Activities. (1) Upon license renewal, a licensee[~~registrant~~] shall report continuing education activities for the continuing education period ending June 30.

(2) The report of continuing education activities shall include:

(a) Name of activity;

(b) Date of activity;

(c) Location of activity; and

(d) Continuing education hours earned.

(3) The report of continuing education activities shall be made on a "Continuing Education Approval Request and Affidavit Form (Form #CE-1)."

(4) The report of continuing education activities shall be:

(a) Signed by the licensee[~~registrant~~]; and

(b) Affixed with the licensee's[~~registrant's~~] seal.

(5) A licensee[~~registrant~~] shall maintain for two (2) continuing education years documentation verifying successful completion of the annual requirement.

Section 7. Verification of Continuing Education Activities. (1) Following each renewal period, the board shall require between five (5) and fifteen (15) percent of the licensees[~~registrants~~], chosen randomly, to furnish documentation of the completion of the appropriate number of continuing education hours for the previous renewal period, including hours carried forward from the previous year.

(2) Documentation of attendance and participation in a continuing education activity shall be made by submission of an official document, including a:

(a) Transcript;

(b) Certificate of attendance;

(c) Affidavit signed by the instructor;

(d) Receipt for a fee paid to a sponsor; or

(e) A written summary of attendance and participation.

(3) If not previously approved, the board shall determine whether the continuing education program submitted is relevant to the practice of landscape architecture and furthers the competence of the licensee[~~registrant~~].

(a) If the activity qualifies as continuing education, the board shall include the number of hours earned for that activity in determining if the applicant obtained the required twelve (12)[~~fifteen (15)~~] hours of continuing education.

(b) If the activity does not qualify as continuing education, the board shall deduct the number of hours claimed for that activity from the total number of hours earned by the licensee[~~registrant~~]. After this calculation, if a licensee[~~registrant~~] does not have the required twelve (12)[~~fifteen (15)~~] hours of continuing education, the board shall send written notification to the licensee[~~registrant~~] that:

1. The licensee[~~registrant~~] did not meet the continuing education requirements because an activity listed on the applicant's form as a continuing education activity did not qualify for continuing education credit; and

2. The board shall suspend his license if the requirements of subsection (4) of this section are not met.

(4) The license of the licensee[~~registrant~~] shall be suspended if the licensee[~~registrant~~] fails to:

(a) Complete the required number of continuing education hours within sixty (60) days of the notification from the board; and

(b) Submit to the board a completed and updated "Continuing Education Approval Request and Affidavit Form" (Form #CE-1) within sixty-five (65) days of the notification from the board.

Section 8. Reciprocity. Credit for continuing education earned by a licensee[~~registrant~~] who does not reside in Kentucky shall be granted if the licensee[~~registrant~~] meets all the requirements of this administrative regulation.

Section 9. Exempt Licensee[~~Registrant~~]. (1) A licensee[~~registrant~~] shall be exempt from the continuing education requirements:

(a) For the period of initial licensure;

(b) During the period of time in which the licensee[~~registrant~~] has an inactive license in accordance with the provisions of Section 10 of this administrative regulation; or

(c) If the board approves a written request for an exemption submitted by the licensee[~~registrant~~] in accordance with the provisions of subsection (2) of this section.

(2) A licensee[~~registrant~~] may request an exemption from the continuing education requirements by submitting written document that the licensee[~~registrant~~] was:

(a) Employed or assigned to duty outside the United States for a period exceeding 120 consecutive days during the calendar year; or

(b) Unable to complete the requirements because of:

1. Physical disability;

2. Personal illness; or

3. Illness of a family member or dependent.

Section 10. Inactive License. (1) A licensee[~~registrant~~] may choose to inactivate his license.

(2) During the period a license is inactive, a licensee[~~registrant~~] shall:

(a) Be exempt from the provisions of this administrative regulation; and

(b) Not practice landscape architecture.

Section 11. Reinstatement of Suspended or Inactive License. (1) Prior to reinstatement of a suspended or inactive license, a licensee[~~registrant~~] shall complete the number of continuing education hours required for the annual renewal of the license times the number of years the license was suspended or inactive.

(2) The number of continuing education hours required by subsection (1) of this section shall not exceed twenty-four (24)[~~thirty (30)~~] hours.

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

(a) "Continuing Education Approval Request and Affidavit Form" (Form #CE-1), May 2002 edition; and

(b) "Continuing Education Preapproval Request and Affidavit Form" (Form #CE-2), May 2002 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky[~~State~~] Board of[~~Examiners and Registration of~~] Landscape Architects, 2365 Harrodsburg Road, B350[~~301 East Main Street~~], Lexington, Kentucky 40504[~~40507~~], Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Jane Alexander, Executive Director, Kentucky Board of Landscape Architects, 2365 Harrodsburg Road, Suite B350, Lexington, Kentucky 40504; phone (859) 246-2753; email ky.labd@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing
(As Amended at ARRS, January 13, 2020)

302 KAR 15:010. Administration; state aid to local fairs.

RELATES TO: KRS 247.220

STATUTORY AUTHORITY: KRS 247.220

NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.220(2) authorizes the Fair Council and the Commissioner of Agriculture to promulgate administrative regulations regarding grants for local fair facilities. This administrative regulation establishes requirements for administration of and participation in the local fairs program.

Section 1. General Administration. (1) The County Fair Coordinator[~~Director~~] of the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] in the Department of Agriculture shall only make premium allocations to the authorized agent of an incorporated local fair board that conducts a qualified local agricultural fair in compliance with KRS 247.220.

(2) Fair officials for local fair boards applying for state funds shall make a reasonable effort to develop a program that ***shall[~~will~~]*** supplement agricultural educational and promotional activities.

(3) Local fair boards seeking state assistance shall plan and conduct a qualified local agricultural fair with educational exhibits running for at least three (3) consecutive days (thirty-six (36) hours of exhibition). All fair events shall be held on consecutive days***, except a fair may[~~with the following exceptions~~]***:

(a) ***[~~A fair may~~]***Be closed on Sundays***[~~, if the local board desires~~]***; and

(b) ***[~~A fair may~~]***Conduct certain events, such as harness horse racing, on separate dates if:

1. The local board files a request to conduct the event with the Shows and Fairs Division[~~Division of Show and Fair Promotion~~];

2. The request is ***considered[~~approved~~]*** by the Kentucky Fair Council at the next regular meeting and thereafter transmitted to the Commissioner of Agriculture for the Commissioner's approval or rejection of the local board's request; and

3. The Commissioner of Agriculture approves the request ***based on the application***.

(4) A local fair board shall establish classes and premiums related to the economic importance of the commodity in the area, the relative value of the exhibit***,*** and the difficulty in preparing for and showing the entry.

(5) Ribbon colors at each local fair shall be***[~~as follows~~]***:

(a) Blue for first place;

(b) Red for second; ***and***

(c) White for third.[~~;~~

~~(d) Pink for fourth;~~

~~(e) Yellow for fifth;~~

~~(f) Green for sixth;~~

~~(g) Light green for seventh;~~

~~(h) Brown for eighth;~~

~~(i) Gray for ninth; and~~

~~(j) Light blue for tenth.~~]

(6) A local fair board seeking state funds shall comply with local and state health regulations for exhibitors tending exhibits and for fair attendants.

(7) A fair event held at a location other than the fairgrounds shall qualify for aid if publicized in the fair's catalog as being a fair event.

Section 2. Records. (1) A local fair board shall make a request for state assistance annually on an Initial Request for State Aid to Local Agricultural Fairs form, and shall mail it to the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] by March 1 of the year in which the fair is conducted. The Commissioner of Agriculture shall allow a fair to enter the program after the application deadline has passed for good cause shown.

(2) A local fair board shall mail an Open Class Livestock Show Information Form Packet[~~a Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Show and Fair Promotion, Open Class Dairy and Beef Show Information Form (1995)~~] concerning the fair's livestock[~~beef and dairy~~] shows to the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] by April 1[~~May 1~~] of the year in which the fair is conducted.

(3) A complete financial statement for events previously requesting state funds shall be submitted to the Department of Agriculture.

(a) This annual financial statement shall cover all crops, foods, domestic livestock, poultry, harness horse racing, other horse events, and other agricultural classes that ***might[~~may~~]*** qualify for aid.

(b) The statement[~~It~~] shall be complete and prepared in detail showing receipts and disbursements***,*** as well as the number of exhibitors and premiums awarded by fair departments.

(c) This certified, notarized statement shall be presented to the County Fair Coordinator[~~Director~~] of the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] within forty-five (45) days following the event***,*** and ***a[~~no~~]*** financial statement shall ***not*** be accepted for payment after December 1 of the year in which the fair is conducted without approval from the Kentucky Fair Council, based on budgetary considerations.

Section 3. Entries. (1)(a) A Fair qualifying for state funds shall provide for adult and youth divisions.

(b) Youth exhibits shall include 4-H, FFA, FHA, and ***[~~shall include~~]*** other official groups***, if any,*** recognized by the extension service or the Office of Secondary Vocational Education. All projects approved by these official groups may be approved for state funds. Fair boards may restrict youth participation to a particular district, county, or trade area.

(2) All exhibitors, adult and youth, shall have equal opportunity to enter open classes.

(3)***(a)*** A local fair board receiving state money shall assure that exhibits eligible in more than one (1) class or section ***shall be[~~are~~]*** exhibited only in the class or section for which it best qualifies.

(b) An exhibitor shall not show the same kind of animal or the same entry in both FFA and 4-H classes or in classes for other organized junior organizations.

(4) All domestic livestock, poultry, and horse entries shall ***comply with 302 KAR Chapter 22[~~meet the specifications of the health administrative regulations~~]*** of the State Board of Agriculture[~~as set forth in 302 KAR 20:065~~] relating to the exhibition of livestock in Kentucky.

Section 4. Catalog. (1)***(a)*** A qualified fair shall have an official fair catalog. A draft copy of the catalog including premium lists and classes, excluding advertisements, shall be submitted to be approved by the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] at least forty-five (45) days prior to the opening of the fair.

(b) The finished catalog shall be submitted to the County Fair Coordinator[~~Director~~] of the Department of Agriculture's Shows and Fairs Division[~~Division of Show and Fair Promotion~~] no later than thirty (30) days before the fair is held.

(2) Classes advertised in the catalog shall be reviewed annually by the local fair board to make certain that competitive events ***shall be[~~are being~~]*** held and that premiums offered ***shall not be[~~are not out~~]*** of balance with entries.

(3) The official fair catalog shall contain***[~~the following information~~]***:

(a) A list of fair officials and their assigned responsibilities with the following organizations being represented on the agriculture advisory board:

1. Vocational Agriculture;
2. Extension Service;
3. Farm Bureau;
4. Local Livestock Association (if ***any[~~one exists~~]***); and
5. Local Horsemen's Association (if ***any[~~one exists~~]***);

(b) A schedule of events planned as a part of the fair;

(c) Local fair rules and ***302 KAR Chapter 15[~~administrative regulations~~]*** including a statement ***[~~to the effect~~]***that "open classes ***shall be[~~are~~]*** open to all exhibitors unless otherwise specified; "

(d) General information by fair departments showing classes and premium lists;

(e) ***302 KAR Chapter 22[~~Animal health administrative regulations~~]***[~~, 302 KAR 20:040 and 302 KAR 20:065~~]; and

(f) A rule ***[~~to the effect~~]***that "entries made in 4-H, FFA and FCCLA classes shall have been produced in conjunction with an approved project sponsored by these organizations."

(4) Catalogs shall be mailed and distributed by the local fair board no later than thirty (30) days prior to the opening of the fair.

Section 5. Judges. (1) To assist with the educational objectives of each event***,*** a local fair shall encourage***[~~,~~]*** judges to present reasons for their evaluations and decisions.

(2) A person shall not be an exhibitor or act as an agent in any division or department for which he or she serves as a judge.

Section 6. State Allocation. (1)(a) The Department of Agriculture's agricultural premium money shall be allocated to all approved local fairs on the basis of total money offered for approved classes in the catalog and total money spent in approved classes taken from the fair's financial statement available as indicated by fair records including catalogs.

1. The total agricultural premium payment for one (1) or more fairs held annually in a single county shall not exceed $4,500.

2.[~~In addition,~~] State money for each class shall not exceed fifty (50) percent of the total premiums awarded.

(b) The first agricultural premium payment to each fair shall be made after the printed catalog is received and may be up to one-fourth (1/4) of the amount of money offered in approved classes by the local fair up to a maximum of $2,250.

(c) The second agricultural premium payment shall be made after the fair's financial statement is received, if all remaining requirements have been met and the necessary records submitted, and shall be based on the amount of money paid for premiums and awards in approved agricultural classes up to a maximum of $4,500 less the amount of the first agricultural premium payment.

(d) The combination of county fairs or community fairs of a number of counties shall not be approved to justify a larger state premium payment.

(2) An additional $2,000 grant may be made to a qualified local agricultural fair to be used for horse events' premiums and awards.

(a) This grant shall be made on an equal matching fund basis and shall be based completely on the amount of money paid in premiums and awards for horse events' classes.

(b) The payment of this grant shall come after the financial statement of the fair is received by the Department of Agriculture and shall be included in the fair's second fair payment.

(c) The qualified fair shall submit with its financial statement, records of premiums paid, number of exhibitors, and number of entries for these horse events.

(3)(a)The Department of Agriculture shall make available to a qualified agriculture fair up to $7,000 on an equal matching basis for harness horse racing, with a maximum of $750 per race being matched by the department.***[~~To qualify, a fair shall meet the requirements set forth in 811 KAR 1:220.~~]***

(b) Harness racing payments shall also be disbursed in two (2) payments***.[~~:~~]***

1. The first payment shall be one-fourth (1/4) the amount of purses offered in the printed catalog, up to a maximum of $3,500. This payment shall be combined with the fair's first agricultural payment.

2. The second harness racing payment shall be based on the amount of money spent in harness racing purses, up to a maximum of $7,000 less the first harness racing payment. It shall be included in the second fair payment, if the fair has included sufficient information on the financial statement in regard to the harness racing results.

(4)***(a)*** The County Fair Coordinator[~~Director~~] of the department's show and fair program shall provide from the appropriation for county fairs a trophy that ***shall[~~will~~]*** be rotated and engraved and presented annually to the local fair that has made the most progress in twelve (12) months.

(b)[~~In addition,~~] Appropriate engraved plaques shall be presented to the first, second, and third placed fairs making the most progress in the twelve (12) months period and also for the most outstanding new fair in the program for that year.

(c) The presentation shall be made by the Department of Agriculture's Fair Council based on records submitted to the department. [~~Section 7. Building Program.~~

~~(1) A qualified local agricultural fair may apply for an additional $3,000 grant of state funds to be used for the establishment of new buildings and facilities or for improvement to existing facilities. Grants shall be on an equal matching basis with the local fair board matching the amount of the state grant. Payments for facilities shall not result in a decrease in the approved agricultural classes or premiums being offered in the fair catalog.~~

~~(2) The buildings and facilities shall be used primarily in conjunction with the qualified local agricultural fair and shall either be constructed on land for which owned by the local fair board or on land the fair group holds a renewable lease.~~

~~(a) The following shall be examples of items that may qualify for the building program;~~

~~1. The purchase of land for a fairground or the purchase of land adjoining the original grounds;~~

~~2. The construction of new buildings;~~

~~3. Repair of any existing facilities on the fairgrounds;~~

~~4. Grandstands or bleachers used to seat people during the fair;~~

~~5. Grading and improvement work done to an existing track or show ring; or~~

~~6. Loading chutes, wash racks or tie-outs for livestock.~~

~~(b) An item not listed in paragraph (a) of this subsection may qualify for state assistance if the local fair provides evidence to the Department of Agriculture that the item meets the minimum application requirements.~~

~~(3) A qualified local agricultural fair shall apply for the building program by submitting the form Request for State Aid for the Building Program, after the fair has submitted its Initial Request for State Aid to Local Agricultural Fairs Form. The building program application shall be submitted to the Division of Show and Fair Promotion Department of Agriculture, by June 1 of the year that the work is to be completed. The application shall include a description of the proposed buildings or improvements to be made, use to be made of these improvements, itemized list of approximate cost, and the date to be completed. Applications shall be available from the Department of Agriculture, Division of Show and Fair Promotion and shall be distributed after fair program applications are received or upon request.~~

~~(4) Upon acceptance of a qualified local fair's request for assistance by the Department of Agriculture, the local fair shall be supplied a Financial Report of the Building Program. The financial~~

~~report shall contain a description of the buildings or improvements and an itemized cost. This report shall be notarized and presented to the Division of Show and Fair Promotion within forty-five (45) days following the completion of the building or repair work. A report shall not be accepted for payment after December 1 of the year that the work is completed without approval from the Kentucky Fair Council, based on budgetary considerations.~~

~~(5) Building program payments shall be disbursed in two (2) payments.~~

~~(a) The first payment shall represent one-fourth (1/4) of the total amount submitted on the fair's building report up to a maximum of $1,500.~~

~~(b) The second building program payment shall be made after all financial statements and building reports have been received in the office of the Division of Show and Fair Promotion and the total amount required for all grants is known. The second building payment amount shall be adjusted on an equal basis to bring the total grants in line with the funds available in the Aid to Fairs Program budget.~~]

Section 7[~~8~~]. Grant Program. (1) A[~~In addition to the Building Program established in Section 7 of this administrative regulation, a~~] qualified local agricultural fair may apply to the Grant Program yearly for[~~land acquisition,~~] capital construction of new buildings and facilities, infrastructure improvement to existing facilities, or the purchase of nonpermanent tangible items (***for example,[~~i.e.~~]*** bleachers ***and[~~,~~]*** restaurant equipment***[~~, etc.~~]***) A fair shall submit the Application[~~to Qualify~~] for County Fair Grant[~~and the Grant Project application~~] to the Shows and Fairs Division[~~Division of Show and Fair Promotion~~]. The applications shall be postmarked by October 1st of each year. Grant applications shall ***comply with the requirements established in paragraphs (a) through (j) of this subsection.[~~meet the following criteria:~~]***

(a) Grants shall made on a matching basis. The Kentucky Department of Agriculture shall provide seventy-five percent (75) percent, and the local fair shall provide twenty-five percent (25) percent, in either a monetary or in-kind match.

(b) The minimum amount eligible to be received shall be [~~in~~] $10,000 [~~$20,000~~]. The maximum amount received shall be $100,000***.[~~;~~]***

(c) The Fair Board shall be required to execute a Memorandum of Agreement with the Kentucky Department of Agriculture for the use of state funds***.[~~;~~]***

(d) The Fair Board shall own the land or hold a long-term lease on the property (twenty (20) years for capital construction and improvements or ten (10) years for non-permanent tangible items). A copy of the deed or lease agreement shall be submitted ***to the Shows and Fair Division.[~~;~~]***

(e) Grant applications shall be accompanied by a development plan for capital construction and infrastructure. Applications for non-permanent tangible items shall be accompanied by a statement of cost from the vendor***.[~~;~~]***

(f) Changes to development plans[~~(capital construction/infrastructure after a grant is awarded~~] shall have prior approval from the Kentucky Department of Agriculture***.[~~;~~]***

(g) All ***building or health[~~building/health~~]*** permits (local and state) shall be obtained and ***submitted[~~provided~~]*** to the Shows and Fairs Division[~~Division of Show and Fair Promotion~~] for capital ***construction or infrastructure upon[~~construction/infrastructure when~~]*** a grant ***being[~~is~~]*** awarded. If none are required an affidavit signed by local officials shall be ***submitted to the Shows and Fairs Division.[~~provided;~~]***

(h) Awarded projects shall be started within ninety (90) days, of the date the project is awarded and completed within nine (9) months. Project extensions shall be made on a case by case basis, based on reasonable assurance of project completion***.[~~;~~]***

(i) Fairs shall make a full accounting of all expenditures and receipts of the completed project within ninety (90) days of completion***.[~~;~~]***

(j) A fair that has been awarded a grant shall be ineligible to apply another grant for three (3) years from the date the previous grant was awarded.

(2) The grants program shall be administered by the Kentucky Department of Agriculture's Shows and Fairs Division[~~Division of Show and Fair Promotion~~]. The County Fair Coordinator shall review all applications for compliance. The grants shall then be presented to the Kentucky Fair Council for selection.

(3) The Fair Council shall select grant recipients until the yearly budget allocations have been met.

(a) The Fair Council ***shall[~~may~~]*** reject a grant that does not meet the requirements established in this administrative regulation.

(b) The Shows and Fairs Division[~~Division of Show and Fair Promotion~~] shall monitor implementation of awarded grants.

(c) Fairs that are awarded grants and fail to execute the projects shall be required to repay the grant.

Section ***8.[~~9.~~]*** Effect of Overspending of Fair Program Budget. If the local agricultural fair program payments exceed the amount of money budgeted for the total fair program, reductions shall be made in payments as recommended by the Fair Council and as determined by the Commissioner of Agriculture ***based on the application***.

Section ***9.[~~10.~~]*** Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Initial Request for State Aid to Local Agricultural Fairs***[~~Form~~]***", **2019***[~~(1995)~~]*;

(b)["~~Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Show and Fair Promotion, Open Class Dairy and Beef Show Information Form" (1995);~~

~~(c) "Financial Report of the Building Program" (November 2006);~~

~~(d) "Request for State Aid for the Building Program" (November 2006);~~

~~(e)~~] "Application [~~to Qualify~~] for County Fair Grant"***, [(]***August 2019[~~November 2006~~]***[)]***; and[~~(f) "Grant Project Application" (November 2006).~~]

(c) "Open Class Livestock Show Information Form Packet"***, [(]***August 2019***[)]***.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Department of Agriculture, Shows and Fairs Division[~~Division of Show and Fair Promotion~~], 111 Corporate Drive[~~100 Fair Oaks 5th Floor Frankfort~~], Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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.

DEPARTMENT OF AGRICULTURE
Office of Consumer and Environmental Protection
(As Amended at ARRS, January 13, 2020)

302 KAR 31:040. Storage and handling of pesticides and bulk fertilizer.

RELATES TO: KRS Chapter 217B, 40 C.F.R., 49 C.F.R.***, 42. U.S.C. 9601***

STATUTORY AUTHORITY: KRS 217B.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050(1) authorizes the department to promulgate administrative regulations prescribing the methods of storing fertilizers and pesticides. This administrative regulation ***establishes requirements for[~~regulates~~]*** the storage and handling of pesticides and bulk fertilizers at commercial facilities.

Section 1. Definitions. (1) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. Best management

practices also includes treatment requirements, operating procedures, practices to control facility run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(2) "Bulk fertilizer" means dry or liquid fertilizer in any unpackaged quantity.

(3) "Bulk pesticide" means a pesticide that is held in a nonmobile container in an undivided quantity greater than:

(a) 300 U.S. gallons of liquid measure; or

(b) 300 U.S. pounds of net dry weight.

(4) "Commercial ***purpose[~~purposes~~]***" means selling a pesticide or fertilizer for compensation or other consideration.

(5) "Commercial storage facility" means a site used for a commercial purpose that, in a year, sells, uses, stores, mixes, repackages, or transfers from one (1) container to another more than:

(a) 300 U.S. gallons of liquid pesticide;

(b) 300 U.S. pounds of a dry pesticide;

(c) 5,000 U.S. gallons of a liquid bulk fertilizer; or

(d) Twenty-five (25) tons of dry bulk fertilizer.

(6) "Elephant ring" means a temporary operational containment device:

(a) With an open top that has a storage capacity of:

1. Not less than twenty-five (25) U.S. gallons; and

2. Not more than 100 U.S. gallons; and

(b) Used for recovering spillage and leakage from a transfer connection or pump.

(7) "Fertilizer" is defined ***by[~~in~~]*** KRS 217B.040***(8)***, but for purposes of this administrative regulation shall not include anhydrous ammonia fertilizer material or fertilizer packaged for household use.

(8) "Impervious" means restricting the passage of water at a rate greater than 1 x 10-6 centimeters per second.

(9) "Impregnation" means the application of a pesticide onto fertilizer.

(10)[~~"Lead agency" means the agency that shall be responsible for the enforcement of this administrative regulation.~~] "Liquid fertilizer" means fertilizer in fluid form, including solutions, emulsions, suspensions, and slurries.

(11) "Liquid pesticide" means any pesticide in fluid form.

(12) "Load" means the transfer of pesticide in an open storage container or bulk fertilizer from the storage facility to transport vehicles, application equipment, or mobile containers.[~~(14) "Low pressure nitrogen solutions" means an aqueous solution of ammonium nitrate, urea, or other nitrogen carriers, containing various quantities of free ammonia exceeding two (2) percent by weight. It does not include aqua ammonia and non-pressure nitrogen solutions commonly referred to as twenty-eight (28), thirty (30), or thirty-two (32) percent nitrogen solutions.~~

~~(15) "Minibulk pesticides" means an amount of:~~

~~(a) Liquid pesticide in an undivided quantity in a mobile container designed for handling and transport that is:~~

~~1. Greater than fifty-five (55) U.S. gallons; and~~

~~2. Less than 300 U.S. gallons; or~~

~~(b) Dry pesticide held in an undivided quantity in a mobile container designed for handling and transport that is:~~

~~1. Greater than 100 U.S. pounds; and~~

~~2. Less than 300 U.S. pounds.~~]

(13) "Mobile container" means a container designed and used for transporting a pesticide or fertilizer.

(14) "Operational area" means a site at a facility where the following occurs:

(a) Loading, unloading, repackaging, mixing, impregnation, or transferring of a pesticide or fertilizer; or

(b) Rinsing, washing, or cleaning of pesticide or fertilizer application equipment.

(15) "Operational area containment" means any structure or system designed and constructed to effectively intercept and contain operational spills of fertilizer and pesticides, including rinsate or rain water resulting from any operational activity in an operational area.[

~~(19) "Package pesticide" means a pesticide not defined as bulk or minibulk pesticide.~~]

(16) "Pesticide" is defined ***by[~~in~~]*** KRS 217B.040(2)***[~~, but for purposes of this administrative regulation, shall not include a pesticide packaged for household use~~]***.

(17) "Primary containment" means any storage container or device used to contain a bulk pesticide, fertilizer, or rinsate at a storage facility.

(18) "Repackaging" means the transfer of bulk pesticides[~~, minibulk pesticides, or package pesticides~~] from one (1) storage container to another storage container.

(19) "Rinsate" means water or other liquid resulting from the washing of equipment, operational areas, or containers used in the application, loading, unloading, mixing, transferring or storing of any fertilizer or pesticide.

(20) "Roofed" means protected from precipitation.

(21) "Secondary containment" means a dike, liner, structure, or other device used to:

(a) Contain a product spill from a primary bulk storage container; and

(b) Prevent runoff or leaching.

(22) "Storage container"***:***

(a) Means a container used for the storage of fertilizer or pesticides. A storage container includes a rail car, nurse tank, or other mobile container used for the storage of bulk fertilizers or pesticides***; and***

(b) Does not mean[~~. The definition of a "storage container" shall not include~~]:

1.[~~(a)~~] A mobile container storing fertilizer or pesticide at a storage facility for less than fifteen (15) days if this storage is incidental to the loading or unloading of a storage container at the storage facility***; and***

2.[~~(b)~~] A container used solely for temporary emergency storage of leaking fertilizer or pesticide containers.

(23) "Storage facility" means a commercial storage facility.

(24) "Temporary operational containment" means any structure or system designed and constructed with the capability of movement between operational areas and designed to intercept and contain discharges from operational activities including the loading, unloading, repackaging, impregnation, and transfer of pesticides or fertilizer or the rinsing, washing***,*** or cleaning of pesticide and fertilizer application equipment.

(25) "Unload" means the transfer of pesticide in an open storage container or bulk fertilizer from the transport vehicle into the storage facility.

Section 2. Scope and Application. (1) A commercial storage facility shall register with the Kentucky Department of Agriculture, Division of Pesticide Regulation***, and shall submit the Pesticide and/or Fertilizer Bulk Storage Facilities Registration form***[~~The Kentucky Department of Agriculture, Division of Pesticide Regulation shall be the designated lead agency~~].

(2) A commercial storage facility shall comply with this administrative regulation.

(3) A commercial storage facility shall have a written emergency response plan to be followed in the event of an emergency. A plan required by another regulatory program may be used. The plan shall be available upon request of the KDA.

(4)[~~A commercial storage facility shall register with the Kentucky Department of Agriculture, Division of Pesticide Regulation.~~

~~(5)~~] A commercial storage facility shall define the scope of the existing operation and facility at the time of registration.

(5) A commercial storage facility shall be subject to SARA Title III***, 42 U.S.C. 9601,[~~(42 U.S.C.A. Sec. 9601)~~]*** and shall:

(a) Be in full compliance by the required dates; and

(b) ***[~~Promptly and~~]***Accurately complete the required annual reporting form[~~forms~~].

(6) Unless[~~After August 2003, unless~~] performed in the field of application, the loading, unloading, mixing***,*** and handling of dry bulk fertilizer shall be performed in accordance with Section 8 of this administrative regulation.

Section 3. Operational Area Site Specifications. (1) New

permanent operational area containment located in a flood plain shall be protected from inundation by floods.

(2) New permanent operational area containment shall be located a minimum of 100 feet from on-site wells and sinkholes, 200 feet from private domestic wells, and 400 feet from any community wells used as a public water source.

Section 4. Primary Containment of Liquid Pesticides and Liquid Fertilizer. (1) Basic requirements.

(a) A storage container and all equipment, including hoses, fittings, valves, clamps, and pumps[~~appurtenances~~] shall be constructed, installed, and maintained so as to prevent the release of liquid fertilizer or pesticides.

(b) Storage containers and all equipment, including hoses, fittings, valves, clamps, and pumps[~~appurtenances~~] shall be constructed of materials ***that shall be[~~which are~~]*** resistant to corrosion, puncture, or cracking and shall be compatible with the product being stored.

(c) A storage container and all equipment, including hoses, fittings, valves, clamps, and pumps[~~appurtenance~~] used for the storage of a liquid fertilizer containing potassium chloride (muriate of potash) may be constructed of ferrous materials if***[~~the following provisions are met~~]***:

1. The container and all equipment, including hoses, fittings, valves, clamps, and pumps[~~appurtenance~~] are coated or treated with protective substances; and

2. The container or all equipment, including hoses, fittings, valves, clamps, and pumps[~~appurtenance~~] is used for a storage period of not more than six (6) months, is completely emptied between storage periods, and is cleaned and inspected for leaks prior to being refilled.

(d) Metals used for valves, fittings, or repairs on metal containers shall be compatible with the materials used in the construction of the storage container so the combination of metals does not cause or increase corrosion ***that could[~~which may~~]*** weaken the storage container or its all equipment, including hoses, fittings, valves, clamps, and pumps[~~appurtenances~~] or create a risk of release.

(e) Storage containers and all equipment, including hoses, fittings, valves, clamps, and pumps[~~appurtenances~~] shall be designed to handle all operating stresses, taking into account static head, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage containers and all equipment, including hoses, fittings, valves, clamps, and pumps[~~appurtenances~~] ***could[~~may~~]*** be subjected to in the foreseeable course of operations.

(f) Storage containers shall be properly labeled during active use of the container.

(2) Prohibition against underground storage and plumbing.

(a) The storage of liquid fertilizer or pesticide in an underground storage container shall be prohibited unless an impervious catch basin is used for the temporary collection of run-off or rinsate from containment or operational areas and it is emptied within seventy-two (72) hours of use.

(b) Underground plumbing shall be restricted to the use of concentric piping.

(3) Abandoned containers.

(a) Storage containers and other containers used at a storage facility to hold liquid bulk fertilizer or pesticide, or pesticide and fertilizer rinsate shall be considered abandoned if they have been out of service for more than six (6) months due to a weakness or leak, or have been out of service for any reason for more than two (2) years ***without[~~and no~~]*** integrity tests ***having[~~have~~]*** been performed.

(b) Abandoned aboveground containers shall be thoroughly cleaned. All hatches on the containers shall be secured and all valves or connections shall be severed or sealed.

(c) A secondary containment facility shall not be considered abandoned for the sole reason that there have been no releases into the secondary containment.

(4) Prohibited materials.

(a) Storage containers and[~~appurtenances~~] shall not be constructed of copper, brass, zinc, or copper base alloys.

(b) Storage containers and[~~appurtenances~~] used for the storage of liquid fertilizers containing phosphate or chlorides shall not be constructed of aluminum alloys.

(c) Storage containers and[~~appurtenances~~] used for the storage of low ph (<5) liquid fertilizers shall not be constructed of ferrous materials other than stainless steel unless the materials are coated or treated with protective substances.

(d) Storage containers ***[~~and~~]***[~~appurtenances~~] used for the storage of low-pressure nitrogen solutions shall not be constructed of mild steel, fiberglass, polyolefins, or plastic. This prohibition shall not extend to nonpressure solutions commonly referred to as twenty-eight (28), thirty (30), or thirty-two (32) percent nitrogen solutions. This prohibition against the use of mild steel shall not extend to aqua ammonia.

(e) Storage containers ***[~~and~~]***[~~appurtenances~~] used for the storage of phosphoric acid shall not be constructed of ferrous materials other than stainless steel unless the container is lined with a suitable substance ***based on contents***.

(5) Filling storage containers. Storage containers shall not be filled beyond the capacity for which they are designed.

(6) Pipes and fittings. Pipes and fittings shall be adequately supported to prevent sagging and possible breakage due to gravity and other forces ***that could[~~which may~~]*** be encountered in the ordinary course of operations. Underground plumbing shall be prohibited except as ***established[~~specified~~]*** in subsection (2)(b) of this section.

(7) Liquid level gauging device.

(a) Every storage container shall be equipped with a liquid level-gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level-gauging device shall not be required if the level of liquid in a storage container can be readily and reliably measured by other means.

(b) Liquid level gauging devices shall be secured in a safe manner to protect against breakage or vandalism.

(c) External sight gauges shall be prohibited.

(8) Venting. Storage containers shall be vented to manufacturer's specifications for the product being stored in the container.

(9) Facility inspection and maintenance by owner or operator. Inspections by the operator shall be conducted quarterly to assure the early detection of cracks and other defects that ***could[~~may~~]*** compromise the integrity of the primary containment. Repairable defects that occur in a primary containment shall be sealed or repaired immediately.

Section 5. Secondary Containment of Liquid Bulk Pesticide and Liquid Bulk Fertilizer. (1) A nonmobile storage container for liquid bulk pesticides and liquid bulk fertilizer shall be located within a secondary containment.

(2) Basic requirements shall include:

(a) The floor and walls of a secondary containment structure shall be constructed of:

1. Concrete;

2. Concrete block that has been capped and filled with concrete;

3. Steel; or

4. Another impervious material compatible with the product being stored***;[~~.~~]***

(b) The floor and walls of a secondary containment structure ***that[~~which~~]*** contains a pesticide shall be constructed of material ***that shall[~~which will~~]*** maintain structural integrity under fire conditions***;[~~.~~]***

(c) Secondary containment structures shall not have relief outlets or release valves***;[~~.~~]***

(d) Underground plumbing shall be prohibited except as ***established[~~provided~~]*** in Section 4(2)(b) of this administrative regulation***;[~~.~~]***

(e) Secondary containment may provide for the separation between bulk pesticides and bulk fertilizer to the extent that a common wall or curbing exists between the fertilizer and pesticide

areas and shall provide for the interception and recovery of materials including clean-up of pesticide releases. The entire secondary containment area shall meet or exceed the total capacity requirements ***established[~~specified~~]*** in this section***;[~~.~~]***

(f) Secondary containment structures shall be cleaned and rinsed within seventy-two (72) hours after any release into the secondary containment***;[~~.~~]***

(g) An inspection shall be conducted quarterly by the owner or operator to assure the early detection of cracks or other defects that ***could[~~may~~]*** compromise the integrity of the secondary containment.

1. Repairable defects that occur in a secondary containment shall be sealed or repaired immediately.

2. Inspections shall be documented in a legible and accurate form***;[~~.~~]***

(h) Containers, pipes, hoses***,*** and valves shall be protected against anticipated risks of damage by trucks and other moving vehicles***;[~~.~~]***

(i) Clay, natural soil clay mixtures, or clay and bentonite mixtures shall not be used to contain any bulk pesticide***;[~~.~~]***

(j) Temporary operational containment or elephant rings shall not be used as secondary containment for any bulk pesticide***; and[~~.~~]***

(k) Secondary containment structures shall include a sump or collection point for collection of spillage, leakage, rinsate, or other residues.

1. A sump or collection point shall not be greater than two (2) feet deep and shall not contain more than 109 U.S. gallons.

2. A sump shall be cleaned and rinsed within seventy-two (72) hours of use.

(3) Secondary containment structures shall provide the following capacity:

(a) If not roofed, the containment shall have a minimum containment volume that equals 110[~~a six (6) inch rain storm in a twenty-four (24) hour period, plus 100~~] percent of the capacity of the largest tank and the volume displaced by the bases of the other tanks located within the secondary containment structure***;[~~.~~]***

(b) If roofed, the containment shall have a minimum containment volume of 100 percent of the capacity of the largest tank plus the volume displaced by the bases of the other tanks located within the secondary containment structure***; and[~~.~~]***

(c) If tanks are plumbed together without valves, any connected tanks shall be considered a single tank for calculation purposes.

(4) Basic requirements for the secondary containment of liquid fertilizer.

(a) Secondary containment shall be provided ***that[~~which~~]*** meets or exceeds the requirements in subsection (2) of this section.

(b) Secondary containment shall be constructed to a water permeability rate of 1 x 10-6 centimeters per second and maintained so that liquid movement through the walls and base does not exceed a rate of 1 x 10-5 centimeters per second permeability rate. The secondary containment structure shall be designed and maintained to withstand a full hydrostatic head of any contained liquid.

(c) Synthetic materials or liners may be used as secondary containment if they are compatible with the substances being contained and are installed according to manufacturer's recommendations. These directions and recommendations shall be maintained at the storage facility.

(d) Earthen walls used for secondary containment of fertilizer shall be protected against erosion.

1. Side slopes shall not exceed a three (3) to one (1) ratio of horizontal to vertical.

2. The top width of earthen walls shall not be less than two and one-half (2 1/2) feet.

(e) Provisions shall be made for safe emergency access and exit to and from the secondary containment structure.

(f) Floors shall be constructed to allow the safe and expeditious removal of precipitation or any spilled liquid to a collection point.

(g) A soil liner used for secondary containment of fertilizer shall be constructed of suitable soil or soil treated with bentonite clay or other comparable material, with a minimum depth of twelve (12) inches, if the other requirements stated in this section are met. The liner shall be covered by a soil or smooth aggregate layer not less than six (6) inches thick and shall be maintained to prevent cracking or puncture.

(h) Prefabricated secondary containment devices shall be constructed of a rigid prefabricated basin having both a base and walls constructed of steel, reinforced concrete, synthetic liner, or synthetic materials ***that[~~which~~]*** are resistant to corrosion, puncture, or cracking.

(5) Exemptions from secondary containment.

(a) A liner shall not be required to be installed directly under a storage container having a capacity of 100,000 gallons or more ***that[~~which~~]*** has been constructed on site and put into use prior to August 1998 if***[~~all the following conditions are met~~]***:

1. A second bottom made of steel shall be constructed for the storage container. The second bottom shall be placed over the original bottom and a layer of smooth fine gravel or coarse sand having a minimum thickness of three (3) inches shall be installed between the layers;

2. The original bottom of the storage container is tested for leaks before the sand layer or second bottom is installed. A record of the test shall be maintained at the storage facility;

3. The newly constructed bottom is tested for leaks before any liquid fertilizer is stored on the newly constructed bottom. A record of the test shall be maintained at the storage facility; and

4. There is a method by which leaks from the newly constructed bottom into the sand layer ***shall[~~may~~]*** be readily detected unless the storage containers are constructed of nonferrous materials ***that[~~which~~]*** have a protection system in place consisting of synthetic liners and monitoring system.

(b) The secondary containment requirements ***established[~~under this~~]*** section shall not apply to railcars ***that[~~which~~]*** are periodically transferred to and from storage.

(6) A storage facility with existing secondary containment on site and in place on August 17, 1998, shall be exempt from this section if***[~~the following conditions are met~~]***:

(a) All requirements ***established[~~specified~~]*** in Section 4 of this administrative regulation are met;***[~~and~~]***

(b) All requirements ***established[~~specified~~]*** in subsection (2) of this section are met; and

(c) A minimum secondary containment capacity of 110 percent of the largest container plus the volume displaced by the other tanks located within the secondary containment structure exists.

Section 6. Operational Containment for Pesticides and Liquid Fertilizer. (1) The transfer of a pesticide or liquid fertilizer between storage containers at a commercial facility shall be performed within impervious operational containment designed to intercept, retain, and recover an accidental release or leakage of rinsate and residue. Transfer shall include***[~~the following~~]***:

(a) Loading

(b) Unloading;

(c) Repackaging;

(d) Impregnating;

(e) Mixing; or

(f) The cleaning of equipment.

(2) Temporary operational area containment may be used in lieu of impervious operational containment for loading or unloading of rail cars or barges.

(3) The basic requirements for permanent operational containment structures for a pesticide and a liquid fertilizer shall include:

(a) The construction and the design of a containment structure shall be compatible with the products handled and be maintained in a condition to retain recovered material until it is properly disposed of or use***;[~~.~~]***

(b) Operational containment shall be constructed of reinforced concrete or other impervious materials compatible with the products being handled***;[~~.~~]***

(c) The owner or operator, to assure the early detection of

cracks and other defects that ***could[~~may~~]*** compromise the integrity of the operational containment structure shall conduct inspections at least quarterly.

1. Repairable defects that occur in an operational containment structure shall be sealed or repaired immediately.

2. Inspections shall be documented in a legible and accurate form;***[~~.~~]***

(d) Stormwater drainage shall be diverted away from all operational containment structures***;[~~.~~]***

(e) Operational containment shall include a sump or collection point for the temporary collection of spillage, leakage, rinsate, or other residues.

1. A sump or collection point shall not be greater than two (2) feet deep nor contain more than 109 U.S. gallons.

2. A sump shall be cleaned and rinsed within seventy-two (72) hours of use***;[~~.~~]***

(f) Operational containment shall not have a relief outlet or release valve***;[~~.~~]***

(g) Operational containment shall be large enough in area to prevent spillage onto unprotected areas and to prevent any release to the surrounding environment***; and[~~.~~]***

(h) The use of underground plumbing shall be prohibited except as ***established[~~provided~~]*** in Section 4(2)(b) of this administrative regulation.

(4) Operational containment shall provide ***that[~~the following capacity~~]***:

(a) Operational area containment for a roofed permanent structure shall have a volume sufficient to contain a minimum of 1,000 U.S. gallons. Containment capacity of the sump shall be figured in addition to the containment capacity of the structure***; and[~~.~~]***

(b) Operational area containment for an unroofed permanent structure shall have a volume sufficient to contain a minimum of 1,250 U.S. gallons. Containment capacity of the sump shall be figured in addition to the containment capacity of the structure.

(5) Temporary operational containment may be utilized to meet the requirements of this section if***[~~the following conditions are met~~]***:

(a) The capacity of temporary operational containment shall not be less than 1,250 U.S. gallons; and

(b) The temporary operational containment shall be constructed of material ***that shall be[~~which is~~]*** compatible with products handled and a written copy of the manufacturer's installation directions, compatibility statement, and expected life expectancy is maintained at the storage facility; and

(c) All requirements ***established[~~specified~~]*** in subsection (3) of this section are met.

(6) An elephant ring may be utilized to meet the requirements of this section if a minimum capacity of twenty-five (25) U.S. gallons is provided for the use of recovering spillage and leakage from the transfer connections and pumps associated with the unloading of a truck, barge, or railcar into a storage facility.

(7) A combination of an elephant ring and concentric piping may be utilized to meet the requirements of this section if a minimum capacity of twenty-five (25) U.S. gallons is provided for the use of recovering spillage and leakage from the transfer connections and pumps associated with the loading or unloading of a railcar or barge.

Section 7. Containment of Dry Bulk Pesticides. (1) A nonmobile storage container for dry bulk pesticides shall be located within secondary containment.

(2) Dry bulk pesticide storage shall be segregated from other containment areas and be segregated by a six (6) inch curb of an area that extends at least two (2) feet beyond the perimeter of the walls of the storage container.

Section 8. Dry Bulk Fertilizer Storage and Handling. (1) Dry bulk fertilizer material shall be stored and handled using best management practices.

(2) Dry bulk fertilizer shall be stored inside a structure or device having a cover or rooftop, sidewalls and base sufficient to prevent contact with precipitation and surface waters.

(3) The loading, unloading, mixing, or handling of dry bulk fertilizer, unless performed in the field of application, shall be conducted in a manner to provide for the collection and reuse of any spilled fertilizer.

Section 9. Containment Management. (1) A pesticide, fertilizer, pesticide residue, fertilizer residue, or rinsate recovered from secondary or operational containment shall be field applied at agronomic rates, used in a liquid mixing operation, or otherwise recycled or disposed of in accordance with the product label.

(a) A pesticide residue or rinsate that is to be land applied shall be handled in accordance with the product labels.

(b) Rinsates may be used to make up the total spray mixture if the mixture does not exceed the pesticide label application rates.

(2) Best management practices shall be used to keep rinsate and other recovered material segregated by compatible uses.

(3) Uncontaminated precipitation collected shall be discharged from containment areas. Contaminated precipitation shall be field applied pursuant to subsection (1) of this section.

(4) Recovered or rinsate material collected in a containment system shall not be considered a hazardous waste unless it is determined that the rinsate or other recovered material cannot be applied to a labeled target area.[

~~Section 10. Field Mixing and Transferring. (1) The following shall be performed at a field site or within operational area containment:~~

~~(a) Field mixing of a pesticide or fertilizer;~~

~~(b) Transferring of a pesticide or fertilizer; or (c) Rinsing of a pesticide container.~~

~~(2) The following shall not be conducted on a public high-way, road, or street:~~

~~(a) Mixing of a pesticide or fertilizer;~~

~~(b) Transferring of a pesticide or fertilizer; or~~

~~(c) Rinsing of pesticide or fertilizer equipment.~~]

Section 10.[~~11.~~] Distribution. (1) Sale by weight or meter shall be the approved method of resale for pesticides and fertilizer. Both methods shall meet the specifications, tolerances***,*** and other technical requirements for weighing and measuring devices as determined by the Kentucky Department of Agriculture.

(2) A separate meter shall be required for each product distributed for sale if the product is sold through a meter.

Section 11. Incorporation by Reference. (1) The "Pesticide and/or Fertilizer Bulk Storage Facilities Registration form"***, [(]***October 2019***[)]*** is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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.

DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing
(As Amended at ARRS, January 13, 2020)

302 KAR 37:010. Forage Testing Program[~~Standard Hay Grading Program~~].

RELATES TO: KRS 260.010

STATUTORY AUTHORITY: KRS 260.033

NECESSITY, FUNCTION, AND CONFORMITY: ***KRS 260.033(2) requires the department to promulgate administrative regulations to test quality standards and procedures for grading hay. This administrative regulation***

establishes definitions for[To define] terms used in the administration of the Kentucky Forage Testing[~~Standard Hay Grading Program~~] Program and ***establishes[establish]*** methods of sampling and[~~,~~] testing forage[~~and grading hay~~] to be applied to the Kentucky Forage Testing[~~Standard Hay Grading~~] Program.

Section 1. ***Definitions.[Terms used in the administration of the hay marketing law and administrative regulations and not otherwise defined shall have the following meaning:]***

(1) ***[The term]***"Acid detergent fiber" means the portion of hay that is highly indigestible.

(2) ***[The term]***"Available protein" means an adjustment in crude protein value determined by subtracting the degree of heat damage from the crude protein level.

(3) ***[The term]***"Crude protein" means the portion of hay that contains true protein and nonprotein nitrogen.

(4) ***[The term]***"Department" means the Kentucky Department of Agriculture.

(5) ***[The term]***"Digestible dry matter" means the estimated percent of hay that is digestible.

(6) ***[The term]***"Dry matter" means the portion of hay ***that[which]*** is not water.

(7) ***[The term]***"Dry matter intake" means an estimate of the maximum amount of hay a lactating cow will eat.[~~(8) The term "grading" means to classify hay by its relative feed value and physical characteristics.~~]

(8)[~~(9)~~] ***"Forage testing program" means a standard grading program for evaluating hay quality as established in KRS 260.033.***

(9) ***[The term]***"Hay" means grass, alfalfa, clover**,** or other forage crops cut and dried for use as livestock feed.

(10)[~~(9)~~][~~(10)~~]***[The term "heat damage protein" means the portion of hay chemically linked to carbohydrates to form an indigestible compound.***

(10)][~~(11)~~]***[The term "injurious foreign material" means anything which has infected hay to make it undesirable or unfit to eat, such as noxious weeds, rocks, wires, or glass matter.***

(11)][(~~(12)~~] ***[The term]***"Kind" means one (1) or more related species or subspecies ***that[which]*** singularly or collectively is known by one (1) common name, for example, alfalfa, red clover**,** and timothy.

(11)[~~(12)~~][~~(13)~~] ***[The term]***"Lot" means hay taken from the same cutting at the same stage of maturity, the same kind, the same field**,** and harvested within forty-eight (48) hours.

(12)[~~(13)~~][~~(14)~~] ***[The term "mold" means a downy growth on the surface of hay caused by the presence of dampness or decay.***

(14)][~~(15)~~] ***[The term]***"Neutral detergent fiber" means the portion of hay that is only partially digestible and limits intake.[~~(16) The term "probe" means a hollow, metal tube used to extract samples from hay.~~]

(13)[~~(15)~~][~~(17)~~] ***[The term]***"Relative feed value" means a combination of digestible dry matter and dry matter intake that is used to evaluate the feed value of hay under a calculation of multiplying the percentage of digestible dry matter times the percentage of dry matter intake and then dividing that number by 1.29.[~~(18) The term "sampler" means an individual who takes samples of hay for testing.~~]

(14)[~~(16)~~][~~(19)~~] ***[The term]***"Total digestible nutrients" means the digestible components of fiber, protein, fat**,** and nitrogen-free extract in the diet.[~~(20) The terms used in reference to mineral content in hay shall be the official feed terms adopted by the Association of American Feed Control Officials and published in its official publication.~~]

Section 2. The method of sampling hay shall be the following:

(1) Forages shall be sampled in accordance with the procedures ***established[set forth]*** in the National Forage Testing Association's ***["]***Recommended Principles for Proper Hay Sampling***["].***

(2) Compliance with the sampling procedures ***established[set forth]*** in the National Forage Testing Association's ***["]***Recommended Principles for Proper Hay Sampling***["]*** shall be the sole responsibility of the person submitting the sample for testing.[~~(1) For rectangular bales, probe shall be inserted in the end of the bale at a point approximately one-half (1/2) the distance from the center to the outside of the bale and drilled or pushed horizontally at least eleven (11) inches into the bale.~~

~~(2) For round bales, probe shall be inserted in the end of the bale at a point approximately one-half (1/2) the distance from the center to the outside of the bale and drilled or pushed at least eleven (11) inches into the bale.~~

~~(3) At least twenty (20) bales shall be sampled and composited to develop one (1) sample per lot. If a lot contains less than twenty (20) bales, all bales shall be sampled.~~

~~(4) Bales within a lot of hay shall be sampled at random by taking into account vertical and horizontal positions within the lot.~~

~~(5) Each bale sampled shall be tagged or marked with colored chalk or vegetable dye.~~

~~(6) Samples from a lot of hay shall be composited and placed in a plastic freezer bag and sealed tightly.~~

~~(7) The department shall keep samples from a lot of hay for a period of at least one (1) year.~~]

Section 3. The testing of forage[~~hay~~] shall be performed in accordance with the procedures set forth in[~~by procedures adopted by~~] the National Forage Testing Association's "Forage Analyses Procedures".[~~National Alfalfa Hay Testing Association and published at page 17 in its "Hay Testing Laboratory Certification Manual, Publication No. 2, February 10, 1986,"~~]***[which is hereby adopted by reference.][~~A copy of the Hay Testing Laboratory Certification Manual may be obtained at the Division of Hay and Grain, 106 West Second Street, Frankfort, Kentucky 40601. The manual may be inspected or copied at the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday.~~

~~Section 4. The grading of hay shall be based on the findings of a test performed by Near Infrared Reflectance Spectroscopy, or any other procedure which has the approval of the Association of Official Agricultural Chemists, and~~] The test result shall include analysis under the categories of "As Received Basis" and "Dry Matter Basis" of ***[the following]***:

(1) Moisture;
(2) Dry matter;
(3) Crude protein;
(4) Heat damaged protein;
(5) Available protein;
(6) Digestible protein;
(7) Acid detergent fiber;
(8) Neutral detergent fiber; ***and***
(9) Relative feed value;[
~~(10) Phosphorous (P);~~
~~(11) Calcium (Ca);~~
~~(12) Potassium (K);~~
~~(13) Magnesium (MG).~~

~~Section 5. The grading of hay also shall be based on a physical description of the hay provided by those who take samples for testing; the description shall be listed on the test result and shall include the following:~~

~~(1) Color;~~
~~(2) Foreign material;~~
~~(3) Injurious foreign material;~~
~~(4) Odor;~~
~~(5) Mold.~~

~~Section 6. Testing results shall be stated in a uniform manner as prescribed by the department.~~

~~Section 7. The grade of "Triple Crown" shall apply to hay in which the physical description is "light green", "green" or "dark green" in color, the odor is "fresh" and there is no mold and no injurious foreign material that is identifiable by a visual inspection.~~

~~Section 8. The grade "Kentucky Pride" shall apply to hay in which the test analysis for crude protein exceeds fourteen (14) percent on a dry matter basis and the test analysis for relative feed value exceeds 124 and the physical description indicates no visible injurious foreign material.~~

~~Section 9. The grade "Kentucky Feeder" shall apply to hay in which the test analysis for crude protein is between eight (8) percent and fourteen (14) percent or the test analysis for relative feed value is between seventy-five (75) and 124 and the physical description includes no visible injurious foreign material.~~

~~Section 10. No grade shall be applied to hay that is not graded as "Triple Crown" or "Kentucky Pride" or "Kentucky Feeder."~~

~~Section 11. All hay testing laboratories used in the Kentucky Standard Hay Grading Program may annually run a series of samples which will then be analyzed by wet chemistry by the University of Kentucky, College of Agriculture, Department of Agronomy to insure consistent readings for Kentucky forages.~~

~~Section 12. All persons who take samples of hay for testing under the Kentucky Standard Hay Grading Program shall be certified by the department and shall receive a certification card issued by the department after having successfully completed the following:~~

~~(1) The taking of samples from ten (10) lots of hay according to the procedures outlined by the National Hay Association in its publication at page 9, "Hay Testing Laboratory Certification Manual, Publication No. 2, February 10, 1986."~~

~~(2) At least forty (40) hours of instruction, from the director of the department's Hay and Grain Division or a person who has been certified to sample, on properly recognizing the physical characteristics (color, mold, foreign material, type, stage of maturity) of hay.~~

~~Section 13. Upon application to the department, individuals who want to take samples of hay on behalf of hay growers' associations and cooperatives may be certified by the department and issued a certification card.~~

~~Section 14. The department may allow laboratories that are certified by the National Hay Association to test hay under the guidelines of the Kentucky Standard Hay Grading Program.~~

~~Section 15. The director of the department's Hay and Grain Division or the Commissioner of Agriculture may revoke certification of samplers and laboratories which do not follow the sampling and testing procedures of the Kentucky Standard Hay Grading Program. Certification may be revoked for failure to follow the procedures and requirements outlined in this administrative regulation, provided that the certification holder is given ten (10) days written notice of the reason for revocation.~~

~~Section 16. Any party aggrieved by a notice of revocation of certification may appeal the department's decision to revoke the certification by filing an appeal with the Department of Agriculture, Division of Hay and Grain, within ten (10) days of the date of notification of revocation.~~

~~(1) There will be a hearing committee available within the Division of Hay and Grain at all times to hear complaints by aggrieved parties and to decide whether to revoke a certification for violation of procedures or requirements set forth in the administrative regulations.~~

~~(2) The hearing committee will hear each appeal and rule upon each cause for revocation.~~

~~Section 17. Hay that is sampled and tested shall be stored in the Commonwealth of Kentucky.~~

~~(1) Hay that is sampled and tested shall have recorded by the department the date of cutting and the date of sampling.~~

~~(2) Hay that is sampled and tested shall be grouped in a lot that does not exceed a weight of fifty (50) tons.~~

~~(3) Upon application by a producer, a second test on a "lot" of hay shall be performed under the following guidelines: A certified sampler who did not take the first sample from the lot of hay shall take the second sample from at least the bales that were previously sampled and tagged or marked with colored chalk.~~

~~Section 18. Within ten (10) working days after a sample is taken, the department or any laboratory certified by the department to test hay shall mail to the producer an analysis report containing the test results, an identification of the hay's producer and type of hay and its location and the date the hay was tested.~~

~~(1) The most recent analysis report on a lot of hay shall be the report of record.~~

~~(2) The department or any laboratory certified by the department to test hay shall keep for a period of one (1) year, records of the analysis report for each lot of hay tested.~~

~~Section 19. If hay meets the requirements for the grades of "Triple Crown", "Kentucky Pride," or "Kentucky Feeder", the department or any laboratory certified by the department to test hay shall affix a label to the analysis report indicating that the hay is graded as such.~~

~~Section 20. Individuals who are certified to take samples of hay for testing under the Kentucky Standard Hay Grading Program shall collect a fee of ten (10) dollars for each lot of hay sampled and tested at the time the hay is sampled for testing. The ten (10) dollar fee shall be refunded to the producer if the hay is not tested within ten (10) working days after the hay is sampled.~~]

Section 4. Testing Fee. The testing fee shall be ten (10) dollars per sample. The fee shall accompany Forage Sample Analysis Request Form and be submitted with the sample.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Recommended Principles for Proper Hay Sampling", July 2019;

(b) "Forage Analyses Procedures", July 1993; and

(c) "Forage Sample Analysis Request Form", August 2019.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Forage Testing Program, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: October 14, 2019

FILED WITH LRC: October 14, 2019 at 3 p.m.

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 Mine Reclamation and Enforcement
(As Amended at ARRS, January 13, 2020)

405 KAR 5:002. Definitions for 405 KAR Chapter 5.

RELATES TO: KRS 350.010(2), 350.240, 350.300

STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 ***requires[authorizes]*** the Energy and Environment[~~Environmental and Public Protection~~] Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate

reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation establishes definitions of certain essential terms used in 405 KAR Chapter 5.

Section 1. Definitions. (1) "Access road" means a road designed and constructed to gain access from a public road to the mineral operation.

(2) "Acid drainage" means water with a pH of less than six (6.0) and in which total acidity exceeds total alkalinity, discharge from an active, inactive or abandoned mine or from an area affected by a mineral operation.

(3) "Acid-forming materials" means earth materials or rock that contain sulfide minerals or other minerals which, if exposed to air, water**,** or weathering processes, form acids that may create acid drainage.

(4) "Affected area" means any land area which is used to facilitate, or is physically altered by strip mining; surface disturbance from an underground mine; surface disturbance from dredging operations; any area covered by dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, holes or depressions, repair areas, roads, storage areas, shipping areas**,** and processing plants.

(5) "Backfill" means excavated overburden material used to regrade a mined area.

(6) "Cabinet" is defined in KRS 350.010(10).

(7) "Check dam" means a small structure placed in ditches, usually constructed of rock, intended to reduce runoff velocity for deterring erosion.

(8) "Clay" means a natural substance or soft rock which, when finely ground and mixed with water, forms a pasty, moldable mass that preserves its shape when air dried; the particles soften and coalesce upon being highly heated and form a stony mass upon cooling.

(9) "Compaction" means the reduction of pore spaces among the particles of soil or rock generally as a result of running heavy equipment over the materials.

(10) "Cropland" means land used for the production of adapted crops for harvest alone or in rotation with grasses or legumes, and includes: row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to, or an integral part of, these operations is also included for purposes of this land use category.

(11) "Department" means the Kentucky Department for Natural Resources.

(12) "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, mineral processing waste, underground development waste or similar waste is placed by mining activities. The disturbed area also includes those areas in which diversion ditches, sedimentation ponds, roads, or other features related to a mineral operation, are installed. Those areas are classified as "disturbed" until reclamation is complete, bond monies or permit have been released**,** and processing plant and stockpile areas have been moved.

(13) "Diversion ditch" means a channel constructed to direct water from one location to another.

(14) "Division" means the Division of Mine Reclamation and Enforcement[~~Field Services of the Kentucky Department for Natural Resources~~].

(15) "Dolomite" means a sedimentary rock composed primarily of the crystalline carbonate mineral dolomite, $CaMg(CO_3)_2$. Many limestones contain small amounts of dolomite; however, the term dolomite is reserved for rocks which contain fifteen (15) percent or more magnesium carbonate.

(16) "Dredging operation" means surface disturbance of dredging river or creek sand and gravel.

(17) ***"Edge" means the area where two (2) habitats meet.***

(18) "Edge effect" means the phenomena by which wildlife is enhanced and wildlife diversity is typically increased as a result of two (2) or more different habitat types occurring in close proximity to each other. ***[~~Where two (2) habitats meet is referred to as an "edge".~~]***

(19)[~~(18)~~] "Embankment" means an artificial deposit of material that is raised above the natural surface of land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(20)[~~(19)~~] "Ephemeral stream" means a stream which only flows in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and that [~~which~~] has a channel bottom that is always above the local water table.

(21)[~~(20)~~] "Erosion" means the detachment and movement of soil or rock fragments by water, wind, ice, or gravity.

(22)[~~(21)~~] "Fish and wildlife land use" means an area which is characterized by an intermixed combination of habitat types including: woodlots or forested areas, shrub scrub areas, grass legume or open areas, and wetland or open water areas arranged in a manner as to promote edge effect for wildlife.

(23)[~~(22)~~] "Floodplain" means the area along, adjacent to and including, a stream which is inundated by a 100 year frequency flood.

(24)[~~(23)~~] "Fluorspar" means an ore of the mineral Fluorite CaF_2. ***[~~This occurs in veins and as bedding replacements found in Western Kentucky, as part of a mining district referred to as the Cave-In-Rock District and in Central Kentucky, as the Central Kentucky Vein and Fault System. Its origin is the result of hydrothermal activity.~~]***

(25)[~~(24)~~] "Forest land" means lands dominated by canopy forming trees, or from a postmining land use standpoint, areas planted throughout with trees.

(26)[~~(25)~~] "General permit" means any KPDES permit authorizing a category of discharges under KRS Chapter 224 within a geographical area, issued under 401 KAR 5:055.

(27)[~~(26)~~] "Gravel" means a sedimentary rock type that implies a loosely, compacted, coarse sediment that is generally larger than 4mm, but smaller than boulders; a naturally occurring aggregate.

(28)[~~(27)~~] "Ground cover" means the area of ground covered by the combined aerial parts of live vegetation and the litter produced and distributed naturally and seasonally on site, expressed as a percentage of the total area of measurement.

(29)[~~(28)~~] "Ground water" means water which is***:***

(a) In the zone of saturation or any subterranean waters flowing in well defined channels and having a demonstrable hydrologic connection with the surface***; and***

(b)[~~. It is~~] Differentiated from water held in the soil, from water in downward motion under the force of gravity in the unsaturated zone, and from water held in chemical or electrostatic bondage.

(30)[~~(29)~~] "Growing season" means the period during a one (1) year cycle, from the last killing frost in spring to the first killing frost in fall, in which climatic conditions are favorable for plant growth. In Kentucky, this period normally extends from mid-April to mid-October.

(31)[~~(30)~~] "Highwall" means the face of exposed overburden and mineral to be mined, in an open cut of a strip mine or for entry to an underground mine.

(32)[~~(31)~~] "Hollowfill" means a fill structure placed in a hollow where the side slopes of the existing hollow, measured at the steepest point, are greater than twenty (20) degrees or the average slope of the profile of the hollow, from the toe of the fill to the top of the fill, is greater than ten (10) degrees.

(33)[~~(32)~~] "Imminent danger to the health and safety of the public" means the existence of any condition, or practice, or any violation of a permit or other requirement of KRS Chapters 350 through 353[~~or 405 KAR Chapters 1 through 30~~]; which ***[~~condition, practice, or violation~~]*** could reasonably be expected to cause substantial, physical harm to persons outside the permit

area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure[~~not expose himself~~] to the danger during the time necessary for the abatement.

(34)*[(33)]* "Impoundment" means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(35)*[(34)]* "Industrial/commercial land use" means lands used for:

(a)***1.*** The extraction or transformation of materials, for fabrication of products, wholesaling of products or for long term storage of products;

2. [and] Heavy and light manufacturing facilities***; or***

3.[.] Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation***[is also included]***; or

(b)***1.*** The retail or trade of goods or services, including: hotels, motels, stores, restaurants, and other commercial establishments***; or***

2.[.] Land used for facilities in support of these operations, which is adjacent to, or an integral part of, that operation***[is also included]***.

(36)*[(35)]* "Intermittent stream" means a stream or reach of stream that:

(a)[~~A stream, or reach of stream, that~~] Drains a watershed of one (1) square mile or more but does not flow continuously throughout the calendar year; or

(b)[~~A stream, or reach of stream, that~~] Is below the local water table for at least some part of the year, and obtains its flow from both surface water and ground water discharge. This term does not include ephemeral streams.

(37)*[(36)]* "Land use" means the specific functions, uses, or management related activities of the proposed permit area, including both premining use and postmining use.

(38)*[(37)]* "Limestone" means a crystalline sedimentary rock that is primarily composed of the mineral calcite $CaCO_3$. However, it may be considered as any sedimentary rock composed essentially of carbonates, chiefly calcite or dolomite, but may contain small amounts of iron-carbonates (siderite).

(39)*[(38)]* "Mast" means nuts, acorns, and fruit produced by certain woody plant species.

(40)*[(39)]* "Mineral operation" means noncoal mining activities including: mining of limestone and dolomite; mining of sand and gravel; surface disturbance of dredging of river or creek sand and gravel; mining of clay; mining of tar sand or rock asphalt; mining of fluorspar and other vein minerals. Mineral operations include the surface disturbance of underground mining as well as strip mining. This term includes mining activities and all activities necessary and incident to the reclamation of the mine or dredging operation as required by this title. This term does not include coal mining or oil shale mining.

(41)*[(40)]* "Mineral operator" means any person, partnership, or corporation engaged in mineral operations.

(42)*[(41)]* "Mineral permittee" means a mineral operator or person holding a permit, or required under KRS Chapter 350 or 405 KAR Chapter 5, to hold a permit to conduct mineral operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapter 5 are satisfied.

(43)*[(42)]* "Natural drainways" means ephemeral areas, gullies, ravines, streams, and similar topographical features occurring naturally in an area which control the direction of surface water flow.

(44)*[(43)]* "Natural hazard lands" means geographic areas in which natural conditions exist that pose or, as a result of mineral operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including, [~~but not limited to,~~] areas subject to landslides, cave-ins, subsidence, substantial erosion, unstable geology, or frequent flooding.

(45)*[(44)]* "Noxious plants" means species that have been included on state and federal lists of noxious plants.

(46)*[(45)]* "Outslope" means the face of the spoil, natural ground, or embankment sloping downward from the highest elevation to the lowest elevation.

(47)*[(46)]* "Outstanding resource waters" means surface waters designated by the cabinet, pursuant to 401 KAR 10:031[~~401 KAR 5:031, Section 7~~].

(48)*[(47)]* "Pastureland" means land used primarily for the long term production of adapted, domesticated, forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to, or an integral part of, these operations is also included.

(49)*[(480)]* "Perennial stream" means a stream, or stream reach, that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.

(50)*[(49)]* "Permanent impoundment" means an impounded body of water, that is formed in the pit during mining or retained by a constructed embankment or dugout, which will be retained after mineral operations are complete and which has been approved for retention by the cabinet and other appropriate Kentucky and federal agencies.

(51)*[(50)]* "Permit" means written approval issued by the cabinet to conduct mineral operations.

(52)*[(51)]* "Permit area" means the area of land and water within boundaries designated in the approved permit application, that includes[~~which shall include, at a minimum,~~] all areas which are or will be affected by mineral operations under that permit.

(53)*[(52)]* "pH" means the index used to describe the hydrogen ion activity of a system defined as the reciprocal of the logarithm of the hydrogen ion concentration at base ten (10). The range of this index is zero to fourteen (14), with seven (7) being neutral.

(54)*[(53)]* "PLS" means pure live seed.

(55)*[(54)]* "Point source" is defined in 401 KAR 5:050.

(56)*[(55)]* "Recreation land use" means land used for public or private leisure time use, including developed recreation facilities including [~~such as~~], parks, camps, and amusement areas, as well as areas for less intensive uses including[~~such as~~], hiking, canoeing, and other undeveloped recreational uses.

(57)*[(56)]* "Residential land use" means tracts employed for single and multifamily housing, mobile home parks, and other residential lodgings. Also included, is land used for support facilities such as, vehicle parking, open space, and other facilities which directly relate to the residential use of the land.

(58)*[(57)]* "Roads"

(a) Means haul roads and access roads constructed, used, reconstructed, improved***,*** or maintained***[for use in mining and stockpiling finished products,]*** within permit boundaries.

(b) Does not mean[~~The term excludes~~] any roadways located in the mining pit area.

(59)*[(58)]* "Runoff" means precipitation that flows overland before entering a defined stream channel and becoming stream flow.

(60)*[(59)]* "Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by engineering practices.

(61)*[(60)]* "Sand" means a sedimentary rock type that implies a loosely, compacted, fine sediment that is generally composed of particles that range in size from 1/16mm to 2mm. Most sands are predominantly composed of quartz grains or fragments of siliceous rocks.

(62)*[(61)]* "Sediment" means undissolved organic and inorganic material transported or deposited by water.

(63)*[(62)]* "Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

(64)*[(63)]* "Significant, imminent environmental harm to land, air, or water resources" means ***and environmental harm that:***

(a) Has an adverse impact on land, air, or water resources, including plant and animal life;

(b) Is imminent because a condition, practice, or violation exists, which:

1. Is causing the harm; or

2. May be reasonably expected to cause the harm at any

time before the end of the reasonable abatement time; and

(c) Is significant because the harm is:

1. Appreciable; and

2. Not immediately reparable.[a situation which is determined as follows:

(a) An environmental harm is an adverse impact on land, air, or water resources, including,] [but not limited to,] ***[plant and animal life.***

(b) An environmental harm is imminent if a condition, practice, or violation exists which:

1. Is causing the harm; or

2. May be reasonably expected to cause the harm at any time before the end of the reasonable abatement time.

(c) An environmental harm is significant, if that harm is appreciable, and not immediately reparable.]

(65)*[(64)]* "Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance. It may also be expressed as a percent or in degrees.

(66)*[(65)]* "Soil horizons" means contrasting layers of soil parallel, or nearly parallel to, the land surface ***and that:***

(a) Are differentiated on the basis of field characteristics and laboratory data; and

(b) Include the following four (4) master soil horizons:

1. "A horizon" or "surface soil," which consists of the uppermost mineral layer of soil where the:

a. Organic matter is most abundant; and

b. Leaching of soluble or suspended particles is typically the greatest;

2. "E horizon," which is the layer commonly near the surface below the A horizon and above the B horizon and is most commonly differentiated from the:

a. A horizon by a lighter color and, in general measurably less organic matter.

b. B horizon in the same sequ3ence by color of higher value or lower chroma, by a courser texture, or by a combination of these properties;

3. "B horizon" or "subsoil," which is the middle layer immediately below the E horizon and commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

4. "C horizon," which is the deepest layer of the soil profile and consists of loose material or weathered rock that is relatively unaffected by biological activity. ***[Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:***

(a) "A horizon". The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is then most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon". The layer commonly near the surface below the A horizon and above the B horizon. The E horizon is most commonly differentiated from the overlying A horizon by a lighter color and generally measurably less organic matter. The E horizon is most commonly differentiated from the B horizon in the same sequence by color of higher value or lower chroma, by coarser texture or by a combination of these properties.

(c) "B horizon". The layer that is immediately below the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon". The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biological activity.]

(67)*[(66)]* "Spoil" means overburden which has been removed during mineral operations.

(68)*[(67)]* "Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth, and includes increasing bearing capacity, increasing shear strength, draining, compacting, riprapping, or by vegetation.

(69)*[(68)]* "Stream buffer zone" means an area of forest or field left untouched and undisturbed by the mineral operator during mining, including haul road construction.

(70)*[(69)]* "Strip mining" is defined in KRS 350.010(2).

(71)*[(70)]* "Surface disturbance of dredging river or creek sand and gravel" means the surface and land disturbed on the banks of a creek or river for haul roads, storage areas, processing areas, maintenance and repair areas, or any other disturbance to the banks and land created by the dredging of sand and gravel out of rivers or creeks.

(72)*[(71)]* "Surface disturbance of underground mining" means above ground activities incidental to subsurface mineral extraction or in situ processing, including construction, use, maintenance, and reclamation of roads; above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including, hoist and ventilating ducts, areas used for the disposal and storage of waste, and areas on which materials incidental to underground mining activities are placed.

(73)*[(72)]* "Surface waters" means those waters having well defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters; and marshes and wetlands. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger, are not considered to be surface waters of the commonwealth.

(74)*[(73)]* "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

(75)*[(74)]* "Tar sand or rock asphalt" means a porous, consolidated or unconsolidated sand or sandstone whose interstices contain asphalt or bitumen.

(76)*[(75)]* "Temporary mineral operation" means a mineral operation that operates for a total of six (6) months or less at a location.

(77)*[(76)]* "Topsoil" means the A and E horizon layers of the four (4) master soil horizons.

(78)*[(77)]* "Toxic forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(79)*[(78)]* "Waste" means materials which are washed, (otherwise separated or left from a mineral product) slurried**,** or otherwise transported from the processing facilities or preparation plants of any kind.

(80)*[(79)]* "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(81)*[(80)]* "Water withdrawal permit" means the written approval issued by the cabinet involving the actual removal or taking of water from any stream, water course, or other body of public water pursuant to KRS 151.140.

(82)*[(81)]* "Wetland" means land that has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions.

(a) "Hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during the growing season to develop an anaerobic condition (without oxygen) that supports the growth and regeneration of hydrophytic vegetation.

(b) "Hydrophytic vegetation" means a plant growing in:

1. Water; or

2. A substance that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(83)*[(82)]* "Wild river" means a water which has been designated as a wild river by the General Assembly pursuant to KRS 146.241.

approved for filing.

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
(As Amended at ARRS, January 13, 2020)

405 KAR 5:032. Permit requirements.

RELATES TO: KRS 350.010(2), 350.130, 350.240, 350.300

STATUTORY AUTHORITY: KRS 350.028, 350.029, 350.240, 350.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 ***requires[~~authorizes~~]*** the Energy and Environment Cabinet to promulgate administrative regulations pertaining to noncoal mineral operations to minimize their adverse effects on the citizens and the environment of the commonwealth. KRS 350.029 authorizes the cabinet to promulgate reasonable administrative regulations to establish effective programs for the control of surface soil disturbance in connection with mining as defined by the Interstate Mining Compact. KRS 350.240 authorizes the cabinet to promulgate reasonable administrative regulations for the reclamation of land disturbed or removed in the mining of clay. KRS 350.300 authorizes the cabinet to formulate and establish an effective program and standards for the conservation and use of mined land. This administrative regulation specifies information to be submitted by the applicant relating to legal status, financial information, general site information, map requirements, cultural and environmental resource information, and mining and reclamation plans. This administrative regulation also addresses the waivers and approvals necessary to conduct noncoal mineral operations, including those of other agencies, and establishes provisions concerning review of permits and other permit related procedural matters.

Section 1. General. (1) This administrative regulation shall pertain to a person who applies for a permit to conduct mineral operations.

(2) Preliminary permit requirements.

(a) A person or mineral operator desiring a permit shall submit a preliminary map at a scale one (1) inch equals 400 feet or 500 feet, marked to show the proposed permit area and adjacent areas, including location of access roads, spoil or waste areas, and sedimentation ponds.

(b) Personnel of the cabinet shall conduct, within fifteen (15) working days after filing, an on-site investigation of the area with ***the applicant or the applicant's designated representatives[~~appropriate persons including appropriate representatives of the applicant~~].***

(3) Permanent permit requirements. An original and two (2) complete, separately bound and distinct copies of the application shall be submitted to the cabinet, at the Department for Natural Resources, Division of Mine Reclamation and Enforcement, Noncoal Review Branch, 300 Sower Boulevard, Frankfort, Kentucky 40601, or at one (1) of the following regional offices:

(a)[~~London Regional Office, Regional State Office Building, 85 State Police Road, London, Kentucky 40741-9011;~~

~~(b)~~] Madisonville Regional Office, 625 Hospital Drive, Madisonville, Kentucky 42431-1683;

(b)[~~(c)~~] Middlesboro Regional Office, 1804 East Cumberland Avenue, Middlesboro, Kentucky 40965-1229;

(c)[~~(d)~~] Pikeville Regional Office, 121 Mays Branch Road, Pikeville, Kentucky 41501-9331; or

(d) Hazard Regional Office, 556 Village Lane, P.O. Box 851, Hazard, Kentucky 41702[~~(e) Prestonsburg Regional Office, 3140 South Lake Drive, Suite 6, Prestonsburg, Kentucky 41653-1410~~].

Section 2. Identification of Interests. (1) Each permit application shall contain the names and addresses of:

(a) The applicant, including phone number;

(b) The registered agent for service of process, if applicable, including phone number;

(c) Owners, partners, or if a corporation, officers or stockholders owning ten (10) percent or more stock;

(d) The project engineer, along with registration number and name of associated firm;

(e) The company and engineer to which correspondence concerning the subject permit shall be addressed;

(f) Surface owners of record within the area proposed for mining, including areas overlying underground workings;

(g) Mineral owners of record within the area proposed for mining, including areas overlying underground workings; and

(h) Surface owners of record within 500 feet of the proposed permit boundary and areas overlying underground workings.

(2) If the company has undergone a name change or changes during the previous five (5) years, the applicant shall list the names.

(3) The legal structure of the applicant shall be specified.

(4) If the business is owned by an individual or is a partnership, and is performed under an assumed name, the applicant shall specify the county and state where the name is registered.

(5) The applicant shall list previous Kentucky permits held by the applicant or an individual, partnership, or corporation associated with the applicant.

(6) The applicant shall provide the name of the contact person at the site, including phone number.

(7) The applicant shall specify the type of application, along with the permit number.

Section 3. Bond Information. (1) If bond is required pursuant to 405 KAR 5:082, the following information shall be provided in the permit application:

(a) The bond amount per acre;

(b) The total amount of bond; and

(c) The bond type.

(2) If a surety is used, the applicant shall provide the bond number and surety.

(3) If a certificate of deposit is used, the applicant shall provide the bank name and CD number.

(4) If a letter of credit is used, the applicant shall provide the bank name and letter of credit number.

Section 4. Equipment Inventory. The permit application shall contain a list of all equipment, model numbers, and condition of the equipment proposed to be used for removing overburden and reclaiming the affected area of the proposed mineral operation.

Section 5. Waivers and Approvals. (1) If blasting will occur within 300 feet of an occupied dwelling or if mineral extraction will occur within 100 feet of an occupied dwelling, the permit application shall contain a waiver from the owner, acknowledging approval of the activity.

(2) Except where mine access roads or haul roads join the right-of-way, if the proposed mineral operation will occur within 100 feet of the right-of-way of a public road, or if relocation of a public road is proposed, the permit application shall contain proof of notification to and required approvals from the appropriate agency or local government with jurisdiction over the road.

(3) If a permanent pond other than a final pit impoundment with no embankment is proposed, approval from the landowner for the structure and a written acknowledgment from the landowner that the mineral permittee shall not have continuing maintenance responsibility after permit release shall be required.

(4) If relocation, channelization, or other significant disturbance to an intermittent or perennial stream is proposed, or if the proposed mineral operation will occur within, or in any way impact, a floodplain, wetland, or other water of the commonwealth, the applicant shall obtain ***[~~the appropriate~~]*** permits and approvals from the United States Army Corps of Engineers and the Kentucky Division of Water. Approval shall also be required by the cabinet for disturbances within 100 feet of an intermittent or perennial stream.

(5) If a sedimentation pond or other point source discharge is proposed, a KPDES permit from the Kentucky Division of Water shall be required.

(6) If water withdrawal is proposed, a Water Withdrawal Permit,

pursuant to 401 KAR 4:010, shall be obtained from the Kentucky Division of Water.

(7) If there are local zoning regulations, the applicant shall state this in the application to the Division of Mine Reclamation and Enforcement.

(8) If applicable, approval from the owner of the utilities and facilities as provided in 405 KAR 5:015, Section 4(6) shall be required.

Section 6. Right to Mine. The permit application shall contain a signed statement by the applicant attesting that the applicant has the legal right to mine ***including the effective date of the source document of the legal right to mine.[, along with the appropriate date.]***

Section 7. Verification of Application. The permit application shall contain a statement, signed by the applicant, acknowledging that all statements and representations, made in the application, are true and correct.

Section 8. Map Requirements. The permit application shall include original and two (2) copies of a section of the ***relevant[appropriate]*** United States Geological Survey Topographical Map or an equivalent format which shall:

(1) Delineate the proposed permit area and areas, if applicable***,*** overlying proposed underground workings;

(2) Be of a scale of not more than one (1) inch to 400 feet;

(3) Show all other mine operations within 500 feet of the proposed permit boundaries and proposed underground workings, including those within the proposed permit boundaries;

(4) Delineate the property boundaries of all landowners within the proposed permit area and areas overlying proposed underground workings and all landowners within 500 feet of the proposed permit boundary and areas overlying proposed underground workings, along with the names of all the landowners;

(5) Delineate all proposed access roads onto the proposed mineral operation;

(6) Show the site slope;

(7) Show the name and location of all streams, rivers, lakes, outstanding resource waters pursuant to 401 KAR 10:031, or other public water bodies; proposed stream buffer zones; roads, cemeteries, houses, churches, schools and other public buildings; oil and gas wells; public properties such as***;***

(a)[,] Parks, Wildlife Management Areas, and nature preserves***; and***

(b)[, and] Utility lines on the area to be affected, and within 1,000 feet of the proposed permit boundary;

(8) Locate sites listed on the National Register of Historic Places and known archaeological sites;

(9) Delineate wetlands that may be affected by the proposed mineral operation;

(10) Show the drainage pattern on and away from the area to be affected, including the direction of flow, proposed constructed drainways, natural drainways to be used for drainage, and the streams or tributaries to receive discharges from the proposed mineral operation;

(11) Show proposed pit area, sediment structures, storage areas, and other facilities and features related to the mineral operation;

(12) Provide a north point arrow;

(13) Contain a legend, which shall:

(a) Provide the company name;

(b) Provide the application number;

(c) Provide the county and quadrangle names;

(d) Provide the site coordinates;

(e) Provide the site address;

(f) Provide the map scale and contour interval;

(g) Provide a description of the site location including:

1. The nearest stream; and

2. The distance and direction from the nearest road intersection or town;

(h) Identify each insignia, symbol, number, or letter used to designate features, facilities, or areas;

(i) Provide acreage breakdowns of the various mineral operation features and facilities***,*** including***[,]*** pit areas, storage areas, sediment structures, access roads, and the total number of acres of area to be affected; and

(j) Specify the deposit to be mined; and

(14) Provide a signed, notarized statement that the map has been prepared and certified by a professional engineer, ***licensed[registered]*** pursuant to the provisions of KRS Chapter 322. This statement shall read, "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mineral operation laws and administrative regulations of the state". This statement shall include:

(a) The engineer's registration number; and

(b) The date on which the map was prepared.

Section 9. General Site Information. The permit application shall contain the following general site information:

(1) Location of the mineral operation to include:

(a) Latitude and longitude;

(b) The nearest community;

(c) The name of the nearest stream;

(d) The nearest public road intersection; and

(e) The name of the United States Geological Survey quadrangle or quadrangles, in which the proposed mineral operation will occur;

(2) A county by county list of the types of disturbances planned, accompanied by the acreage to be involved with each disturbance;

(3) Specification of the mineral to be extracted;

(4) Specification of the major watershed or watersheds, which will be affected, by the proposed mineral operation;

(5) Specification if active discharges exist that may affect the proposed mineral operation. If so, provide the following information:

(a) The pH of the discharge; and

(b) The source of the discharge;

(6) Specification if underground workings will be encountered, and the distance, in feet, to the nearest active deep mine; and

(7) Specification of the types of disturbances planned for the proposed mineral operation.

Section 10. Cultural Resource Information. The applicant shall specify if sites listed on the National Register of Historic Places or known archaeological sites exist within, or adjacent to, the proposed permit boundary.

Section 11. Environmental Resources Information. (1) The applicant shall indicate if there are Wildlife Management Areas, wildlife refuges, nature preserves, state or national parks, state or national forests, or similar public lands within the vicinity of the proposed mineral operation. If these lands exist, the applicant shall delineate them on the map.

(2) The applicant shall indicate if disturbances within the channel of, or within 100 feet of, an intermittent or perennial stream are proposed.

(3) The applicant shall indicate if there are outstanding resource waters, pursuant to 401 KAR 10:031, within the vicinity of the proposed mineral operation. If so, the applicant shall delineate these waters on the map.

Section 12. Surface Water Quantity and Quality Protection Plan. The permit application shall contain a surface water quantity and quality protection plan, which shall demonstrate ***[to the satisfaction of the cabinet]*** compliance with 405 KAR 5:050 and 405 KAR 5:055, and shall include the following information:

(1) The number of sedimentation ponds proposed, accompanied by designs, drawings, and specifications for each structure to include:

(a) The structure number;

(b) The number of acres to be disturbed within the drainage area;

(c) The number of acres in the drainage area;

(d) Sediment storage capacity;

(e) Storage capacity at the principal spillway;

(f) Storage capacity at the emergency spillway;

(g) Spillway capacities;

(h) Structure height measured from the downstream toe; and

(i) All other engineering designs, dimensions, and calculations required to demonstrate compliance with 405 KAR 5:050 and 5:055.

(2) If sediment removal becomes necessary, the permit application shall contain a description of how sediment shall be removed and disposed.

(3) The applicant shall state if any permanent sedimentation ponds are proposed.

(4) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate all other sediment control structures.

(5) The permit application shall contain descriptions, designs, diagrams, figures, and calculations as necessary to adequately explain and illustrate other methods proposed for protecting surface waters.

Section 13. Permanent and Temporary Impoundments. If an impoundment is part of the plan of reclamation or method of mineral operation, the permit application shall contain detailed designs and specifications for the impoundment that demonstrates compliance with 405 KAR 5:055.

Section 14. Spoil Handling Plan. The permit application shall contain or be accompanied by a plan for the handling and disposal of spoil, in excess of that involved with backfilling and grading, which shall demonstrate ***[~~to the satisfaction of the cabinet,~~]*** compliance with the requirements of 405 KAR 5:062.

Section 15. Toxic Materials Handling Plan. The permit application shall contain, or be accompanied by, a plan for the handling of acid-forming or toxic-forming materials, waste materials, or other unstable materials that shall demonstrate***[~~, to the satisfaction of the cabinet,~~]*** compliance with the requirements of 405 KAR 5:062.

Section 16. Backfilling and Grading Plan. The permit application shall contain, or be accompanied by, a plan for backfilling and grading, which shall demonstrate ***[~~to the satisfaction of the cabinet,~~]*** compliance with the requirements of 405 KAR 5:062.

Section 17. Topsoil Handling and Restoration Plan. The permit application shall contain, or be accompanied by, a plan for the handling and restoration of topsoil, which shall demonstrate ***[~~to the satisfaction of the cabinet,~~]*** compliance with the requirements of 405 KAR 5:062.

Section 18. Land Use Plan. (1) The permit application shall contain a land use plan, which demonstrates compliance with 405 KAR 5:065, and is consistent with 405 KAR 5:070, that:

(a) Specifies the premining use or uses within, and adjacent to, the proposed permit boundary;

(b) Specifies the intended postmining land use for the proposed permit area; and

(c) If the postmining land use is different from the premining land use, shall provide a discussion justifying the change.

(2) The land uses are listed at 405 KAR 5:065, and are defined in 405 KAR 5:002.

Section 19. Revegetation Plan. The permit application shall contain a revegetation plan ***that[~~which~~]*** shall demonstrate***[~~, to the satisfaction of the cabinet,~~]*** compliance with the requirements of 405 KAR 5:070, and is consistent with 405 KAR 5:065 and that provides the following information:

(1) Identification of the material that will be redistributed on the regraded area as a plant growth medium;

(2) Permanent grass species, permanent legume species, and quick cover species to be seeded during revegetation, along with their application rates (pounds/acre);

(3) Tree and shrub species to be planted during revegetation, along with their stocking rates (number/acre); and

(4) The type of mulch to be used, along with the mulching rate (pounds or tons/acre), or other soil stabilization practices to be incorporated.

Section 20. Designs and Attachments. (1) The permit application shall be accompanied by ***the[~~appropriate~~]*** descriptions, designs, diagrams, figures, and calculations ***[~~as~~]*** necessary to adequately explain and illustrate proposed sediment control structures, as required under Sections 12 and 13 of this administrative regulation; spoil disposal fills; access and haul roads; stream crossings; and ditches.

(2) Access and haul road designs shall conform to the specifications established in 405 KAR 5:040.

(3) The designs and plans shall demonstrate***[~~, to the satisfaction of the cabinet,~~]*** compliance with all pertinent requirements of 405 KAR Chapter 5, and shall be certified by a Kentucky***[~~-registered~~]*** professional engineer.

Section 21. Newspaper Advertisement: Publication of Notice of Intention to Mine. (1) An applicant for a new permit required pursuant to KRS Chapter 350, shall publish at least once, a public notice of the application for that permit.

(a) The publication shall be made by advertisement in the newspaper of largest bona fide circulation***[,]*** in the county where the proposed mining site is located.

(b) If the proposed mining site is in more than one (1) county, publication shall be required in the newspaper of largest bona fide circulation in each county.

(2) The publication shall be made not less than ten (10) nor more than thirty (30) days prior to the filing of the permit application with the department.

(3) The public notice of the intention to file an application shall be entitled***[,]*** "Notice of Intention to Mine Noncoal Minerals"***[~~, and may be in a manner and form prescribed by the department~~]*** and shall include at a minimum the following:

(a) Name and address of the applicant;

(b) Permit application number;

(c) The location of the proposed mining site; and

(d) A brief description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed mineral operations.

(4) The applicant for a new permit required by KRS Chapter 350 shall establish the date and place that the "Notice of Intention to Mine Noncoal Minerals" was published, by attaching to the application proof of the time, place, and content of the published notice.

Section 22. Permit Revisions. A revision to a permit shall be obtained if the mineral permittee desires to modify the mineral operations or make changes to the original permit that does not involve increased acreage. The following stipulations shall apply to permit revisions:

(1) The application for revision shall be filed with the cabinet and approved prior to the date on which the mineral permittee expects to revise the mineral operation;

(2) The term of a permit shall remain unchanged by a revision; and

(3) The application for revision shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal Mining", Form NCR-2.

Section 23. Permit Amendments. Upon application by the mineral permittee, the cabinet may amend a valid existing permit, so as to increase the permitted area to be affected by mineral

operations under the permit. Applications for amendment may be filed at any time during the term of the permit. (1) The mineral permittee shall file an application in the same form and with the same content as required for an original permit pursuant to this administrative regulation.

(2) The mineral permittee may need to file a supplemental bond with the cabinet in an amount to be determined, as provided under 405 KAR 5:082, for each additional acre or fraction of an acre.

Section 24. Permit Renewals. A valid permit issued pursuant to 405 KAR Chapter 5 shall carry with it, the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be allowed only for those areas specifically within the boundaries of the existing permit. (1) An application for renewal of a permit shall be filed with the cabinet at least sixty (60) days prior to the expiration date of the permit.

(2) If an application for renewal of a valid existing permit includes a proposal to extend the mineral operation beyond the boundaries authorized pursuant to the existing permit, the portion of the application that addresses a new land area shall be subject to all requirements of 405 KAR Chapter 5, and a new original permit application shall be required for these areas.

(3) The permit renewal shall be issued if the following requirements are met:

(a) The application for renewal shall be submitted using the "Application for Surface Disturbance Mining Permit Noncoal Mining", Form NCR-2;

(b) The mineral permittee shall submit all revised or updated information required by the cabinet, including at a minimum:

1. An updated operational plan current to the date of request for renewal; and

2. Specification of the status and extent of all mineral operations on the existing permit area;

(c) The present mineral operation is in compliance with KRS Chapter 350 and 405 KAR Chapter 5; and

(d) The mineral permittee shall provide additional bond required in accordance with 405 KAR 5:082.

Section 25. Permit Succession. (1) There shall not be succession on the permitted area without the prior written approval of the cabinet ***in accordance with this section***.

(2) The initial mineral permittee shall notify the cabinet, in writing, of a proposed succession.

(3) The cabinet may release the first mineral operator from reclamation responsibility pursuant to 405 KAR Chapter 5 as to that particular mineral operation, except that:

(a) There shall not be release until the successive mineral operator has been issued a permit and has otherwise complied with the requirements of 405 KAR Chapter 5; and

(b) The successor shall immediately assume, as a part of his obligation pursuant to 405 KAR Chapter 5, all liability for the reclamation of the area affected by the former permitted mineral operation.

(4) If the cabinet has given its prior written approval to the succession, a successor in interest to a mineral permittee who applies for a successor permit within thirty (30) days of succeeding to the interest, and who obtains immediate bond coverage at least equivalent to the amount of the bond of the original mineral permittee, may continue mineral operations according to the approved permit plan of the original mineral permittee until the successor's application is granted or denied.

(5) The bond coverage provided by the successor in interest shall take effect immediately upon the commencement of mineral operations by the successor.

Section 26. Review of Permits. (1) Within thirty (30) working days of receiving the permit application, the cabinet shall make one (1) of three (3) decisions:

(a) To technically withdraw the permit application;

(b) To deny the permit application; or

(c) To approve the permit application.

(2) If the permit application is technically withdrawn or denied, the thirty (30) working day period shall be stopped on the date of this decision.

(3) The time period shall restart on the date the permit application is returned with deficiencies corrected.

(4) If the application is not approved, the cabinet shall state the reasons, in writing, for which the application is not approved; and the cabinet may propose modifications, delete areas, or reject the entire application.

(5) If the mineral permittee disagrees with the decision of the cabinet**,** the mineral permittee ***[he or she]*** may, by written notice, request a hearing by the cabinet, pursuant to 400 KAR 1:120.

(6) The cabinet shall notify the applicant by registered mail within twenty (20) days after a decision is made.

Section 27. Criteria for Permit Approval and Denial. An application for a permit and mineral operation shall not be approved unless the application affirmatively demonstrates and the cabinet determines on the basis of information stated in the application, and other available pertinent information, that:

(1) The permit application is accurate, complete, and that the applicant has complied with all requirements of 405 KAR Chapter 5;

(2) The mineral operation proposed can be carried out under the method of mineral operation outlined in the permit application in a manner that will satisfy all requirements of 405 KAR Chapter 5;

(3) The proposed mineral operation shall not constitute a hazard to, or do physical damage to life, to an occupied dwelling, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property, or to members of the public or their real and personal property.

(a) All necessary measures shall be included in the method of mineral operation in order to eliminate the hazard or damage.

(b) If it is not technologically feasible to eliminate the hazard or damage by adopting specifications in the method of mineral operation, then that part of the mineral operation that constitutes the cause of the hazard or damage shall be deleted from the application and mineral operation;

(4) The proposed mineral operation shall not adversely affect natural hazard lands or a wild river established pursuant to KRS Chapter 146;

(5) The proposed mineral operation shall not be inconsistent with other mineral operations anticipated in areas adjacent to the proposed permit area; and

(6) The proposed permit area is:

(a) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), and the National Recreation Areas designated by Act of Congress;

(b) Not included within 300 feet, measured horizontally, of a public park, public building, school, church, community, or institutional building;

(c) Not included within 100 feet, measured horizontally, of a cemetery, and access to be provided to a cemetery at all times;

(d) Not within 100 feet, measured horizontally, of the outside right-of-way line of a public road, except:

1. Where mine access roads or haul roads join the right-of-way; or

2. Where the cabinet allows the roads to be relocated or allows disturbances within 100 feet of the roads, once the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road, as required under Section 5 of this administrative regulation; and if after public notice and opportunity for public hearing a written finding is made***[,]*** by the cabinet***[,]*** that the interest of the public and the landowners affected thereby shall be protected;

(e) Not within the distances specified in Section 5 of this administrative regulation, measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written affidavit from the owner of the dwelling specifying an

allowance, as required by Section 5 of this administrative regulation.

1. This waiver shall be knowingly and intelligently executed, and be separate from a lease or deed, unless the lease or deed contains an explicit waiver.

2.a. A waiver obtained from previous owners shall remain effective for subsequent owners who had actual or constructive knowledge of the existing waiver when the dwelling was purchased.

b. A subsequent owner shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to KRS 382.110 or if the mining has proceeded to within the distance limit prior to the date of purchase; and

(f) Not within 100 feet of an intermittent or perennial stream unless appropriate permits and approvals, required pursuant to Section 5 of this administrative regulation, have been obtained authorizing mineral operations at a closer distance to, or through, the stream. The authorization shall not be given unless the applicant demonstrates ***[~~to the satisfaction of the cabinet~~]*** that the authorization is environmentally sound and that KRS Chapter 350 and 405 KAR Chapter 5 have been satisfied.

Section 28. Permit Conditions; Permit Term. (1) Permits issued by the cabinet may contain certain conditions necessary to ensure that the mineral operation shall be conducted in compliance with KRS Chapter 350 and 405 KAR Chapter 5.

(2) All mineral operations shall be conducted in accordance with KRS Chapter 350 and 405 KAR Chapter 5 and conditions of the permit.

(3) Each permit shall be issued for a fixed term not to exceed five (5) years.

Section 29. Denial of a Permit for Past Violations. (1) A mineral operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350 and 405 KAR Chapter 5 with respect to all permits issued him.

(2) A mineral operator or person whose surface coal mining operation permit has been revoked or suspended shall not be eligible to receive another permit or begin another mineral operation, or be eligible to have suspended permits or mineral operations reinstated until he has complied with all applicable requirements of KRS Chapter 350, 405 KAR Chapters[~~1, 3, and~~] 7 through 24 with respect to all surface coal mining operation permits issued him.

(3) A mineral operator or person who has forfeited any bond filed with the cabinet for a mineral operation or a surface coal mining operation shall not be eligible to receive another permit or begin another mineral operation unless:

(a) The land for which the bond was forfeited has been reclaimed without cost to the state; or

(b) The mineral operator or person has paid a sum ***in accordance with the estimate prepared by[~~determined by the cabinet after~~]*** the Division of Abandoned Mine Lands ***[~~has prepared an estimate~~]*** of the cost to reclaim the lands, based upon site specific conditions.

(4) If the applicant, mineral operator, a subcontractor, or a person acting on behalf of the applicant has either conducted activities with a demonstrated pattern of willful violations of 405 KAR Chapter 5, or has repeatedly been in noncompliance of this chapter, then the permit application shall be denied. A mineral permittee shall not be relieved of responsibility with respect to a permit issued to him.

(5) If the cabinet determines that an activity of the applicant regulated pursuant to 405 KAR Chapter 5 is currently in violation of KRS Chapters 149, 151, 224, 350 through 353[~~354~~], 400 KAR Chapters 1 through 3, 401 KAR Chapters 4 through 100, 402 KAR Chapter 3, or 405 KAR Chapters 2[~~1~~] through 30, then the cabinet shall require the applicant, before the issuance of the permit, to either:

(a) Submit proof that can be substantiated by the cabinet that the violation has been corrected***[~~,~~]*** or is in the process of being corrected in good faith; or

(b) Establish, by proof that can be substantiated by the cabinet, that the applicant has filed and is presently pursuing, a good faith administrative or judicial appeal to contest the validity of the violation.

(6) If the applicant submits the proof specified pursuant to subsection (5) of this section, then the cabinet may issue the permit with ***a[~~an appropriate~~]*** condition that either the reclamation work be continued in good faith until completion or that if the applicant loses his action contesting the violation that the violation be corrected within a specified time. Failure to comply with a condition shall be grounds for revocation of the permit.

(7) If the applicant disagrees with the cabinet's determination pursuant to this section, then he or she has the right to request an administrative hearing pursuant to 400 KAR 1:120.

Section 30. Permit Conference and Public Comment. (1) Procedures for requests. A person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of any federal, state**,** or local government agency or authority, may request that the cabinet hold an informal conference on an application for a permit. The request shall:

(a) Briefly summarize the issues to be raised by the requester at the conference; and

(b) Be filed with the cabinet within fifteen (15) days of the newspaper advertisement.

(2)(a) The conference shall be held at the Division of Mine Reclamation and Enforcement.

(b) The conference shall be held within fifteen (15) days of the date of the request. The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference.

(c) The conference shall be conducted by a representative of the cabinet who shall accept oral or written statements and other relevant information from a party to the conference.

(d) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(e) All comments and evidence shall be taken into consideration by the Division of Mine Reclamation and Enforcement in Frankfort before a final decision is made on the disposition of the application.

(f) The record shall be maintained and shall be accessible to the parties during the life of the mineral operation.

(3) A person whose interests are or may be adversely affected by the issuance of the application, including the officer or head of a federal, state, or local government agency or authority, may submit written comments to the cabinet.

Section 31. Existing Mineral Operations. (1)[~~Existing mineral operations that were not permitted or regulated prior to February 1995 shall obtain a permit within 180 days of February 1995.~~

~~(2)~~] The cabinet may grant limited variances from the distance limitations of Section 27(6) of this administrative regulation if an existing disturbance within those limits was made prior to February 1995 by an existing mineral operation that was not permitted or regulated prior to February 1995. These variances shall only be granted if practical and reasonable remedial compliance measures cannot be identified.

(2)[~~(3)~~] The distance limitations of Section 27(6) of this administrative regulation shall not apply if lesser distance limitations have been approved in a valid permit issued prior to February 1995. The distance limitations established in those permits shall continue to apply.

Section 32. Incorporation by Reference. (1) "Application for Surface Disturbance Mining Permit Noncoal Mining, NCR-2", July 2005, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Natural

Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 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
(As Amended at ARRS, January 13, 2020)

405 KAR 7:040. General obligations of operators and permittees.

RELATES TO: KRS 350.050, 350.057, 350.060, 350.410, 350.450

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.057, 350.060, 350.090, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350[~~in pertinent part~~] requires the cabinet to promulgate[~~rules and~~] administrative regulations pertaining to surface coal mining and reclamation operations. This administrative regulation sets forth the basic requirements and general obligations of operators and permittees. This administrative regulation prescribes certain methods of disposal of materials and other obligations of operators and permittees.

Section 1. General Requirements for Permits and Exploration Approvals. (1) Requirement to obtain a permit. ***A***[~~no~~] person or operator shall ***not*** engage in surface coal mining and reclamation operations without first having obtained from the cabinet a valid permit covering the area of land to be affected.

(2) Requirement to obtain exploration approval. Subject to the provisions of 405 KAR 8:020, ***a***[~~no~~] person or operator shall ***not*** engage in coal exploration operations without first having***:***

(a) Filed[~~filed~~] a written notice of intention to explore***;*** or

(b) Obtained[~~having obtained~~] written approval from the cabinet.

(3) Requirement to comply with permit or exploration approval. A permittee or person issued a coal exploration approval shall comply with all terms and conditions placed upon the permit or exploration approval by the cabinet and with all plans submitted as part of the application approved by the cabinet.

Section 2. Disposal of Materials. A person or operator engaged in surface coal mining and reclamation operations shall no throw, pile, dump***,*** or permit the throwing, piling, dumping***,*** or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of an area of land which is under permit and for which bond has been posted pursuant to KRS Chapter 350, nor place these***[~~such~~]*** materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit ***the***[~~such~~] materials to go beyond or outside of an area land which is under permit and for which bond has been posted pursuant to KRS Chapter 350.

Section 3. Unsafe Practices. (1) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations ***that***[~~which~~] result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(2) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations which result in a condition or constitute a practice that causes***,*** or can reasonably be expected to cause***,*** significant, imminent environmental harm to land, air, or water resources.

(3) ***(a)*** Upon development of any emergency conditions which threaten the life, health, or property of the public, the operator shall***:*** ***1. Immediately***[~~immediately~~] notify the persons whose life, health***,*** or property are so threatened***;***

2. Take[~~, shall take~~] any and all reasonable actions to eliminate the conditions creating the emergency***;***[~~,~~] and

3. Immediately[~~shall immediately~~] provide notice of the emergency conditions to the cabinet, to local law enforcement officials***,*** and to appropriate local government officials.

(b) Any emergency action taken by an operator pursuant to this subsection shall not relieve the operator of other obligations pursuant to 405 KAR Chapters 7 through 24 or of obligations under other applicable local, state***,*** or federal laws and regulations.

Section 4.[~~Existing Structures on Areas Sought to be Permitted.~~

~~(1) Except as provided in subsection (2) of this section, no application for a permit or a revision which proposes to use an existing structure in connection with or to facilitate the proposed coal exploration or surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of complete information set forth in the complete application that:~~

~~(a) Irrespective of whether the structure meets the design requirements of 405 KAR Chapters 16 through 20, the existing structure will operate in compliance with the performance standards set forth in 405 KAR Chapters 16 through 20;~~

~~(b) No significant harm to the environment or public health or safety will result from the use of the structure; and~~

~~(c) The applicant will monitor the structure as required by the cabinet to determine compliance with the performance standards of 405 KAR Chapters 16 through 20.~~

~~(2) In the event the applicant fails to demonstrate that the existing structure meets the requirements of subsection (1) of this section, no application for a permit or revision which proposes to use such an existing structure in connection with or to facilitate the proposed coal exploration or surface coal mining and reclamation operation shall be approved unless the applicant demonstrates and the cabinet finds, in writing, on the basis of complete information set forth in the complete application that:~~

~~(a) Such existing structure complies with the performance standards of 405 KAR Chapter 1 or 3; and~~

~~(b) 405 KAR Chapters 16 through 20 require performance standards for such existing structure which either are not required by, or are more stringent than the performance standards of 405 KAR Chapter 1 or 3; and~~

~~(c) The applicant has included as a part of the application a compliance plan for modification or reconstruction of the structure demonstrating:~~

~~1. That the modification or reconstruction of the structure will bring the structure into compliance with the performance standards of 405 KAR Chapters 16 through 20 as soon as possible but not later than six (6) months from the date of issuance of the permit unless the applicant demonstrates to the satisfaction of the cabinet that a longer time is necessary due to the scope and nature of the reconstruction;~~

~~2. That the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and~~

~~3. The applicant will monitor the structure as required by the cabinet to determine compliance with the performance standards of 405 KAR Chapters 16 through 20.~~

~~(d) Should the cabinet find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon or remove the existing structure in the manner provided in 405 KAR 16:010 or 405 KAR 18:010. The structure shall not be used for or to facilitate surface coal mining operations after the date a permanent program permit is required under 405 KAR 8:010.~~

~~(3) In the event that 405 KAR Chapter 1 or 3 prescribes a performance standard applicable to any such existing structure which performance standard has not been complied with by the applicant, no permit shall be issued by the cabinet unless the applicant shall have redesigned and reconstructed such existing~~

~~structure in accordance with the design requirements of 405 KAR Chapters 16 through 20.~~

~~(4) Existing structures allowed to operate subsequent to permit approval as provided in subsection (1) of this section shall not include coal waste piles used either temporarily or permanently as dams or embankments. Such existing coal waste piles allowed to operate subsequent to permit approval as provided in subsection (2) of this section must be modified or reconstructed in order to comply with the design requirements of 405 KAR Chapters 16 through 20 in addition to the performance standards.~~

~~(5) Any structures or facilities which must be reconstructed pursuant to subsection (2) of this section shall be reconstructed according to engineering plans prepared and certified by a registered professional engineer. Upon completion of reconstruction, the responsible engineer shall certify to the cabinet, within fourteen (14) days thereafter, that the reconstruction was performed in accordance with the approved design plans.~~

~~Section 5.~~] Hazard Classifications for Impoundments. (1) For proposed new sedimentation ponds or other new impoundments[~~and those proposed for reconstruction pursuant to Section 4(2) and (3) of this administrative regulation~~], the responsible design engineer shall determine the structure hazard classification according to the classification descriptions. For structures classified (B) - moderate hazard or (C) - high hazard, the operator shall obtain a permit from the cabinet pursuant to KRS 151.250***[~~,~~]*** and ***405 KAR Chapters 7 through 24[~~administrative regulations adopted pursuant thereto~~]***, prior to beginning[~~reconstruction or~~] construction.

(2) ***The following structure[~~Structure~~]*** hazard classifications ***shall be[~~are as follows: The following broad classes of structures are~~]*** established to permit the association of criteria with the damage that might result from a sudden major breach of the structure:

(a) Class (A)***, [~~;~~]*** low hazard: ***This class shall include*** structures located***:***

1. Where[~~such that~~] failure would cause loss of the structure itself but little or no additional damage to other property.

2. Generally[~~Such structures will generally be located~~] in rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands, or county roads.

(b) Class (B)***, [~~;~~]*** moderate hazard: ***This class shall include*** structures located***:***

1. Where [~~such that~~] failure may cause significant damage to property and project operation, but loss of human life is not envisioned.

2. Generally [~~Such structures will generally be located~~] in predominantly rural agricultural areas where failures may damage isolated homes, main highways or major railroads, or cause interruptions of use or service of relatively important public utilities.

(c) Class (C)***, [~~;~~]*** high hazard:

1. This class shall include structures located ***where[~~such that~~]*** failure may cause loss of life, or serious damage to homes, industrial or commercial buildings, important public utilities, main highways or major railroads.

2. This classification shall[~~must~~] be used if failure would cause probable loss of human life.

(3) The responsible engineer shall determine the classification of the structure after considering the characteristics of the valley below the site and probable future development. Establishment of minimum criteria ***shall[~~does~~]*** not preclude provisions for greater safety***, if the engineer determines that these provisions are necessary[~~when deemed necessary in the judgment of the engineer~~]***. Considerations other than those mentioned in the above classifications may require that the established minimum criteria be exceeded, ***if the cabinet determines that it is necessary for greater safety[~~as determined by the cabinet~~]***. A statement of the classification established by the responsible engineer shall be clearly shown on the first sheet of the design drawings.

(4) ***If[~~When~~]*** structures are spaced so that the failure of an upper structure could endanger the safety of a lower structure, the possibility of a multiple failure shall[~~must~~] be considered in assigning the structure classification of the upstream structure.

Section 5[~~6~~]. Reports Required. The operator shall submit such reports, documentation, certifications, or other information as the cabinet may require, or as may be required by KRS Chapter 350 and ***405 KAR Chapters 7 through 24[~~administrative regulations adopted pursuant thereto~~]***.

Section 6[~~7~~]. Coal Exploration. (1) Any person conducting coal exploration[~~on or after the date specified in Section 11 of this administrative regulation~~] shall either file a Notice of Intention to Explore or obtain approval of the cabinet as required by 405 KAR 8:020.

(2) The coal exploration performance standards in 405 KAR 20:010 shall apply to coal exploration ***that[~~which~~]*** substantially disturbs the natural land surface [~~two (2) months after the date specified in Section 11 of this administrative regulation~~].

Section 7[~~8~~]. Compliance with 405 KAR Chapters 7 through 24 ***shall[~~does~~]*** not relieve any person or operator from the obligation to comply with other applicable administrative regulations of the cabinet.

Section 8[~~9~~]. The requirement to restore the approximate original contour of the land shall apply regardless of any reconstruction of any existing structure allowed[~~pursuant to Section 4 of this administrative regulation~~].

Section 9[~~10~~]. Certifications by ***Licensed[~~Registered~~]*** Professional Engineers. (1) A document required to be certified shall be rejected by the cabinet as incomplete if its accuracy is not so attested.

(2) Certification by a qualified ***licensed[~~registered~~]*** professional engineer as required by 405 KAR Chapters 7 - 24 means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of KRS Chapter 350 and 405 KAR Chapters 7 - 24, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the ***licensed[~~registered~~]*** professional engineer or supervision of the ***licensed[~~registered~~]*** professional engineer's employees or subordinates. ***This[~~Such~~]*** certification shall not be construed to constitute a warranty or guarantee.

(3) Certification of maps, plans, and drawings. ***If[~~Where~~]*** 405 KAR requires that maps, plans, and drawings be certified by a qualified ***licensed[~~registered~~]*** professional engineer, the ***licensed[~~registered~~]*** professional engineer shall certify:

(a) That the information or documentation contained in the map, plan, or drawing is correct as determined by accepted engineering practices; and

(b) That the map, plan or drawing includes all the information required by KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(4) Certification of designs. Where 405 KAR Chapters 7 – 24 requires that a qualified ***licensed[~~registered~~]*** professional engineer design and certify a facility, he or she shall certify that:

(a) The design is in accordance with accepted engineering practices and recognized professional standards;

(b) The design complies with the design requirements of KRS Chapter 350 and 405 KAR Chapters 7 - 24; and

(c) Provided the facility is properly constructed, operated, and maintained, the design is adequate for the facility to meet the applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 - 24 insofar as such performance can reasonably be predicted by accepted engineering practices.

(5) Certification of construction.

(a) Where 405 KAR Chapters 7 - 24 requires that a qualified ***licensed[~~registered~~]*** professional engineer certify that a facility was constructed in accordance with the design approved by the cabinet, he or she shall certify:

1. That adequate inspections were conducted by the qualified

licensed[registered] professional engineer or by persons under his or her supervision;

2. That the construction was performed in accordance with accepted construction practices; and

3. Either that the facility was constructed in accordance with the design approved by the cabinet, or that the facility was constructed in accordance with the design approved by the cabinet except for certain minor deviations which will not adversely affect the performance of the facility nor render the facility in violation of KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(b) Any minor deviations shall be described in the certification document and the effect of the deviations upon the performance of the facility shall be explained.

(c) As-built drawings shall be submitted as a part of the certification.

(6) Certification of maintenance. Where 405 KAR Chapters 7 - 24 requires that a qualified ***licensed[registered]*** professional engineer certify the maintenance of a structure, he or she shall certify that:

(a) An inspection of the structure was conducted by the ***licensed[registered]*** professional engineer or by a person under his or her supervision; and

(b) Based on that inspection, the ***licensed[registered]*** professional engineer has determined that the structure has been maintained as required by 405 KAR Chapters 7 - 24. ***[***

(7) Certifications shall be made in the form prescribed by the cabinet, and the cabinet may reject any certification which is not made in such form.]

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
(As Amended at ARRS, January 13, 2020)

405 KAR 7:050. Coal processing waste disposal sites.

RELATES TO: KRS 151.125, 151.297, ***224.10-100, 224.10-410[224.071]***, 350.020, 350.090(1), 350.420

STATUTORY AUTHORITY: KRS 151.125, ***224.10-410 [224.033]***, 350.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.020 ***authorizes[states that unregulated surface coal mining operations create hazards dangerous to life and property and that it is the purpose of KRS Chapter 350 to provide such regulation and control of these operations in order to minimize or prevent injurious effects on the people and resources of the Commonwealth. KRS 350.020 directs]*** the ***Energy and Environment Cabinet to promulgate[cabinet to adopt whatever]*** administrative regulations ***that*** are ***[found]*** necessary to accomplish the purpose of KRS Chapter 350. ***[Furthermore,]*** KRS 151.125 ***authorizes the cabinet to promulgate administrative regulations concerning flood control, water resources, requirements for dams or reservoirs, and waste planning and management activities. KRS 224.10-410 requires the secretary to promulgate administrative regulations concerning[and 151.297 provide for the issuance of remedial orders whenever life or property are or may be endangered by the failure of any dam, reservoir, levee, embankment, or other water barrier. In addition, KRS 224.071 provides for]*** the issuance of abate and alleviate orders when there is a danger to the health or welfare of the people of the Commonwealth or to natural resources. This administrative regulation provides for the control of coal processing waste dams, waste impoundments, and waste banks in order to prevent loss of life, damage to property, and injurious effects on the environment of the Commonwealth due to structural failure of these facilities and is necessary because ***these[such]*** facilities are not otherwise adequately regulated. This administrative regulation provides[, among other things,] for submittal of engineering reports, performance standards, and remedial measures to correct dangerous facilities.

Section 1. Applicability. This administrative regulation ***shall apply[applies]*** to all coal processing waste disposal sites, ***such as[whether]*** dams, waste impoundments, or waste banks, that were constructed or utilized after August 3, 1977, regardless of whether or not the sites are or have been under permit or bond under KRS Chapter 350.

Section 2. Reports. (1)[Within sixty (60) days of September 21, 1982,] Operators or owners of coal processing waste disposal sites shall submit two (2) copies of the following to the cabinet regional office:

(a) All existing information currently available to the operator or owner**,** including complete design of the facility, stability analyses, and a description of the coal processing waste material at the site ***that includes[including]*** moisture content and particle size gradation. This ***submittal*** shall also include copies of plans submitted to [and/]or approved by ***the Mine Safety and Health Administration (***MSHA***)***. If ***these[such]*** plans ***[submitted to MSHA]*** include all of the information required by this paragraph, then submittal of copies of ***the[such]*** plans shall suffice. ***If[Where]*** information required by this paragraph has already been submitted to the cabinet as a part of a permit application, the operator or owner shall ***[so]*** notify the cabinet regional office in writing and ***shall[need]*** not resubmit duplicate material.

(b) As-built drawings of the current phase of construction or of the completed facility**,** as applicable, including a map showing the location of the facility.

(2) ***(a)*** Analyses and descriptions submitted under subsection (1)(a) of this section shall be based upon current information available to the operator or owner.

(b) If the failure of the facility could cause damage to life or property or injurious effects on the environment of the Commonwealth, the cabinet shall [However, on a case-by-case basis, at any time, the cabinet may] require the operator or owner to submit ***[such]*** additional plans and analyses or to conduct ***the[such]*** investigations and testing of materials ***that are[as]*** necessary to determine the stability of the facility ***[where failure of the facility could cause damage to life or property or injurious effects on the environment of the Commonwealth]***.

(c) These investigations and tests [This] may include[, but is not limited to,] seepage investigations, settlement studies based on compressibility and mining subsidence, foundation investigations including borings or test pits, laboratory testing of foundation materials, and determination of strength parameters based on laboratory testing of site specific coal processing waste materials.

Section 3. Performance Standards. (1) Any coal processing waste disposal site impounding water, or impounding coal processing waste which is physically unstable due to excessive moisture content or excessive fine-grained material, and any dam containing coal processing waste in the embankment shall comply with 405 KAR 16:100 or 405 KAR 18:100[either 405 KAR 1:210 or 405 KAR 3:180].

(2) All other coal processing waste disposal sites shall comply with 30 C.F.R. 77.214 as amended at 36 Fed. Reg. 13,143 (1971) and 30 C.F.R. 77.215 as amended at 40 Fed. Reg. 41,776 (1975), ***except a[provided, however, no]*** facility shall ***not*** be constructed in ***a[such]*** manner that ***[it]*** may cause loss of life, damage to property, or injurious effects on the environment of the Commonwealth due to structural failure of the facility.

(3) Those portions of structures that have already been constructed and structures that have been completed ***shall[need]*** not be reconstructed ***unless[except where]*** reconstruction is ***[determined by the cabinet to be]*** necessary to ensure stability of the facility ***[in order]*** to**:**

(a) Eliminate [eliminate] potential hazards to life or property**;** or

(b) Prevent ***[~~to prevent~~]*** injurious effects on the environment of the Commonwealth.

(4) ***This*** ***[~~Nothing in this~~]*** administrative regulation shall ***not*** be construed as relieving an operator from the obligation to comply with any other provision of 405 KAR Chapters 7 - 24, including***[~~, but not limited to,~~]*** compliance with the permanent program performance standards and the requirements for existing structures in 405 KAR 7:040, Section 4.

Section 4. Remedial Measures. ***The cabinet may require operators*****[~~Operators~~]** or owners of coal processing waste disposal sites ***[~~may be required by the cabinet~~]*** to revise the facility design ***and*****[~~and/or~~]** to implement ***[~~such~~]*** remedial measures ***if*****[~~as~~]** necessary to comply with Section 3 of this administrative regulation.

Section 5. Certifications. (1) All designs, maps, plans, and drawings submitted under this administrative regulation shall be prepared and certified by a qualified registered professional engineer.

(2) Construction or reconstruction of coal processing waste disposal sites shall be inspected during and after construction by a qualified ***licensed*****[~~registered~~]** professional engineer or by qualified persons under the engineer's supervision***. The*****[~~and the~~]** facility shall be certified within two (2) weeks of each inspection by the responsible qualified ***licensed*****[~~registered~~]** professional engineer as having been constructed in accordance with the design approved by the cabinet ***under 405 KAR Chapters 7 through 24***. ***If*****[~~Where~~]** the cabinet has not yet reviewed and approved the design, the engineer shall make the certifications based upon the design approved by MSHA.

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 Permits
(As Amended at ARRS, January 13, 2020)

405 KAR 8:010. General provisions for permits.

RELATES TO: KRS 61.870-61.884, 146.200-146.360, 322.010(3), 322.340, 350.020, 350.055, 350.060, 350.070, 350.085, 350.090, 350.130, 350.135, 350.450, 350.465, 350.500-350.521, 424.110-424.120, 27 C.F.R. 555.206, 555.218, 555.219, 555.220, 30 C.F.R. 77.1301(c), 730-733, 735, 775, 777, 778.17, 870, 917, 16 U.S.C. 470aa-mm, 470x-6, 661-667e16, 668-668d, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.135, 350.450, 350.465, 350.515, 30 C.F.R. Parts 730-733, 735, 773-775, 777, 778.17, 917, 16 U.S.C. 661-667e16, 668a, 703-712, 1531-1544, 30 U.S.C. 1253, 1255-1261, 1263-1266, 1272

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 and 350.465 require the cabinet to promulgate***[~~rules and~~]*** administrative regulations pertaining to permits for surface coal mining and reclamation operations. This administrative regulation establishes provisions for permits to conduct these operations, including the conditions for which permits are required, application deadlines, requirements for applications for permanent program permits, fees, verification of applications, public notice requirements, submission of comments on permit applications, the right to file objections, informal conferences, review of the permit applications, criteria for application approval or denial and relevant actions, term of the permits, conditions of permits, review of outstanding permits, revisions of permits, amendments, renewals, transfers, assignments, sales of permit rights, administrative and judicial review, and procedures relating to improvidently issued permits.

Section 1. Applicability. Excluding coal exploration operations, this administrative regulation shall apply to applications, actions regarding permits, and surface coal mining and reclamation operations.

Section 2. General Requirements. (1) Permanent program permits required. A person shall not engage in surface coal mining and reclamation operations unless that person has first obtained a valid permanent program permit pursuant to 405 KAR Chapter 8.

(2) General filing requirements for permanent program permit applications.

(a) Each person who intends to engage in surface coal mining and reclamation operations or underground only operations shall***:***

1. File a complete and accurate application for a permanent program permit that shall comply fully with applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24***; and***

2.**[~~, and shall~~]** Not begin the operation until the permit has been granted.

(b) Renewal of valid permanent program permits. An application for renewal of a permit pursuant to Section 21 of this administrative regulation shall be filed with the cabinet at least 120 days before the expiration of the permit.

(c) Revision of permanent program permits. A permittee may apply for a revision of a permit, but shall not vary from the requirements of the permit until the revision has been approved by the cabinet. The term of a permit shall remain unchanged by a revision.

(d) Succession to rights granted pursuant to prior permanent program permits.

1. An application for the transfer, sale, or assignment of rights granted pursuant to a permit may be submitted.

2. The actual transfer, sale, or assignment of permit rights shall not take place until written permission has been granted by the cabinet pursuant to 405 KAR Chapters 7 through 24.

(e) Amendment of permanent program permits. A permittee may apply for an amendment to a permit pursuant to Section 23 of this administrative regulation, but shall not begin surface coal mining and reclamation operations on the areas until the amendment has been approved by the cabinet. The term of a permit shall remain unchanged by an amendment.

(3) Compliance with permits. A person engaging in surface coal mining and reclamation operations pursuant to a permit issued pursuant to KRS Chapter 350 shall comply with the terms and conditions of the permit, including the plans and other documents submitted as part of the application and approved by the cabinet and the applicable requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 3. Coordination of Review of Permit Applications. (1) For the purposes of avoiding duplication, the cabinet shall coordinate the review and issuance of permits for surface coal mining and reclamation operations with:

(a) Any other federal or Kentucky permit process applicable to the proposed operations, as required by Section 503 of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955; and

(b) Applicable requirements of the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; the Fish and Wildlife Coordination Act of 1934, 16 U.S.C. 661-667d; the Migratory Bird Treaty Act of 1918, 16 U.S.C. 703-712; the National Historic Preservation Act of 1966, (54 U.S.C. 300101 – 307108; and the Bald Eagle Protection Act of 1940, 16 U.S.C. 668-668d, as required by 30 C.F.R. 773.12.

(2) This coordination shall be accomplished by providing the appropriate agencies with an opportunity to comment on permit applications as established in Section 8(6) and (7) of this administrative regulation and, if necessary, by any other measures the cabinet and interested parties agree are appropriate.

Section 4. Preliminary Requirements. (1) A person desiring a permit may submit to the cabinet a Preliminary Application, MPA-00.

(2) If the permittee chooses to submit a Preliminary Application, the Preliminary Application shall contain pertinent information, including a map at a scale of one (1) inch equals 400 or 500 feet, marked to show the proposed permit area, shadow area, and adjacent areas; and the areas of land to be affected, including, for example, locations of the coal seam or seams to be mined, access roads, haul roads, spoil or coal waste disposal areas, and sedimentation ponds.

(a) Areas delineated on the map shall be physically marked at the site; and

(b) Pursuant to KRS Chapter 350 and 405 KAR Chapters 7 – 24, personnel of the cabinet shall conduct, within fifteen (15) working days after the filing of the Preliminary Application, an on-site investigation of the area with the person or his or her representatives and representatives of appropriate local, state, or federal agencies, after which the person may submit a permit application.

Section 5. General Format and Content of Applications. (1)(a) Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the number, form, and content required by the cabinet, in accordance with KRS 350.060(5) and (6), including a copy to be filed for public inspection pursuant to Section 8(8) of this administrative regulation.

(b) The application and copies shall be prepared, assembled, and submitted with attachments, plans, maps, certifications, drawings, calculations, or other documentation necessary for the cabinet to review the proposed surface coal mining and reclamation operations.

(c) The following forms shall be submitted by an applicant:

1. Permittee Information for a Mining Permit, MPA-01;

2. Operator Information for a Mining Permit, MPA-02;

3. Technical Information for Mining Permit, MPA-03;

4. Surface Owner's Affidavit: Lands Historically Used for Cropland, MPA-03-20.1.B.;

5. Disinterested Third Party Affidavit: Lands Historically Used for Cropland, MPA-03.20.1.C.;

6. Update of Permittee or Operator Information, MPA-05;

7. Change of Corporate Owners, Officers or Directors, MPA-06;

8. Application to Transfer a Mining Permit, MPA-07;

9. Revision Application to Change Operator, MPA-08;

10. Application for Renewal of a Mining Permit, MPA-09;

11. Application for a Coal Marketing Deferment, MPA-10; and

12. Minor Field Revision Application Form, SME 80.

(d) The application shall be complete with respect to all information required by 405 KAR Chapters 7 - 24[~~KAR Title 405~~] and include, at a minimum for:

1. Surface mining activities, all the applicable information required pursuant to 405 KAR 8:030;

2. Underground mining activities, all the information required pursuant to 405 KAR 8:040; and

3. Special types of surface coal mining and reclamation operations, all the information required pursuant to 405 KAR 8:050.

(e) An application shall not be determined to be administratively complete unless all design plans for the permit area are in detailed form.

(2) Information established in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the cabinet.

(3) The collection and analysis of technical data submitted in the application shall be planned by or conducted under the direction of a professional qualified in the subject to be analyzed and shall be accompanied by:

(a) Names of persons or organizations that collected and analyzed the data;

(b) Dates of the collection and analyses; and

(c) Descriptions of methodology used to collect and analyze the data.

(4) The application shall state the name, address, and position of officials of each private or academic research organization or governmental agency that provided information that has been made a part of the application regarding land uses; soils; geology; vegetation; fish and wildlife; water quantity and quality; air quality; and archaeological, cultural, and historic features.

(5)(a) The applicant shall designate in the permit application either the applicant or some other person to serve as agent for service of notices and orders.

1. The designation shall identify the person by full name and complete mailing address, and if a natural person, the person's Social Security number.

2. The person shall continue as agent for service of process until a written revision of the permit has been made to designate another person as agent.

(b) The applicant may authorize a person to submit application modifications to the cabinet. If the designation has not been made in the application, or in separate correspondence, the cabinet shall accept modifications only from the applicant.

(6) General requirements for maps and plans.

(a) If information marked on the preliminary map required pursuant to Section 4 of this administrative regulation has changed, the application shall contain an updated USGS seven and one-half (7 1/2) minute topographic map marked as required in Section 4 of this administrative regulation.

(b)1. Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include the types of information established on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series.

2. Maps of the permit area, shadow area, and adjacent areas shall be at a scale of 400 or 500 feet to the inch, inclusive; and the scale shall be clearly shown on the map.

3. A map of scale larger than 400 feet to the inch shall be provided by the applicant if the larger scaled map is needed to adequately show mine site details.

4. The map required by 405 KAR 8:030, Section 23(1)(a) or 405 KAR 8:040, Section 23(1)(a), regarding additional areas on which permits will be sought, shall be a USGS seven and one-half (7 1/2) minute (1:24,000) topographic map.

(c) If a map or drawing is required to be certified by a qualified professional engineer, as defined by KRS 322.010(3), the map or drawing shall bear the seal and signature of the engineer as required by KRS 322.340, and shall be certified in accordance with 405 KAR 7:040, Section 10.

(d) All engineering design plans submitted with an application shall be prepared by or under the direction of a qualified professional engineer and shall bear the engineer's seal, signature, and certification as required by KRS 322.340 and 405 KAR 7:040, Section 10.

(e) Maps and plans submitted with the application shall clearly identify all previously mined areas as defined at 405 KAR 16:190, Section 7(2)(c) or 405 KAR 18:190, Section 5(2)(c).

(7) Referenced materials. If used in the application, referenced materials shall either be provided to the cabinet by the applicant or be readily available to the cabinet. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

Section 6. Application and Acreage Fees. (1) Each application for a surface coal mining and reclamation permit shall be accompanied by the fees established in this administrative regulation. The fee may be less than, but shall not exceed the actual or anticipated cost of reviewing, administering, and enforcing the permit.

(2) An applicant shall submit an application fee of $2,500 for an original application or $1,750 for an amendment.

(3) An applicant shall also submit an additional seventy-five (75) dollars for each acre or fraction thereof of the area of land to be affected by the operation.

(a) If the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid individually as the bond for each increment is submitted.

(b) An acreage fee shall not be required for surface areas

overlying underground or auger workings that will not be affected by surface operations and facilities.

(4) The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. A permit application shall not be processed unless the application fee has been paid.

Section 7. Verification of Application. Applications for permits; revisions; amendments; renewals; or transfers, sales, or assignments of permit rights shall be verified under oath, before a notary public, by the applicant or the applicant's authorized representative, that the information contained in the application is true and correct to the best of the official's information and belief.

Section 8. Public Notice of Filing of Permit Applications. (1) An applicant for a permit, major revision, amendment, or renewal of a permit shall place an advertisement in the newspaper of largest bona fide circulation as established in KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

(2)(a) The first advertisement shall be published on or after the date the:

1. Application is submitted to the cabinet; or

2. Applicant receives the notification from the cabinet pursuant to Section 13(2) of this administrative regulation that the application has been deemed administratively complete and ready for technical review.

(b) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the final consecutive weekly advertisement being published after the applicant's receipt of written notice from the cabinet that the application has been deemed administratively complete and ready for technical review.

(c) The final consecutive weekly advertisement shall clearly state that it is the final advertisement and that written objections to the application shall be submitted to the cabinet until thirty (30) days after the date of the final advertisement.

(3) Within fifteen (15) days of the final date of publication of the advertisement, the applicant shall submit to the cabinet proof of publication of the required final four (4) consecutive weekly notices, in accordance with this section that shall consist of an affidavit from the publishing newspaper certifying the dates, place, and content of the advertisements.

(4) The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in subsection (5) of this section.

(5) The advertisement shall contain, at a minimum:

(a) The name and business address of the applicant;

(b) A map or description that shall:

1. Clearly show or describe towns, rivers, streams, and other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly show or describe the exact location and boundaries of the proposed permit area;

3. State the name of the U.S. Geological Survey 7.5 minute quadrangle map that contains the area shown or described; and

4. Show the north arrow and map scale, if a map is used;

(c) The location where a copy of the application shall be available for public inspection pursuant to subsection (8) of this section;

(d) The name and address of the cabinet to which written comments, objections, or requests for permit conferences on the application may be submitted pursuant to Sections 9, 10, and 11 of this administrative regulation;

(e) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road; except if public notice and hearing have been previously provided for this particular part of road in accordance with 405 KAR 24:040, Section 2(6); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing;

(f) A statement, if the application includes a request for an experimental practice pursuant to 405 KAR 7:060, indicating that an experimental practice is requested that identifies the regulatory requirement for which a variance is requested; and

(g) The application number.

(6) Within five (5) working days after the application for a permit, major revision, amendment, or renewal of a permit has been determined to be administratively complete, the cabinet shall issue written notification of:

(a) The applicant's intention to conduct surface coal mining and reclamation operations on a particularly described tract of land;

(b) The application number;

(c) Where a copy of the application may be inspected; and

(d) Where comments on the application may be submitted pursuant to Section 9 of this administrative regulation.

(7) The written notifications required by subsection (6) of this section shall be sent to:

(a) Local government agencies with jurisdiction over or an interest in the area of the proposed operations, including:

1. Planning agencies;

2. Sewage or water treatment authorities; and

3. Water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas;

(b) All federal and Kentucky governmental agencies that have the authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and that are a part of the permit coordination process required by Section 3 of this administrative regulation; and

(c) Those agencies with an interest in the particular proposed operation including the:

1. USDA Soil Conservation Service State Conservationist;

2. Local U.S. Army Corps of Engineers district engineer;

3. National Park Service;

4. U.S. Department of Fish and Wildlife and Kentucky Department of Fish and Wildlife Resources; and

5. State historic preservation officer.

(8) In accordance with Section 12 of this administrative regulation, the cabinet shall, upon receipt of the application:

(a) Make the application available for public inspection and copying during all normal working hours at the appropriate regional office of the cabinet where the mining has been proposed; and

(b) Provide reasonable assistance to the public in the inspection and copying of the application.

Section 9. Submission of Comments or Objections by Public Agencies. (1) Written comments or objections on applications for permits, major revisions, amendments, and renewals of permits may be submitted to the cabinet by the public agencies to whom notification has been provided pursuant to Section 8(6) and (7) of this administrative regulation with respect to the effects of the proposed mining operations on the environment within the public agency's area of responsibility.

(2) These comments or objections shall be submitted to the cabinet within thirty (30) calendar days after the date of the written notification by the cabinet pursuant to Section 8(6) and (7) of this administrative regulation.

(3) The cabinet shall immediately file a copy of all comments or objections at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation. A copy shall also be transmitted to the applicant.

Section 10. Right to File Written Objections. (1) Any person whose interests are or ***could[~~may~~]*** be adversely affected or an officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation shall have the right to file written objections to an application for a permit, major revision, amendment, or renewal of a permit with the cabinet, within thirty (30) days after the last publication of the newspaper notice required by Section 8(1) of this administrative regulation.

(2) The cabinet shall, immediately upon receipt of any written

objections:

(a) Transmit a copy of the objections to the applicant; and

(b) File a copy at the appropriate regional office of the cabinet for public inspection pursuant to Section 8(8) of this administrative regulation.

Section 11. Permit Conferences. (1) Procedure for requests. Any person whose interests are or may be adversely affected by the decision on the application, or the officer or head of any federal, state, or local government agency or authority to be notified pursuant to Section 8 of this administrative regulation may, in writing, request that the cabinet hold an informal conference on any application for a permit, major revision, amendment, or renewal of a permit. The request shall:

(a) Briefly summarize the issues to be raised by the person requesting at the conference;

(b) State if the person requesting desires to have the conference conducted in the locality of the proposed mining operations; and

(c) Be filed with the cabinet not later than thirty (30) days after the last publication of the newspaper advertisement placed by the applicant pursuant to Section 8(1) of this administrative regulation.

(2) If a permit conference has been requested in accordance with subsection (1) of this section, then the cabinet shall hold a conference within twenty (20) working days after the last date to request a conference under subsection (1)(c) of this section.

(3) The conference shall be conducted ***as established in paragraphs (a) through (c) of this subsection.[~~according to the following:~~]***

(a) If requested pursuant to subsection (1)(b) of this section, the conference shall be held in the locality of the proposed mining***.[;]***

(b) The date, time, and location of the conference shall be sent to the applicant and parties requesting the conference and advertised once by the cabinet in the newspaper of largest bona fide circulation, pursuant to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located, at least two (2) weeks prior to the scheduled conference***.[~~; and~~]***

(c) If requested, in writing, by a person requesting the conference in a reasonable time prior to the conference, the cabinet shall arrange with the applicant to grant parties to the conference access to the permit area and, to the extent that the applicant has the right to grant access, to the adjacent areas prior to the established date of the conference for the purpose of gathering information relevant to the conference[~~; and~~

~~(d) The requirements of 405 KAR 1:090 and 1:110 shall not apply to the conduct of the conference~~].

1. The conference shall be conducted by a representative of the cabinet, who shall accept oral or written statements and any other relevant information from any party to the conference.

2. An electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties.

3. The record shall be maintained and accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 405 KAR Chapter 10.

(4) If all parties requesting the conference stipulate agreement before the requested conference and withdraw their requests, the conference shall not be held.

(5) Permit conferences held in accordance with this section may be used by the cabinet as the public hearing required pursuant to 405 KAR 24:040, Section 2(6) on proposed relocation and closure of public roads.

Section 12. Public Availability of Information in Permit Applications on File with the Cabinet. (1) General availability.

(a) The cabinet shall make an application for a permit, revision, amendment, or renewal of a permit or an application for transfer, assignment, or sale of permit rights available for the public to inspect and copy by placing a full copy of the application at the regional office for the area in which mining shall occur.

1. The application shall be made available by the cabinet for public inspection and copying, at reasonable times, in accordance with Kentucky open records statutes, KRS 61.870 to 61.884.

2. This copy ***is not required to[~~need not~~]*** include confidential information exempt from disclosure pursuant to subsection (3) of this section.

(b) The application required by paragraph (a) of this subsection shall be placed at the appropriate regional office no later than the first date of newspaper advertisement of the application.

(c) The applicant shall be responsible for placing all changes in the copy of the application retained at the regional office upon the changes being submitted to the Division of Mine Permits.

(2) Information pertaining to coal seams, test borings, core samples, and soil samples in applications shall be made available for inspection and copying to any person with an interest that is or ***could[~~may~~]*** be adversely affected.

(3) Confidentiality.

(a) The cabinet shall provide for procedures to ensure the confidentiality of qualified confidential information.

(b) Confidential information shall be clearly identified by the applicant and submitted separately from the remainder of the application.

(c) If a dispute arises concerning the disclosure or nondisclosure of confidential information, the cabinet shall provide notice and convene a hearing in accordance with 400 KAR 1:110, Section 9.

(d) Confidential information shall be limited to ***information***:

1. That pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of the coal that are potentially toxic in the environment; and

2. On the nature and location of archaeological resources on public land and Indian land as required pursuant to the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa - mm.

Section 13. Department Review of Applications for Permits, Revisions, Amendments, and Renewals. (1) General.

(a) The cabinet shall review the application for a permit, revision, amendment, or renewal; written comments and objections submitted; and records of any permit conference held on the application and make a written decision, within the time frames listed in Section 16(1) of this administrative regulation, concerning approval of, requiring modification of, or concerning rejection of the application.

(b) An applicant for a permit, revision, or amendment shall have the burden of establishing that the application is in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(2)(a) Administrative completeness determination.

1. Within ten (10) working days of initial receipt of the application the cabinet shall provide written notification to the applicant as to the administrative completeness of the application.

2. If the application is incomplete, the cabinet shall notify the applicant within ten (10) working days after initial receipt of the application by certified mail, return receipt requested, or by registered mail, of the deficiencies that render the application incomplete.

3. The applicant shall submit supplemental information to correct the identified deficiencies for a period of ten (10) working days after the applicant's receipt of the initial notice of incompleteness.

4. If, after ten (10) working days, the application is still incomplete, the cabinet shall return the incomplete application to the applicant with written notification of the reasons for the determination.

(b)1. An application shall not be deemed administratively complete if one (1) or more major elements are found to be absent from the application, which, by virtue of their absence, would require that the permit be denied.

2. A determination that an application is administratively complete shall not mean that the application is complete in every

detail, nor shall it mean that any aspect of the application is technically sufficient or approvable.

(3) Processing of the administratively complete application. Within the time periods established in Section 16 of this administrative regulation, the cabinet shall either notify the applicant:

(a) Of the cabinet's decision to issue or deny the application; or

(b)1. In writing, by certified mail, return receipt requested, or by registered mail, ***[promptly]*** upon discovery of deficiencies in the application and allow the application to be temporarily withdrawn for the purpose of correcting the deficiencies.

2. Temporary withdrawal periods shall not be counted against the time available to the cabinet for consideration of the application.

(4) Review of violations.

(a) The cabinet shall not issue a permit if any surface coal mining reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of SMCRA, 30 U.S.C. 1201 - 1328 and 30 C.F.R. 700 - 955, KRS Chapter 350 and 405 KAR Chapters 7 - 24, any other state's laws or administrative regulations pursuant to SMCRA, or any other law, rule, or administrative regulation referred to in this subsection. The denial of the permit shall be based on available information concerning:

1. Failure-to-abate cessation orders issued by OSM, Kentucky, or any other state;

2. Unabated imminent harm cessation orders issued by OSM, Kentucky, or any other state;

3. Delinquent civil penalties assessed pursuant to SMCRA, federal regulations enacted pursuant to SMCRA, KRS Chapter 350 and 405 KAR Chapters 7 - 24, or any other state's laws or administrative regulations pursuant to SMCRA;

4. Bond forfeitures by OSM, Kentucky, or any other state in which violations upon which the forfeitures were based have not been corrected;

5. Delinquent abandoned mine reclamation fees; and

6. Unabated violations of federal, Kentucky, and any other state's laws, rules and administrative regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation.

(b) In the absence of a failure-to-abate cessation order, the cabinet may presume that a notice of violation issued by OSM, Kentucky, or any other state pursuant to its laws and administrative regulations pursuant to SMCRA has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except if evidence to the contrary is established in the permit application, or if the violation is for nonpayment of abandoned mine reclamation fees or civil penalties.

(c) If a current violation exists, the cabinet shall require the applicant or person who owns or controls the applicant, before issuance of the permit, to either:

1. Submit to the cabinet proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

2. Establish for the cabinet that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority affirms the violation, then the applicant shall within thirty (30) days of the judicial action submit proof required pursuant to subparagraph (1) of this paragraph.

(d) Any permit that is issued on the basis of proof submitted pursuant to paragraph (a)1. of this subsection that a violation is in the process of being corrected, or pending the outcome of an appeal established in paragraph (a)2 of this subsection, shall be conditionally issued.

(e)1. If the cabinet makes a finding that the applicant, anyone who owns or controls the applicant, or the operator established in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of KRS Chapter 350 and 405 KAR Chapters 7 - 24 of a nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws or administrative regulations, a permit shall not be issued.

2. Before a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 400 KAR 1:110, Section 8.

(5) Final compliance review. After an application is approved, but before the permit is issued, the cabinet shall reconsider its decision to approve the application, based on the compliance review required by subsection (4)(a) of this section in light of any new information submitted under 405 KAR 8:030, Sections 2(11) and 3(4), or 405 KAR 8:040, Sections 2(11) and 3(4).

Section 14. Criteria for Application Approval or Denial. An application for a permit, revision (as applicable), or amendment of a permit shall not be approved unless the application affirmatively demonstrates and the cabinet finds, in writing, on the basis of information established in the application or from information otherwise available, which has been documented in the approval, that:

(1) The permit application is complete and accurate and in compliance with all requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24;

(2) The applicant has demonstrated that surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24 can be feasibly accomplished in accordance with the mining and reclamation plan contained in the application;

(3) The assessment of the probable cumulative impacts of all anticipated coal mining in the cumulative impact area on the hydrologic balance has been made by the cabinet and the operations proposed pursuant to the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area and shadow area;

(4) The proposed permit area is:

(a) Not included within an area designated unsuitable for surface coal mining operations pursuant to 405 KAR 24:030;

(b) Not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 405 KAR 24:030, unless the applicant demonstrates that, before January 4, 1977, he or she made substantial legal and financial commitments in relation to the operation for which he or she is applying for a permit;

(c) Not on any lands subject to the prohibitions or limitations of 405 KAR 24:040, Section 2(1), (2), or (3);

(d) Not within 100 feet of the outside right-of-way line of any public road, except as provided for in 405 KAR 24:040, Section 2(6); and

(e) Not within 300 feet from any occupied dwelling, except as established in 405 KAR 24:040, Section 2(5);

(5)(a) The proposed operations ***shall[will]*** not adversely affect any publicly-owned parks or any places included on the National Register of Historic Places, except as established in 405 KAR 24:040, Section 2(4); and

(b) The cabinet has taken into account the effect of the proposed operations on properties listed and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the mining and reclamation plan to protect historic resources, or a documented decision that additional protection measures are not necessary;

(6) For operations involving the surface mining of coal in which the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the cabinet the documentation required pursuant to 405 KAR 8:030, Section 4(2) or 405 KAR 8:040, Section 4(2);

(7) With regard to current violations, the applicant has either:

(a) Submitted the proof required by Section 13(4)(a) of this administrative regulation; or

(b) Made the demonstration required by Section 13(4)(b) of this administrative regulation;

(8) The applicant has paid all reclamation fees from previous

and existing operations as required by 30 C.F.R. 870, or has entered into a payment schedule approved by OSM. If the applicant has entered into a payment schedule approved by OSM, a permit may be issued only if it includes a condition that the permittee comply with the approved payment schedule;

(9) The applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of SMCRA or KRS Chapter 350 of a nature and duration and with resulting irreparable damage to the environment to indicate an intent not to comply with SMCRA or KRS Chapter 350;

(10) The applicant has demonstrated that any existing structure will comply with 405 KAR 8:030, Section 25 and 405 KAR 8:040, Section 25, and the applicable performance standards of KAR 405 KAR Chapters 16 and 18;

(11) The applicant has, if applicable, satisfied the requirements established in 405 KAR 16:210 and 405 KAR 18:220 for approval of a long-term, intensive agricultural postmining land use;

(12) The applicant may reasonably be expected to submit the performance bond or other equivalent guarantee required pursuant to 405 KAR Chapter 10 prior to the issuance of the permit;

(13) The applicant has, with respect to prime farmland obtained either a negative determination or satisfied the requirements of 405 KAR 8:050, Section 3;

(14) The applicant has satisfied the applicable requirements of 405 KAR 8:050 regarding special categories of mining;

(15) The cabinet has made all specific approvals required pursuant to 405 KAR Chapters 16 through 20;

(16) The cabinet has found that the activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats as determined pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531-1544);

(17) The applicant has not forfeited any bond pursuant to KRS Chapter 350. If the applicant has forfeited a bond, the permit may be issued if the land for which the bond was forfeited has been satisfactorily reclaimed without cost to the state or the operator or person has paid a sum that the cabinet finds is adequate to reclaim the land;

(18) The applicant has not had a permit revoked, suspended, or terminated pursuant to KRS Chapter 350. If the applicant has had a permit revoked, suspended, or terminated, another permit may be issued, or a suspended permit may be reinstated, only if the applicant has complied with all of the requirements of KRS Chapter 350 or submitted proof that the violation has been corrected or is in the process of being corrected, in respect to all permits issued to him or her;

(19) The operation ***shall[~~will~~]*** not constitute a hazard to or do physical damage to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property;

(20) The surface coal mining operation ***shall[~~will~~]*** not adversely affect a wild river established pursuant to KRS Chapter 146 or a state park unless adequate screening and other measures have been incorporated into the permit application and the surface coal mining operation has been jointly approved by all affected agencies as established in 405 KAR 24:040; or

(21) For a proposed remining operation that the applicant intends to reclaim in accordance with the requirements of 405 KAR 16:190, Section 7, or 405 KAR 18:190, Section 5, the applicant has demonstrated that the ***proposed*** site of the operation ***is[~~will be~~]*** a previously mined area as defined in those sections.

Section 15. Criteria for Application Approval or Denial Regarding Existing Structures. An application for a permit, revision, or amendment that proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall not be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of information established in the complete and accurate application, that the provisions of 405 KAR 7:040, Section 4, have been met.

Section 16. Application Approval or Denial Actions. (1) The cabinet shall take action on applications within the following time periods as appropriate:

(a)1. Except as established in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(a), (b), (d), and (e) of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within sixty-five (65) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the sixty-five (65) working-day period available to the cabinet.

2. Except as established in paragraph (b) of this subsection, for a complete and accurate application submitted pursuant to Section 2(2)(c) of this administrative regulation of a major revision as established in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application within forty-five (45) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the forty-five (45) working-day period available to the cabinet.

3. For a complete and accurate application for a minor revision as established in Section 20 of this administrative regulation, a decision shall be made by the cabinet to approve, require modification of, or deny the application.

a. The timeframes for review shall be:

(i) Fifteen (15) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation; and

(ii) Thirty (30) working days after the notice of administrative completeness pursuant to Section 13(2) of this administrative regulation for minor revisions that require full cost bonding calculations.

b. Periods of temporary withdrawal pursuant to Section 13(3)(b) of this administrative regulation shall not be counted against the fifteen (15) or thirty (30) working day period available to the department; and

(b) If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time periods established in paragraph (a) of this subsection, the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(2) The cabinet shall issue written notification of the decision to approve, modify, or deny the application, in whole or part, to the following persons and entities:

(a) The applicant;

(b) Each person who files comments or objections to the permit application;

(c) Each party to an informal permit conference, if held;

(d) The county judge-executive of the county and the chief executive officer of any municipality in which the permit area lies. This notice shall be sent within ten (10) days after the issuance of the permit and shall include a description of the location of the permit area; and

(e) The regional office manager of the Division of Mine Reclamation and Enforcement.

(3) If the application has been denied, the notification required in subsection (2) of this section, for the applicant, any person filing objections to the permit and parties to an informal conference, shall include specific reasons for the denial.

(4) If the cabinet approves the application, the cabinet shall require that the applicant file the performance bond before the permit is issued, in accordance with 405 KAR Chapter 10.

(5) The cabinet shall publish a summary of the decision in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

Section 17. Term of Permit. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted, pursuant to KRS 350.060(1)(a), only if:

(a) The application is complete and accurate for the specified longer term; and

(b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source for the financing.

(2)(a) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within three (3) years of the issuance of the permit.

(b) The cabinet may grant reasonable extensions pursuant to KRS 350.060(16) of the time for commencement of these operations, upon receipt of a written statement showing that the extensions of time are necessary, if:

1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

2. There are conditions beyond the control and without the fault or negligence of the permittee.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall have commenced surface mining operations if construction of the synthetic fuel or generating facility is initiated.

(d) Extensions of time granted by the cabinet pursuant to this subsection shall be specifically established in the permit, and notice of the extension shall be made to the public.

(3) Permits may be suspended, revoked, or modified by the cabinet, in accordance with Section 19 of this administrative regulation; 405 KAR 7:060, Section 3; 405 KAR 8:050, Sections 4, 6, and 7; and 405 KAR Chapter 12.

Section 18. Conditions of Permits. Actions by an applicant, permittee, or operator to submit an application to the cabinet, to accept a permit issued by the cabinet, or to begin operations pursuant to a permit issued by the cabinet, shall constitute knowledge and acceptance of the conditions established in this section, which shall be applicable to each permit issued by the cabinet pursuant to this chapter if the conditions have or have not been established in the permit. (1) General. The general conditions established in paragraphs (a) through (c) of this subsection shall apply to a permit issued by the cabinet.

(a) The permittee shall comply fully with all terms and conditions of the permit and all applicable performance standards of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(b) The permittee shall conduct all surface coal mining and reclamation operations as established in the approved application, except to the extent that the cabinet otherwise directs in the permit that specific actions be taken.

(c) The permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated as the permit area on the maps submitted pursuant to 405 KAR 8:030 or 405 KAR 8:040 and authorized for the term of the permit, and that are subject to the performance bond in effect pursuant to 405 KAR Chapter 10.

(2) Right of entry.

(a) Without advance notice, unreasonable delay, or a search warrant, and upon presentation of appropriate credentials, the permittee shall allow authorized representatives of the Secretary of the Interior and the cabinet to:

1. Have the rights of entry provided for in 405 KAR 12:010, Section 3; and

2. Be accompanied by private persons for the purpose of conducting a federal inspection if the inspection is in response to an alleged violation reported to the cabinet by the private person.

(b) The permittee shall allow the authorized representatives of the cabinet to be accompanied by private persons for the purpose of conducting an inspection pursuant to 405 KAR 12:030.

(3) Environment, public health, and safety.

(a) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from failure to comply with any term or condition of the permit, including:

1. Accelerated or additional monitoring necessary to determine the nature and extent of failure to comply and the results of the failure to comply;

2. Immediate implementation of measures necessary to comply; and

3. Warning, as soon as possible after learning of the failure to comply, any person whose health and safety is in imminent danger due to the failure to comply.

(b) The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 405 KAR Chapters 16 through 20, and that prevents violation of any other applicable Kentucky or federal law.

(c) The permittee shall conduct its operations:

1. In accordance with any measures established in the permit as necessary to prevent significant, imminent environmental harm that ***could[~~may~~]*** affect the health or safety of the public; and

2. Utilizing any methods established in the permit by the cabinet in approving alternative methods of compliance with the performance standards of KRS Chapter 350 and 405 KAR Chapters 16 through 20, in accordance with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(4) Reclamation fees. The permittee shall pay all reclamation fees required by 30 C.F.R. 870 for coal produced pursuant to the permit for sale, transfer, or use, in the manner required by that subchapter.

(5) Within thirty (30) days after a cessation order is issued by OSM for operations conducted pursuant to the permit or after an order for cessation and immediate compliance is issued pursuant to 405 KAR 12:020, Section 3, for operations conducted pursuant to the permit, except if a stay of the order is granted and remains in effect, the permittee shall either notify the cabinet in writing that there has not been a change since the immediately preceding submittal of the information or submit to the cabinet the following information, current to the date the order was issued:

(a) Any new information needed to correct or update the information previously submitted to the cabinet by the permittee pursuant to 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3); or

(b) If not previously submitted, the information required from a permit applicant by 405 KAR 8:030, Section 2(3), or 405 KAR 8:040, Section 2(3).

Section 19. Review of Permits. (1)(a) The cabinet shall review each permit issued pursuant to 405 KAR Chapter 8 during the term of the permit.

1. This review shall occur not later than the middle of the permit term and as required by 405 KAR 7:060 and 405 KAR 8:050, Sections 4, 6, and 7.

2. Issued permits shall be reevaluated in accordance with the terms of the permit and the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24, including reevaluation of the bond.

(b) For permits of longer than five (5) year terms, a review of the permit shall be no less frequent than the permit midterm or every five (5) years, whichever is more frequent.

(2) The cabinet may, by order, require revision or modification of the permit provisions to ensure compliance with KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of 400 KAR 1:110, Section 8.

Section 20. Permit Revisions. (1) General. A revision to a permit shall be obtained:

(a) For changes in the surface coal mining and reclamation

operations established in the existing application and approved pursuant to the current permit;

(b) If a revision is required by an order issued pursuant to Section 19(4) of this administrative regulation;

(c) In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued; or

(d) As otherwise required pursuant to 405 KAR Chapters 7 through 24.

(2) Major revisions.

(a) Except as established in subsections (3)(f) and (6) of this section, a revision shall be deemed a major revision if the proposed change is of a scope and nature that public notice is necessary to allow participation in the cabinet's decision by persons who have an interest that ***could[~~may~~]*** be adversely affected by the proposed change. Major revisions shall include:

1. A change in the postmining land use;

2. Enlargement or relocation of impoundments so as to increase the safety hazard classification of the impoundment;

3. A variance to approximate original contour requirements;

4. Construction or relocation of a road, if the construction or relocation could adversely affect the interests of persons other than the surface owner;

5. A change that may adversely affect significant fish and wildlife habitats or endangered species;

6. A proposed experimental practice;

7. A change that may cause a major impact on the hydrologic balance;

8. An incidental boundary revision that affects a new watershed; ***and***

9. An incidental boundary revision that includes a diversion of a perennial stream.

(b) A major revision shall be subject to all of the requirements of Sections 5; 7 through 12; 13(1), (2), (3); 14(1) through (6), (8), (10) through (16), (19) through (21); 15; 16; 18; and 24 of this administrative regulation; and shall be submitted on forms MPA-01 and MPA-03 pursuant to KRS Chapter 350 and 405 KAR Chapters 7 - 24. In addition to the requirements of Section 8(5) of this administrative regulation, the advertisement shall contain a statement that the applicant proposes to revise the existing permit and shall contain a description of the proposed change.

(3) Minor revisions.

(a) A revision that is not determined by the cabinet under subsection (2) of this section to be a major revision, or that is not an operator change revision pursuant to subsection (6) of this section, shall be a minor revision and shall be subject to Sections 5; 7; 12; 13(1), (2), (3); 14(1) through (6), (10) through (16), (19) through (21); 15; 16(1) through (4); 18; and 24 of this administrative regulation, except that a minor field revision established in paragraph (d) of this subsection shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation, and the time frame for review in Section 16(1)(a)3 of this administrative regulation shall begin at the time of application submittal.

(b) If a proposed minor revision is actually a major revision pursuant to Section 13 of this administrative regulation, the cabinet shall so inform the applicant and return the application.

(c)1. The cabinet shall notify, in writing, those persons that could have an interest or ***could[~~may~~]*** be adversely affected by the proposed change.

2. Those persons shall have the right to file written objections to the revision within ten (10) days of the date of the notification.

(d) A minor field revision shall be reviewed and processed in accordance with this section by the appropriate regional office of the department, unless the number of persons that potentially could have an interest or ***could[~~may~~]*** be adversely affected by the proposed change is large enough that public notice by newspaper advertisement rather than individual notice by letter from the cabinet is necessary, the regional administrator shall determine if the proposed minor revision is a major revision and shall not be processed pursuant to this paragraph. The following proposals shall be a minor field revision:

1. Proposals for minor relocation of underground mine entries if:

a. There are no structures or renewable resource lands (pursuant to paragraph (b) of the definition in 405 KAR 8:001(103) of "renewable resource lands") overlying the area;

b. There is no proposed change to the permit boundary; and

c. The proposed new location is on the same face-up area and coal seam as originally permitted, is within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

2. A proposal for retention of a concrete platform or a small building if:

a. There is no proposed change to the previously approved postmining land use; and

b. The application contains a notarized letter from the surface owner requesting retention of the structure;

3.a. A proposal to leave roads as permanent, except proposals involving roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads within areas designated unsuitable for mining pursuant to 405 KAR 24:040, Section 2, regardless of if a previous waiver or approval has been granted.

b. The application shall contain a notarized letter from the surface owner including a request to retain the road and a statement acknowledging that the surface owner understands that the operator does not have responsibility for maintenance of the road after the performance bond has been released pursuant to 405 KAR 10:040 for the area in which the road is located.

4. A proposal to increase the diameter of a culvert used as a road crossdrain, not including a culvert used for a stream crossing, if the proposed culvert is the same type of pipe as the previously approved culvert;

5. A proposal to install an additional culvert used as a road crossdrain (not including a culvert used for a stream crossing), if the diameter of the proposed additional culvert is equal to the diameter of the nearest downstream crossdrain and if it is the same type of pipe as the nearest downstream crossdrain;

6. A proposal for a minor relocation of an on-bench sediment control structure (dugouts only) in order to locate the structure at a low spot on the same bench on which initially proposed, if:

a. The drainage area to the structure shall remain the same as the original design;

b. The proposed location shall not cause short-circuiting of the structure; and

c. There is no proposed change to the permit boundary;

7. A proposal to retain diversions of overland flow (not including stream diversions) as permanent facilities if:

a. The application contains a notarized letter from the surface owner including a request to retain the diversion and a statement accepting maintenance responsibilities for the diversion; and

b. The diversions have previously been designed to the standards for permanent diversions;

8. A proposal for relocation of topsoil storage areas if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

9. A proposal to substitute a plant species if:

a. The proposed species is of the same vegetative type (grass, legume, tree, or shrub) as the original species;

b. The proposed species will serve the equivalent function of the original species with respect to the previously approved revegetation plan, postmining land use plan, and the fish and wildlife protection and enhancement plan; and

c. The proposed species and its application or planting rate are compatible with the remainder of the previously approved species mixture to be planted;

10. A proposal to utilize hydroseeding for trees instead of

planting trees or tree seedlings if:

a. Hydroseeding is an appropriate method for the tree species being established; and

b. A change in tree species is not involved unless concurrently approved pursuant to subparagraph 9 of this paragraph;

11. A proposal to change the type of mulch to be utilized on the permit area, including a revised rate of application consistent with the different type of mulch proposed;

12. A proposal to retain small depressions in the reclaimed area;

13. A proposal required by the cabinet to increase frequency of air blast monitoring;

14. A proposal required by the cabinet to increase frequency of air pollution monitoring;

15. A proposal to employ more effective fugitive dust controls, and proposals required by the cabinet to employ additional fugitive dust controls;

16. A proposal to add a portable coal crusher if:

a. The crusher and associated conveying equipment are a completely portable, trailer-mounted unit;

b. The equipment shall be utilized to crush coal only from the permit area on which it is proposed to be located;

c. The operation shall not generate coal mine waste;

d. There is no proposed change to the permit boundary; and

e. The equipment shall always be located in the mining pit or other location previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there shall be no additional disturbed acreage or delayed reclamation within the drainage area of any of the sedimentation ponds;

17. A proposal to change the time periods, or the types or patterns of warning or all-clear signals, when explosives are to be detonated;

18. A proposal to relocate an explosive storage area within the existing permit area in accordance with 27 C.F.R. 555.206, 555.218, 555.219, and 555.220, and 30 C.F.R. 77.1301(c);

19. Approval for minor relocation of a support facility such as a conveyor, hopper, or a coal stockpile if:

a. There is no proposed change to the permit boundary; and

b. The proposed new location was previously permitted as a disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond;

20. A proposal for a modification of a shared facility if that modification has already been approved in a revision for one (1) of the permittees by the Division of Mine Permits and no additional performance bond was required for the initial revision;

21. A proposal to add a hopper to a permitted area if:

a. There is no proposed change to the permit boundary; and

b. The proposed location was previously permitted as a disturbed area controlled by a previously approved sedimentation pond and there will be no additional disturbed acreage or delayed reclamation within the drainage area of that sedimentation pond;

22. A proposal to change the brush disposal plan, not including any proposals to bury brush in the backfill area on steep slopes or in excess spoil fills or coal mine waste fills;

23. A proposal to change the basis of judging revegetation from reference areas to the technical standards established in 405 KAR Chapters 7 - 24;

24.a. A proposal for an incidental boundary revision for a minor off-permit disturbance if:

(i) The total acreage of the minor off-permit disturbance is no more than one (1) acre combined per proposal;

(ii) The cumulative acreage limitation in subsection (5) of this section is not exceeded;

(iii) The area to be permitted does not include any wetlands, prime farmlands, stream buffer zones, federal lands, habitats of unusually high value for fish or wildlife, an area that may contain threatened or endangered species, or an area designated as unsuitable for mining pursuant to 405 KAR Chapter 24;

(iv) The off-permit disturbance was not a coal extraction area nor shall any future coal extraction occur on the area;

(v) There is no structure such as an excess spoil disposal fill, a coal mine waste disposal fill or impoundment, or a water impoundment involved;

(vi) The surface owner of the area to be permitted is a surface owner of a disturbed area pursuant to the existing permit; and

(vii) An additional performance bond in the amount of $5,000 has been filed by the permittee.

b. The regional administrator, as established in paragraph (b) of this subsection, may decline to review and process a proposal to permit an off-permit disturbance as a minor field revision and instead requires that an application be submitted to the Division of Mine Permits;

25. Except as established in clauses a. through e. of this subparagraph, a proposal to remove a sedimentation pond previously approved as a permanent impoundment if the application contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. A proposal to remove a sedimentation pond shall not be processed as a minor field revision if the:

a. As established in 405 KAR 7:040, Section 5, structure has a hazard classification of B or C;

b. Impoundment is a developed water resource land use;

c. Removal or activities associated with the removal of the structure may adversely affect significant fish and wildlife habitats or threatened or endangered species;

d. Impoundment may be a necessary element in the achievement of the previously approved postmining land use (such as a stock pond for pastureland if no other nearby source of water is available to the livestock); or

e. Impoundment was originally planned to be left for the purpose, in whole or in part, of enhancing fish and wildlife and related environmental values;

26. A proposal to approve an exemption from the requirement to pass drainage through a sedimentation pond for a disturbed area that, due to unexpected field conditions, will not drain to an approved sedimentation pond if:

a. There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated and none is expected based on overburden analysis;

b. The application contains a justification that it is not feasible to control the drainage by a sedimentation pond;

c. The disturbed area is one (1) acre or less;

d. The application contains a plan to immediately implement alternate sedimentation control measures including, at a minimum, mulching, silt fences, straw bale dikes, and establishment of a quick growing temporary vegetative cover;

e. The application contains sufficient plan views and cross sections certified by a registered professional engineer to clearly illustrate the feasibility of the proposal and the location of the alternate control methods (minimum scale one (1) inch equals 100 feet); and

f. The application contains an MRP map certified by a professional engineer showing the location of the disturbed area and the drainage area clearly; and

27. A proposal to use the Reclamation Advisory Memorandum #124 reclamation practice on sites where the permittee is required to establish trees and shrubs as part of the approved reclamation plan if there is a letter of consent from the property owner.

(e) Proposed minor revisions that only seek to change the engineering design of impoundments and diversions of overland flow if no change in permit boundary is involved shall not be subject to the administrative completeness determination of Section 13(2) of this administrative regulation.

1. Within ten (10) days the cabinet shall process the application and provide a written notice stating the application has been determined to be subject to this paragraph and is being forwarded to technical review.

2. The time frame for review in Section 16(1)(a)3 of this

administrative regulation shall begin at the time of this notice.

(f) An incidental boundary revision shall be deemed a minor revision if it:

1. Does not exceed ten (10) percent of the relevant surface or underground acreage in the original or amended permit area;

2. Is contiguous to the current permit area;

3. Is within the same watershed as the current permit area;

4. Is required for an orderly continuation of the mining operation;

5. Involves mining of the same coal seam or seams as in the current permit;

6. Involves only lands for which the hydrologic and geologic data and the probable hydrologic consequences determination in the current permit are applicable;

7. Does not involve a property on which mining is prohibited pursuant to KRS 350.085 and 405 KAR 24:040, unless a waiver has been obtained, or that has been designated as unsuitable for mining pursuant to 405 KAR 24:030, or is a property eligible for listing on the National Register of Historic Places;

8. Does not involve any of the categories of mining in 405 KAR 7:060 and 405 KAR 8:050 unless the current permit already includes the relevant category;

9. Does not constitute a change in the current method of mining; and

10. Shall be reclaimed in conformity with the current reclamation plan.

(g) Extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed surface disturbances shall be minor revisions.

(4) An extension to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new or amended permit and shall not be approved pursuant to this section.

(5) Size limitations for incidental boundary revisions.

(a) For surface mining activities, an incidental boundary revision shall not exceed ten (10) percent of the acreage in the original or amended permit area and shall not exceed twenty (20) acres.

(b) For underground mining activities and auger mining, an incidental boundary revision for a surface operation and an incidental boundary revision for underground workings shall be determined separately.

1. For surface operations, an incidental boundary revision shall not exceed the greater of two (2) acres or ten (10) percent of the acreage of surface operations in the original or amended permit area and shall not exceed twenty (20) acres.

2. For underground workings, an incidental boundary revision shall not exceed ten (10) percent of the acreage of underground workings in the original or amended permit area and shall not exceed twenty (20) acres.

(c)1. Cumulative incidental acreage added by successive incidental boundary revisions shall not exceed the limitations in this subsection.

2. Acreage added by incidental boundary revisions prior to a permit amendment shall not be counted toward cumulative incidental acreage after the amendment.

(6) Operator change revisions.

(a) This subsection shall apply to all operator changes that do not constitute a transfer, assignment, or sale of permit rights.

(b) A permittee proposing to change the operator approved in the permit shall submit a complete and accurate application for approval of the change.

(c) The application shall include:

1. The permit number, the name and business address of the permittee, the telephone number of the permittee, and the identifying number assigned to the permittee by the cabinet;

2. The name, business address, and telephone number of the operator approved in the permit, and the identifying number, if any, assigned to the approved operator by the cabinet;

3. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by Sections 2(1) through (4) and (8) of 405 KAR 8:030 and 405 KAR 8:040, and Sections 2(11) through (13) of those administrative regulations; and

4. For the proposed operator and persons related to the proposed operator through ownership or control, the same information as required for applicants and persons related to applicants through ownership or control by 405 KAR 8:030, Section 3 and 8:040 shall be required***[;]***.

(d) The application shall be verified under oath by the permittee and the proposed operator in the manner required pursuant to Section 7 of this administrative regulation.

(e) On or after the date the application has been submitted to the cabinet, the application shall be advertised in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the proposed surface coal mining and reclamation operations are to be located.

1. The advertisement shall be entitled "Notice of Intention to Mine" and shall be as established in Section 8(5) of this administrative regulation.

2. A copy of the advertisement and proof of publication shall be filed with the cabinet and made a part of the application not later than fifteen (15) days after the date of publication. The advertisement shall include:

a. The permit number;

b. The geographic location of the permit area;

c. The name and business address of the permittee;

d. A statement that the permittee proposes to change the operator approved in the permit;

e. The names and business addresses of the currently approved operator and the proposed operator;

f. The cabinet address to which written comments may be sent pursuant to paragraph (f) of this subsection; and

g. The time available for submission of the comments.

(f) A person whose interests are or ***could[~~may~~]*** be adversely affected by the cabinet's decision on the proposed operator change, including an officer of a federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days after the date of publication of the advertisement.

(g) The cabinet shall approve or disapprove the proposed operator change if it finds, in writing, that the proposed operator:

1. Is eligible to act as an operator pursuant to the criteria in Section 13(4) of this administrative regulation; and

2. Meets the other applicable requirements of KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(h)1. The cabinet shall notify in writing the permittee, the proposed operator, and any commenters on the application, of its decision to approve or deny the application within fifteen (15) working days after the close of the public comment period pursuant to paragraph (f) of this subsection.

2. A period of temporary withdrawal shall not be counted against the fifteen (15) working day period available to the cabinet. If the notice, hearing, and conference procedures mandated by KRS Chapter 350 and KAR Title 405 prevent a decision from being made within the time period established in this paragraph, then the cabinet shall have additional time to issue its decision, but not to exceed twenty (20) days from the completion of the notice, hearing, and conference procedures.

(7) Fees. An application for a revision shall include a basic fee, except that a minor field revision and an operator change revision shall not have a basic fee.

(a) The fee for a revision shall be $1,750 for a major revision and $750 for a minor revision.

(b) If the revision application proposes an incidental boundary revision that would increase the acreage in the permit, an additional acreage fee of seventy-five (75) dollars per acre, or fraction thereof, shall be included with the application. An acreage fee shall not be required for shadow area that will not be affected by surface operations and facilities.

Section 21. Permit Renewals. (1) General requirements for

renewal. Any valid, existing permit issued pursuant to 405 KAR Chapter 8 shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(2) Contents of renewal applications. An application for renewal of a permit shall be submitted within the time established by Section 2(2)(b) of this administrative regulation. Renewal applications shall be submitted on form MPA-09, Application for Renewal of a Mining Permit, and in accordance with this section, and shall include:

(a) The name and address of the permittee, the term of the renewal requested and the permit number;

(b) A copy of the proposed newspaper notice and proof of publication of same pursuant to Section 8 of this administrative regulation;

(c) Evidence that liability insurance pursuant to 405 KAR 10:030, Section 4, for the proposed period of renewal;

(d) A renewal fee of $750;

(e) Evidence that the performance bond shall continue in effect for any renewal requested, as well as any additional bond required by the cabinet pursuant to 405 KAR 10:020; and

(f) Any additional, updated, or revised information required to demonstrate compliance with KRS Chapter 350 and 405 KAR Chapters 7 - 24.

(3) An application for renewal shall be subject to the requirements of Sections 8 through 11, 13, and 16 of this administrative regulation.

(4) An application for renewal shall not include any proposed revisions to the permit. Revisions shall be made by separate application and shall be subject to the requirements of Section 20 of this administrative regulation.

(5) Term of renewal. Any permit renewal shall be for a term not to exceed the period of the original permit established pursuant to Section 17 of this administrative regulation.

(6) Approval or denial of renewal applications.

(a) The cabinet shall approve a complete and accurate application for permit renewal, unless it finds, in writing, that:

1. The terms and conditions of the existing permit are not being ***[satisfactorily]***met;

2. The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards pursuant to KRS Chapter 350 and 405 KAR Chapters 7 through 24;

3. The requested renewal substantially jeopardizes the applicant's continuing responsibility to comply with KRS Chapter 350 and 405 KAR Chapters 7 through 24 on existing permit areas;

4. The applicant has not provided evidence that any performance bond required for the operations shall continue in effect for the proposed period of renewal, as well as any additional bond the cabinet ***requires[might require]*** pursuant to 405 KAR Chapter 10;

5. Any additional revised or updated information required by the cabinet pursuant to this administrative regulation has not been provided by the applicant; or

6. The applicant has not provided evidence of having liability insurance in accordance with 405 KAR 10:030, Section 4.

(b) In determining if to approve or deny a renewal, the burden shall be on the opponents of renewal.

(c) The cabinet shall send copies of its decision to the applicant, any persons who filed objections or comments to the renewal, any persons who were parties to any informal conference held on the permit renewal, and to the field office director of the Office of Surface Mining Reclamation and Enforcement.

(d) Any person having an interest that is or may be adversely affected by the decision of the cabinet shall have the right to administrative and judicial review established in Section 24 of this administrative regulation.

Section 22. Transfer, Assignment, or Sale of Permit Rights. (1) General. A transfer, assignment, or sale of the rights granted pursuant to any permit issued pursuant to KAR Title 405 shall not be made without the prior written approval of the cabinet, in accordance with this section.

(2) Application requirements. An applicant (successor) for approval of the transfer, assignment, or sale of permit rights shall:

(a) Provide a complete and accurate application for the approval of the proposed transfer, assignment, or sale. The application shall be signed by both the existing holder of permit rights and the applicant for succession and the applicant shall submit:

1. The name and address of the existing permittee and the permit number;

2. A brief description of the proposed action requiring approval;

3. The legal, financial, compliance, and related information required by 405 KAR 8:030, Sections 2 through 10 and 405 KAR 8:040, Sections 2 through 10; and

4. A processing fee of $750;

(b) Advertise the filing of the application in the newspaper of largest bona fide circulation, according to KRS 424.110 to 424.120, in the county where the operations are located, indicating the name and address of the applicant, the original permittee, the permit number, the geographic location of the permit, and the address to which written comments may be sent pursuant to subsection (3) of this section; and

(c) Obtain sufficient performance bond coverage that shall ensure reclamation of all lands affected by the permit, including areas previously affected by the existing permittee on the permit being transferred.

(3) Public participation. Any person whose interests are or ***could[may]*** be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any federal, state, or local government agency, may submit written comments on the application to the cabinet within fifteen (15) days of the date of publication of the advertisement.

(4) Criteria for approval. The cabinet may allow a permittee to transfer, assign, or sell permit rights to a successor if it finds, in writing, that the successor:

(a) Is eligible to receive a permit in accordance with the criteria established in Section 14 of this administrative regulation;

(b) Has submitted a performance bond, in accordance with 405 KAR Chapter 10, which shall ensure reclamation of all lands affected by the permit, including areas previously disturbed by the existing permittee on the permit being transferred and that is at least equivalent to the bond of the existing permittee;***[and]***

(c) Has submitted proof that liability insurance, as required by 405 KAR 10:030, Section 4, has been obtained; and

(d) Meets all requirements necessary to ensure compliance with KRS Chapter 350 or 405 KAR Chapters 7 through 24.

(5) Notice of decision. The cabinet shall notify the original permittee, the successor, any commenters or objectors, and the field office director of the Office of Surface Mining Reclamation and Enforcement of its final decision.

(6) Permit reissuance. After receiving the notice established in subsection (5) of this section, the successor shall immediately provide proof to the cabinet of the consummation of the transfer, assignment, or sale of permit rights. Upon submission of this proof, the cabinet shall reissue the original permit in the name of the successor.

(7) Rights of successor.

(a) All rights and liabilities pursuant to the original permit shall pass to the successor upon reissuance of the permit, except that the original permittee shall remain liable for any civil penalties resulting from violations occurring prior to the date of reissuance of the permit.

(b) The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit pursuant to KRS 350.130(3).

(8) Requirements for new permits for persons succeeding to rights granted pursuant to a permit.

(a) A successor in interest who is able to obtain appropriate bond coverage may continue surface coal mining and reclamation operations according to the approved mining and reclamation plan and permit of the original permittee.

(b) A successor in interest seeking to change the conditions of

mining or reclamation operations or any of the terms or conditions of the original permit shall make application for a new permit, revision, or amendment, as appropriate.

(9) Release of bond liability. The cabinet shall release the prior permittee from bond liability on the permit area if the successor in interest has:

(a) Filed a performance bond satisfactory to the cabinet;

(b) Received written approval of the cabinet for the transfer, sale, or assignment of rights;

(c) Submitted proof of execution of the agreement; and

(d) Assumed the liability pursuant to KAR Title 405 for the reclamation of the areas affected by all prior permittees.

Section 23. Amendments. (1) Except for an incidental boundary revision, an extension to an area covered by a permit shall not be approved, as established in Sections 20 (permit revisions) or 21 (permit renewals) of this administrative regulation.

(a) An extension shall be made by application for another permit.

(b) If the permittee desires to add the new area to an existing permit in order to have existing areas and new areas under one (1) permit, the cabinet shall amend the original permit, if the applicant complies with procedures and requirements applicable to an application for an original permit in accordance with KAR Title 405 amend the original permit, but the application for the new area shall be subject to all procedures and requirements applicable to applications for original permits pursuant to KAR Title 405.

(2) A fee for an amendment to existing permits shall be submitted to the cabinet as established in Section 6(2) of this administrative regulation.

Section 24. Administrative and Judicial Review. (1) Following the final decision of the cabinet concerning the application for a permit, revision, or renewal thereof, application for transfer, sale, or assignment of rights or concerning an application for coal exploration, the applicant, permittee, or any person with an interest that ***could[~~may~~]*** be adversely affected may request a hearing on the reasons for the final decision. The request shall be in accordance with 400 KAR 1:110, Section 8.

(2) Any applicant or any person with an interest that ***could[~~may~~]*** be adversely affected and who has participated in the administrative proceedings as an objector shall have the right to:

(a) Judicial review as provided in KRS 350.0301 and 350.0305 if the applicant or person is aggrieved by the decision of the cabinet in an administrative hearing requested pursuant to subsection (1) of this section; or

(b) An action in mandamus pursuant to KRS 350.250 if the cabinet fails to act within time limits established in KRS Chapter 350 or 405 KAR Chapters 7 through 24.

Section 25. Improvidently Issued Permits. (1) Permit review. If the cabinet has reason to believe that it improvidently issued a surface coal mining and reclamation permit, the cabinet shall review the circumstances under which the permit was issued, using the criteria in subsection (2) of this section. If the cabinet finds that the permit was improvidently issued, the cabinet shall comply with subsection (3) of this section.

(2) Review criteria. The cabinet shall find that a surface coal mining and reclamation permit was improvidently issued if:

(a) Pursuant to the violation review criteria of the cabinet upon permit issuance:

1. The cabinet should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

2. The permit was issued on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued;

(b) The violation, penalty, or fee:

1. Remains unabated or delinquent; and

2. Is not the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; and

(c) If the permittee was linked to the violation, penalty, or fee through ownership or control, pursuant to the violations review criteria of the regulatory program upon permit issuance an ownership or control link between the permittee and the person responsible for the violation, penalty, or fee still exists, or if the link was severed the permittee continues to be responsible for the violation, penalty, or fee.

(3) Remedial measures. If the cabinet, pursuant to subsection (2) of this section, finds that because of an unabated violation or a delinquent penalty or fee a permit was improvidently issued, the cabinet shall use one (1) or more of the following remedial measures:

(a) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(b) Impose on the permit a condition requiring that in a specified period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(c) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(d) Rescind the permit pursuant to subsection (4) of this section.

(4) Rescission procedures. If the cabinet, pursuant to subsection (3)(d) of this section, elects to rescind an improvidently issued permit, the cabinet shall serve on the permittee a notice of proposed suspension and rescission that includes the reasons for the finding of the cabinet pursuant to subsection (2) of this section and states that:

(a) Automatic suspension and rescission. After a specified period of time not to exceed ninety (90) days the permit automatically shall become suspended, and not to exceed ninety (90) days thereafter rescinded, unless within those periods the permittee submits proof, and the cabinet finds, that:

1. The finding of the cabinet pursuant to subsection (2) of this section was erroneous;

2. The permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee***[~~, to the satisfaction of the responsible agency~~]***;

3. The violation, penalty, or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying ***with[~~to the satisfaction of~~]*** the responsible agency; or

4. Since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty, or fee;

(b) Cessation of operations. After permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations pursuant to the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the cabinet; and

(c) Right to request a formal hearing. Any permittee aggrieved by the notice may request a formal hearing. A formal hearing shall be in accordance with 400 KAR 1:110, Section 9.

Section 26. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Preliminary Application", MPA-00, October 2017;

(b) "Permittee Information for a Mining Permit", MPA-01, August 2010;

(c) "Operator Information for a Mining Permit", MPA-02, August 2010;

(d) "Technical Information for a Mining Permit", MPA-03, October 2017;

(e) "Surface Owner's Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.B, November 1991;

(f) "Disinterested Third Party Affidavit: Lands Historically Used for Cropland", MPA-03-20.1.C, November 1991;

(g) "Update of Permittee or Operator Information", MPA-05, August 2010;

(h) "Change of Corporate Owners, Officers or Directors", MPA-

06, October 2017;

(i) "Application to Transfer a Mining Permit", MPA-07, June 2013;

(j) "Revision Application to Change Operator", MPA-08, August 2010;

(k) "Application for Renewal of a Mining Permit", MPA-09, August 2017;

(l) "Application for a Coal Marketing Deferment", MPA-10, August 2017

(m) "Minor Field Revision Application Form", SME 80, revised August 2010; and

(n) "Reclamation Advisory Memorandum #124, Reforestation Initiative", March 1997.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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 Permits
(As Amended at ARRS, January 13, 2020)

405 KAR 8:030. Surface coal mining permits.

RELATES TO: KRS 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.060, 350.465, 7 C.F.R. Part 657, 30 C.F.R. Parts 77.216-1, 77.216-2, 730-733, 735, 773.13(a), 778-780, 785.17(b), (d), 917, 40 C.F.R. Parts 136, 434, 16 U.S.C. 1276(a), 1531 – 1544, 30 U.S.C. 1253, 1255, 1257, 1258, 1267

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.060(13), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes requirements for granting a surface coal mining permit. This administrative regulation differs from 30 C.F.R. 780.25. Section 34(3) and (5) of this administrative regulation require that the permit applicant submit to the cabinet after approval by the Mine Safety and Health Administration (MSHA), a: (1) Copy of the final approved design plans for impounding structures; (2) Copy of all correspondence with MSHA; (3) Copy of technical support documents requested by MSHA; and (4) Notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

Section 1. General. (1) This administrative regulation applies to any person who applies for a permit to conduct surface mining activities.

(2) The requirements ***established[~~set forth~~]*** in this administrative regulation specifically for applications for permits to conduct surface mining activities are in addition to the requirements applicable to all applications for permits to conduct surface coal mining and reclamation operations as ***established[~~set forth~~]*** in 405 KAR 8:010.

(3) This administrative regulation ***establishes[~~sets forth~~]*** information required to be contained in each application for a permit to conduct surface mining activities, including:

(a) Legal, financial, compliance, and related information;

(b) Environmental resources information; and

(c) Mining and reclamation plan information.

Section 2. Identification of Interests. (1) An application shall contain the following information, except that the submission of a Social Security number shall be voluntary:

(a) A statement identifying if the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

(b) The name, address, telephone number and, as applicable, Social Security number, and employer identification number of the:

1. Applicant;

2. Applicant's resident agent; and

3. Person who will pay the abandoned mine land reclamation fee;

(c) For each person who owns or controls the applicant:

1. The person's name, address, Social Security number, and employer identification number;

2. The person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

3. The title of the person's position, date position was assumed, and when submitted under 405 KAR 8:010, Section 18(5) date of departure from the position;

4. Each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five (5) years preceding the date of the application; and

5. The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States;

(d) For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant, the operation's:

1. Name, address, identifying numbers, including employer identification number, federal or state permit number, and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and

2. Ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

(e) The names and addresses of:

1. Every legal or equitable owner of record of the property to be mined;

2. The holders of record of any leasehold interest in the property to be mined; and

3. Any purchaser of record, under a real estate contract, of the property to be mined;

(f) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area;

(g) The name of the proposed mine and all MSHA identification numbers that have been assigned for the mine and all mine associated structures that require MSHA approval;

(h) Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the power to represent the applicant in the permit matter; and

(i) A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands that are contiguous to the area to be covered by the permit.

(2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsection (1)(a) through (d) of this section.

(3) The permittee shall, in writing, inform the cabinet of any change of the permittee's address immediately if changed at any point prior to final bond release.

(4) The permittee shall submit updates of the information established in paragraphs (a) through (c) of this subsection in writing to the cabinet within thirty (30) days of the effective date of any change. An update shall be submitted for any changes that occur at any point prior to final bond release. Failure to submit updated information shall constitute a violation of KRS Chapter 350 only upon the permittee's refusal or failure to timely submit the

information to the cabinet upon request. After the permittee's refusal or failure to timely submit the information to the cabinet upon request, the cabinet may suspend the permit after opportunity for hearing pending compliance with this subsection***. This information shall include***:

(a) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the permittee;

(b) The names and addresses of principal shareholders; and

(c) If the permittee or other persons ***established[~~specified~~]*** in this subsection are subject to any of the provisions of KRS 350.130(3).

Section 3. Violation Information. (1) Each application shall contain:

(a) A statement identifying if the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has:

1. Had a coal mining permit of the United States or any state suspended or revoked in the five (5) years preceding the date of submission of the application; or

2. Forfeited a coal mining performance bond or similar security deposited in lieu of bond;

(b) If any suspension, revocation, or forfeiture as established in paragraph (a) of this subsection has occurred, a statement of the facts involved, including:

1. Identification number and date of issuance of the permit, and date and amount of bond or similar security;

2. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;

3. The current status of the permit, bond, or similar security involved;

4. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

5. The current status of these proceedings; and

(c) For any violation of a provision of SMCRA***;[,]*** federal regulations enacted pursuant to SMCRA***;[,]*** KRS Chapter 350 and administrative regulations adopted pursuant thereto***;[,]*** any other state's laws or regulations under SMCRA***;[,]*** any federal law, rule, or regulation pertaining to air or water environmental protection***;[,]*** or any Kentucky or other state's law, rule, or regulation enacted pursuant to federal law, rule, or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant during the three (3) year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include***[~~the following information~~]***, as applicable:

1. Any identifying numbers for the operation, including the federal or state permit number and MSHA number; the dates of issuance of the violation notice and MSHA number; the name of the person to whom the violation notice was issued; and the name of the issuing regulatory authority, department, or agency;

2. A brief description of the particular violation alleged in the notice;

3. The final resolution of each violation notice, if any; and

4. For each violation notice that has not been finally resolved:

a. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person identified in this subsection to obtain administrative or judicial review of the violation;

b. The current status of the proceedings and of the violation notice; and

c. The actions, if any, taken or being taken by any person identified in this subsection to abate the violation.

(2) After an applicant has been notified that his or her application has been approved, but before the permit is issued, if necessary, the applicant shall update the application to indicate what change, if any, has occurred in the information previously submitted under subsection (1) of this section.

(3) Upon request by a small operator, the cabinet shall provide to the small operator, with regard to persons under subsection (1) of this section who are identified by the small operator, the compliance information required by this section regarding suspension and revocation of permits and forfeiture of bonds under KRS Chapter 350, and information pertaining to violations of KRS Chapter 350 and administrative regulations promulgated thereunder.

Section 4. Right of Entry and Right to Surface Mine. (1) Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface mining activities in the permit area and if that right is the subject of pending litigation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(2) If the private mineral estate to be mined has been severed from the private surface estate, the application shall contain:

(a) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(b) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(c) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable state law, the applicant has the legal authority to extract coal by those methods.

(3) Nothing in this section shall be construed to authorize the cabinet to adjudicate property rights disputes.

Section 5. Relationship to Areas Designated Unsuitable for Mining. (1) Each application shall contain a statement of available information identifying if the proposed permit area is within an area designated unsuitable for surface mining activities under 405 KAR Chapter 24 or under study for designation in an administrative proceeding under that chapter.

(2) If an applicant claims the exemption in 405 KAR 8:010, Section 14(4)(b), the application shall contain information supporting the applicant's assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface mining activities.

(3) If an applicant proposes to conduct surface mining activities within 300 feet of an occupied dwelling, the application shall contain the waiver of the owner of the dwelling as required in 405 KAR 24:040, Section 2(5).

(4) If the applicant proposes to conduct surface mining activities within 100 feet of a public road, the requirements of 405 KAR 24:040, Section 2(6) shall be met.

Section 6. Permit Term Information. (1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres of land to be affected for each phase of mining and over the total life of the permit.

(2) If the applicant proposes to conduct the surface mining activities in excess of five (5) years, the application shall contain the information needed for the showing required under 405 KAR 8:010, Section 17(1).

Section 7. Personal Injury and Property Damage Insurance Information. Each permit application shall contain a certificate of liability insurance according to 405 KAR 10:030, Section 4.

Section 8. Identification of Other Licenses and Permits. Each application shall contain a list of all other licenses and permits needed by the applicant to conduct the proposed surface mining activities. This list shall identify each license and permit by:

(1) Type of permit or license;

(2) Name and address of issuing authority;

(3) Identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

(4) If a decision has been made, the date of approval or disapproval by each issuing authority.

Section 9. Identification of Location of Public Office for Filing of Application. Each application shall identify, by name and address, the appropriate regional office of the cabinet where the applicant will file a copy of the entire application for public inspection under 405 KAR 8:010, Section 8(8).

Section 10. Newspaper Advertisement and Proof of Publication. A copy of the newspaper advertisement of the application for a permit, major revision, amendment, transfer, or renewal of a permit and proof of publication of the advertisement***[, which is acceptable to the cabinet,]*** shall be filed with the cabinet and made a part of the application, not later than fifteen (15) days after the last date of publication required under 405 KAR 8:010, Section 8(2).

Section 11. Environmental Resources Information. (1) Each permit application shall include a description of the existing environmental resources within the proposed permit area and adjacent areas as required by Sections 11 through 23 of this administrative regulation. The description required by this administrative regulation may, where appropriate, be based upon published texts or other public documents together with reasonable extrapolations from specific data available from existing permit areas or other appropriate areas.

(2)(a) Each application shall describe and identify the nature of cultural, historic, and archaeological resources listed or eligible for listing on the National Register of Historic Places and known archaeological sites within the proposed permit area and adjacent areas. The description shall be based on all available information, including information from the state Historic Preservation Officer and from local archaeological, historical, and cultural preservation agencies.

(b) According to historical databases, the cabinet may require the applicant to identify and evaluate important historic and archaeological resources that may be eligible for listing on the National Register of Historic Places, through collection of additional information, field investigations, or other appropriate analyses.

Section 12. General Requirements for Baseline Geologic and Hydrologic Information. (1) The application shall contain baseline geologic and hydrologic information that has been collected, analyzed, and submitted in the detail and manner sufficient to:

(a) Identify and describe protective measures pursuant to Section 32(1) of this administrative regulation that will be implemented during the mining and reclamation process to assure protection of the hydrologic balance or to demonstrate that protection of the hydrologic balance can be assured without the design and installation of protective measures, and to design necessary protective measures pursuant to Section 32(2) of this administrative regulation;

(b) Determine the probable hydrologic consequences of the mining and reclamation operations upon the hydrologic balance in the permit area and adjacent area pursuant to Section 32(3) of this administrative regulation so that an assessment can be made by the cabinet pursuant to 405 KAR 8:010, Section 14(3) of the probable cumulative impacts of all anticipated mining on the hydrologic balance in the cumulative impact area;

(c) Determine pursuant to 405 KAR 8:010, Section 14(2) and (3) if reclamation as required by 405 KAR can be accomplished and if the proposed operation has been designed to prevent material damage to the hydrologic balance; and

(d) Design surface and groundwater monitoring systems pursuant to Section 32(4) of this administrative regulation for the during-mining and postmining time period which, together with the baseline data collected under Sections 14(1) and 15(1) of this administrative regulation, shall demonstrate if the mining operation is meeting applicable effluent limitations and stream standards and protecting the hydrologic balance.

(2)(a) Geologic and hydrologic information pertaining to the area outside the permit and adjacent area but within the cumulative impact assessment area shall be provided to the applicant by the cabinet if this information is:

1. Needed in preparing the cumulative impact assessment; and

2. Available from an appropriate federal or state agency.

(b) If this information is needed by the cabinet for conducting the cumulative impact assessment and is not available from a federal or state agency, the applicant may gather and submit this information to the cabinet as part of the permit application.

(3) Interpolation, modeling, correlation, or other statistical methods, and other data extrapolation techniques may be used if the applicant can demonstrate that the data extrapolation techniques are valid and that information obtained through the techniques meets the requirements of subsection (1) of this section.

(4) Water quality analysis and sampling required by this chapter shall be conducted according to:

(a) Standard Methods for the Examination of Water and Wastewater (14th Edition); or

(b) 40 C.F.R. Parts 136 and 434.

Section 13. Baseline Geologic Information. (1) The application shall contain baseline geologic information collected from the permit area that shall meet the requirements of Section 12(1) of this administrative regulation and shall include at a minimum:

(a) The results of samples obtained from continuous cores; drill cuttings; channel cuttings from fresh, unweathered, rock outcrops; or other rock or soil material ***that[which]*** has been collected using ***[acceptable]***sampling techniques ***appropriate for the material type***.

1. The vertical extent of sampling shall include those strata from the surface down to and including the stratum immediately below the lowest coal seam to be mined.

2. Where aquifers located within the permit area underlie the lowest coal seam to be mined and these aquifers may be adversely affected by the mining operation, the vertical extent of sampling shall also include those strata from the lowest coal seam to be mined down to and including the aquifers.

3. The area and vertical density of sampling shall, at a minimum, be sufficient to determine the distribution of strata that have a potential to produce acid drainage and to determine the area and vertical extent of aquifers that ***could[may]*** be adversely affected.

4. If the vertical extent, and the area and vertical density of sampling ***established[specified]*** in subparagraphs 1 through 3 of this paragraph are not sufficient to locate suitable strata for use as a topsoil substitute, or for other required design or analysis, additional sampling shall be conducted as necessary to furnish adequate geologic information;

(b) Chemical analyses including maximum potential acidity and neutralization potential of each overburden stratum and the stratum immediately below the lowest coal seam to be mined, to identify those strata ***that[which]*** have a potential to produce acid or toxic drainage; and

(c) Chemical analyses of the coal seam to be mined to determine the potential to produce acid or toxic drainage, including the parameters of total sulfur and pyritic sulfur; except that the cabinet shall not require an analysis for pyritic sulfur if the applicant can demonstrate that an analysis for total sulfur provides adequate information to assure protection of the hydrologic balance.

(2) Collection of geologic information from the permit area as required in this subsection may be waived in whole or in part if:

(a)***1.*** The applicant can demonstrate through geologic correlation or other procedures that information collected from outside the permit area is representative of the permit area and is sufficient to meet the requirements of Section 12(1) of this administrative regulation; or

2.[(b)] Other information equivalent to that required by this subsection is available to the cabinet and is made a part of the

permit application; and

(b)[(c)] The cabinet provides a written statement granting a waiver.

(3) The application shall contain a description of the geology of the proposed permit area and adjacent area that shall meet the requirements of Section 12(1) of this administrative regulation and be based on the information required in subsection (1) of this section or other appropriate geologic information. The description shall include, at a minimum, geologic logs, cross-sections, fence diagrams, or other appropriate illustrations and written descriptions depicting:

(a) Within the permit area:

1. The structural geology and lithology of overburden strata and the stratum immediately below the lowest coal seam to be mined;

2. The thickness and chemical characteristics of each overburden stratum and the stratum immediately below the lowest coal seam to be mined; and

3. Where aquifers ***could[~~may~~]*** be adversely affected by the mining operation, the structural geology, lithology, thickness, and area extent of the aquifers; and structural geology and lithology of strata, and thickness of each stratum, from the surface down to the aquifers; and

(b) Within the adjacent area, the approximate area extent and approximate thickness of aquifers that ***could[~~may~~]*** be adversely affected by the mining operation.

(4) If necessary to assure adequate reclamation and protection of the hydrologic balance, the cabinet shall require geologic information and description in addition to that required by subsections (1) and (2) of this section including leaching tests of material from strata that ***could[~~may~~]*** be disturbed by the operation to determine the potential for the operation to produce drainage with elevated levels of acidity, sulfate, and total dissolved solids, and the collection of information to greater depths within the proposed permit area or the collection of information for areas outside the proposed permit area.

Section 14. Baseline Groundwater Information. (1) The application shall contain baseline groundwater information for the permit area and adjacent area that shall be collected and submitted in a manner adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Groundwater information shall include an inventory of wells, springs, underground mines, or other similar groundwater supply facilities currently being used, have been used in the past, or have a potential to be used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the location, ownership, type of usage, and if possible, other relevant information such as the depth and diameter of wells and approximate rate of usage, pumpage, or discharge from wells, springs, and other groundwater supply facilities.

(3) Groundwater information shall include seasonal groundwater quantity and quality data collected from monitoring wells, springs, underground mines, or other appropriate groundwater monitoring facilities, at a sufficient number of monitoring locations with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation. Seasonal groundwater quantity and quality data shall be provided for each water transmitting zone above, and potentially impacted water transmitting zone below, the lowest coal seam to be mined including at a minimum:

(a) Groundwater levels; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, pH, dissolved iron, dissolved manganese, acidity, alkalinity, and sulfate. For data collected prior to August 13, 1985, total iron and total manganese may be substituted for dissolved iron and dissolved manganese.

(4) The groundwater information ***required by[~~described in~~]*** subsection (3) of this section shall be required in whole or in part for coal seams if the coal seams to be mined are serving as water supply sources or are otherwise significant in protecting the hydrologic balance.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require groundwater information in addition to that ***established[~~described~~]*** in subsections (2), (3), and (4) of this section including information pertaining to aquifer storage, yield, discharge, recharge capacity, and additional water quality parameters.

Section 15. Baseline Surface Water Information. (1) The application shall contain baseline surface water information for the permit area and adjacent area that shall be collected and submitted in a manner adequate to meet the requirements of Section 12(1) of this administrative regulation.

(2) Surface water information shall include an inventory of all streams, lakes, impoundments, or other surface water bodies in the permit and adjacent area that are currently being used for domestic, agricultural, industrial, or other beneficial purpose. The inventory shall include the name of the surface water body being used as a water supply source; the location, drainage area, ownership, and type of usage for the withdrawal; and if possible other relevant information such as the rate of withdrawal and seasonal variation.

(3) Surface water information shall include:

(a) The name, location, and ownership if appropriate, of all streams, lakes, impoundments, and other surface water bodies that receive run-off from watersheds that will be disturbed by the operation; and

(b) The location and description of any existing facilities located in watersheds that will be disturbed by the mining operation and ***could[~~may~~]*** contribute to surface water pollution, such as existing or abandoned mining operations, oil wells, logging operations, or other similar facilities, including the location of any discharges that ***could[~~may~~]*** be flowing from the facilities.

(4) Surface water information shall include seasonal quantity and quality data collected from a sufficient number of watersheds that will be disturbed by the operation with adequate area distribution to meet the requirements of Section 12(1) of this administrative regulation and include at a minimum:

(a) Flow rates; and

(b) Total dissolved solids, or specific conductance corrected to twenty-five (25) degrees C, total suspended solids, pH, total iron, total manganese, acidity, alkalinity, and sulfate.

(5) If additional information is needed to assess the need for protective measures, to design protective measures, to determine the probable hydrologic consequences of mining, or to conduct the cumulative impact assessment, the cabinet shall require surface water information in addition to that established in subsections (2), (3), and (4) of this section, including information pertaining to flood flows and additional water quality parameters.

Section 16. Alternative Water Supply Information. If the determination of probable hydrologic consequences required under Section 32 of this administrative regulation indicates that the proposed surface mining activities ***could[~~may~~]*** proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit area or adjacent area used for domestic, agricultural, industrial, or other legitimate use, then the application shall identify and describe the adequacy and suitability of the alternative sources of water supply that could be developed for existing premining uses and approved postmining land uses.

Section 17. Climatological Information. (1) Upon cabinet request, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(a) The average seasonal precipitation;

(b) The average direction and velocity of prevailing winds; and

(c) Seasonal temperature ranges.

(2) The cabinet shall request additional data if necessary to

ensure compliance with the requirements of this chapter.

Section 18. Soil Resources Information. (1) If soil survey information for the proposed permit area is available from SCS, the application shall include this information as a part of the description of premining land use capability and productivity required by Section 22(1)(b) of this administrative regulation.

(2) ***If***[~~Where~~] the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of analyses, trials, and tests as required under 405 KAR 16:050, Section 2(5).

Section 19. Vegetation Information. (1) The permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(2) If a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife.

Section 20. Fish and Wildlife Resources Information. (1) Each application shall include fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for this information shall be determined by the cabinet in consultation with the Kentucky Department of Fish and Wildlife Resources and the U.S. Department of the Interior, Fish and Wildlife Service, and shall be sufficient to design the protection and enhancement plan required under Section 36 of this administrative regulation.

(2) Site-specific resource information necessary to address the respective species or habitats shall be required if the permit area or adjacent area is likely to include:

(a) Listed or proposed endangered or threatened species of plants or animals or their critical habitats listed by the Secretary of the Interior under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 – 1544), or those species or habitats protected by similar state statutes;

(b) Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or

(c) Other species or habitats identified through agency consultation as requiring special protection under state or federal law.

(3) Wetland delineations shall be conducted in accordance with:

(a) The Corps of Engineers Wetlands Delineation Manual;

(b) U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7;

(c) National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary; and

(d) List of Hydric Soils of the United States, All Kentucky Counties.

(4) Upon request, the cabinet shall provide the resource information required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(5)(a) Fish and wildlife resource information shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of if fish and wildlife information is necessary, and the scope of information needed, shall be made ***[***~~on a case-by-case basis~~***]***in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife.

(6) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 21. Prime Farmland Investigation. (1) The applicant shall before making application investigate the proposed permit area to determine if lands within the area may be prime farmland.

(2) Land shall not be considered prime farmland if the applicant can demonstrate one (1) of the following:

(a) The land has not been historically used as cropland;

(b) The slope of the land is ten (10) percent or greater;

(c) Other relevant factors exist, which would preclude the soils from being defined as prime farmland according to 7 C.F.R. 657, such as a very rocky surface, or the land is flooded during the growing season more often than once in two (2) years, and the flooding has reduced crop yields; or

(d) On the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. SCS.

(3) If the investigation establishes that the lands are not prime farmland, the applicant shall submit with the permit application a request for a negative determination and results of the investigation that show that the land for which the negative determination is being sought meets one (1) of the criteria of subsection (2) of this section.

(4) If the investigation indicates that lands within the proposed permit area ***could***[~~may~~] be prime farmlands, the applicant shall contact the U.S. SCS to determine if a soil survey exists for those lands and if the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall request the SCS to conduct a soil survey.

(a) If a soil survey of lands within the proposed permit area contains soil map units designated as prime farmlands, the applicant shall submit an application, in accordance with 405 KAR 8:050, Section 3 for the designated land.

(b) If a soil survey for lands within the proposed permit area contains no soil map units designated as prime farmland after review by the U.S. SCS, the applicant shall submit with the permit application a request for negative determination under subsection (2)(d) of this section for the nondesignated land.

(5) The cabinet shall ***[***~~decide to~~***]***grant or deny a negative determination based upon documentation provided by the applicant and any other pertinent information, such as cropping history, available to the cabinet from other sources.

(6) The cabinet shall consult with the SCS in deciding on a request for negative determination under subsection (2)(c) of this section.

(7) The cabinet shall examine any records on crop history available from the Agriculture Stabilization and Conservation Service ***to decide***[~~when deciding~~***]*** on a request for negative determination under subsection (2)(a) of this section.

Section 22. Land-use Information. (1) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including:

(a) A map and supporting narrative of the uses of the land existing when the application is filed. If the premining use of the land was changed within five (5) years before the date of application, the historic use of the land shall also be described; and

(b) A narrative of land use capability and productivity, which analyzes the land-use description in conjunction with other environmental resources information required under this administrative regulation. The narrative shall provide analyses of:

1. The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of

the proposed permit area; and

2. The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from the lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, state agricultural universities, or appropriate state natural resource or agricultural agencies.

(2) The application shall state if the proposed permit area has been previously mined, and, if so and, if available, the:

(a) Type of mining method used;

(b) Coal seams or other mineral strata mined;

(c) Extent of coal or other minerals removed;

(d) Approximate dates of past mining; and

(e) Uses of the land preceding mining.

(3) The application shall contain a description of the existing land uses and local government land use classifications, if any, of the proposed permit area and adjacent areas.

(4) The application shall contain a description identifying the extent to which cities, towns, and municipalities, or parts thereof, are located within the proposed permit area.

Section 23. Maps and Drawings. (1) The permit application shall include a map or maps showing:

(a) The boundaries of all subareas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of the size, sequence, and timing of the surface mining operations for which it is anticipated that additional permits will be sought;

(b) Any land within the proposed permit area and adjacent area within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), or which is within the boundaries of a wild river established pursuant to KRS Chapter 146;

(c) The boundaries of any public park and locations of any cultural or historical resources listed on or eligible for listing on the National Register of Historic Places and known archaeological sites within the permit area and adjacent areas;

(d) The locations of water supply intakes for current users of surface water within a hydrologic area defined by the cabinet, and those surface waters that will receive discharges from affected areas in the proposed permit area;

(e) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(f) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(g) The location of surface and subsurface manmade features within, passing through, or passing over the proposed permit area, including major electric transmission lines, pipelines, and agricultural drainage tile fields;

(h) The location and boundaries of any proposed reference areas for determining the success of revegetation for the permit area;

(i) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(j) Each public road located in or within 100 feet of the proposed permit area;

(k) Each cemetery that is located in or within 100 feet of the proposed permit area; and

(l) Other relevant information required by 30 C.F.R. 779.24(l).

(2) The application shall include drawings, cross sections, and maps showing:

(a) Elevations and locations of test borings and core samplings;

(b) Elevations and locations of monitoring stations or other sampling points in the permit area and adjacent areas used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application, or ***that[~~which~~]*** will be used for this data gathering during the term of the permit;

(c) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined, for the permit area;

(d) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(e) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit area and adjacent areas;

(f) Location and extent of subsurface water, if encountered, within the proposed permit area or adjacent areas;

(g) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drainage patterns, and irrigation ditches within the proposed permit area and adjacent areas;

(h) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(i) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(j) Location and dimensions of existing areas of spoil, waste, and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area; and

(k) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the requirements established in subparagraphs 1. through 3. of this paragraph.

1. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, if impractical, at locations and in a manner sufficient to demonstrate that the surface coal mining and reclamation operations, as required by KRS Chapter 350 and 405 KAR Chapters 7 through 24, can be feasibly accomplished in accordance with the mining and reclamation plan.

2. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance representative of the premining configuration of the land.

3. Slope measurements shall take in account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(3) The permit application shall include the map information ***established[~~specified~~]*** in Sections 22(1)(a), 24(3), 24(4)(c), 24(4)(h), 27(1), 28(1), 31, 32, 33, 34, and 38 of this administrative regulation, and 405 KAR 8:010, Section 5(6).

(4) Maps, drawings, and cross-sections included in a permit application that are required by this section shall be prepared by or under the direction of and certified by a qualified registered professional engineer, and shall be updated as required by the cabinet if there is a material change. The qualified registered professional engineer shall not be required to certify true ownership of property.

Section 24. Mining and Reclamation Plan; General Requirements. (1) Each application shall contain a detailed mining and reclamation plan (MRP) for the proposed permit area as ***established[~~set forth~~]*** in this section through Section 38 of this administrative regulation, showing how the applicant will comply with KRS Chapter 350 and 405 KAR Chapters 16 through 20.

(2) Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area, including, at a minimum a narrative:

(a) Description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) Explaining the construction, modification, use, maintenance, and removal of the following facilities (unless

retention of the facilities is to be approved as necessary for postmining land use as ***established[~~specified~~]*** in 405 KAR 16:210):

1. Dams, embankments, and other impoundments;

2. Overburden and topsoil handling and storage areas and structures;

3. Coal removal, handling, storage, cleaning, and transportation areas and structures;

4. Spoil, coal processing waste, and noncoal waste removal, handling, storage, transportation, and disposal areas and structures;

5. Mine facilities; and

6. Water and air pollution control facilities.

(3) Each application shall contain plans and maps of the proposed permit area and adjacent areas pursuant to paragraphs (a) through (c) of this subsection.

(a) The plans and maps shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under Section 23 of this administrative regulation.

(b) The following shall be shown for the proposed permit area:

1. Buildings, utility corridors, and facilities to be used;

2. The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

3. Each area of land for which a performance bond or other equivalent guarantee will be posted under 405 KAR Chapter 10;

4. Each coal storage, cleaning, and loading area;

5. Each topsoil, spoil, coal waste, and noncoal waste storage area;

6. Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

7. Each air pollution collection and control facility;

8. Each source of waste and each waste disposal facility relating to coal processing or pollution control;

9. Each facility to be used to protect and enhance fish and wildlife and related environmental values;

10. Each explosive storage and handling facility; and

11. Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with Section 34 of this administrative regulation, and fill area for the disposal of excess spoil in accordance with Section 27 of this administrative regulation.

(c) Plans, maps, and drawings required under this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

(4) Each plan shall contain the following information for the proposed permit area:

(a) A projected timetable for the completion of each major step in the mining and reclamation plan;

(b) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 405 KAR Chapter 10, with supporting calculations for the estimates;

(c) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 405 KAR 16:190;

(d) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 405 KAR 16:050 including a demonstration of suitability of any proposed topsoil substitutes or supplements;

(e) A plan for revegetation as required in 405 KAR 16:200, including descriptions of the: schedule of revegetation; species and amounts per acre of seeds and seedlings to be used; methods to be used in planting and seeding; mulching techniques; irrigation, if appropriate; pest and disease control measures, if any; ***[~~and~~]***measures proposed to be used to determine the success of revegetation as required in 405 KAR 16:200, Section 6; and a soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(f) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 405 KAR 16:010, Section 2;

(g) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 405 KAR 16:150 and 16:190, Section 3, and a description of the contingency plans that have been developed to preclude sustained combustion of the materials;

(h) A description, including appropriate maps and drawings, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 405 KAR 16:040; and

(i) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Chapter 85), the Clean Water Act (33 U.S.C. Chapter 26), and other applicable air and water quality laws and regulations and health and safety standards. This description shall, at a minimum, consist of identification of permits or approvals required by these laws and regulations ***that[~~which~~]*** the applicant either has obtained, has applied for, or intends to apply for.

Section 25. MRP; Existing Structures. (1) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(a) Location;

(b) Plans of the structure that describe the structure's current condition;

(c) Approximate dates on which construction of the existing structure was begun and completed; and

(d) A showing, including relevant monitoring data or other evidence, that[~~of if~~] the structure meets the performance standards of 405 KAR Chapters 16 through 20 [~~or, if the structure does not meet those performance standards, a showing of if the structure meets the performance standards of the interim performance standards of 405 KAR Chapter 1~~].

(2) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

(a) Design specifications for the modification or reconstruction of the structure to meet the performance standards of 405 KAR Chapters 16 through 20;

(b) A construction schedule that shows dates for beginning and completing interim steps and final reconstruction;

(c) Provisions for monitoring the structure to ensure that the performance standards of 405 KAR Chapters 16 through 20 are met; and

(d) A showing that the risk of harm to the environment or to public health or safety will not be significant during the period of modification or reconstruction.

Section 26. MRP; Blasting. (1) Each application shall contain a blasting plan for the proposed permit area explaining how the applicant intends to comply with the requirements of 405 KAR 16:120. This plan shall include, at a minimum, information setting forth the limitations the permittee shall meet with regard to:

(a) Ground vibration and airblast;

(b) The bases for the ground vibration and airblast limitations; and

(c) The methods to be applied in controlling the adverse effects of blasting operations.

(2) Each application shall contain a description of the systems to be used to monitor compliance with the standards for ground vibration and airblast including identification of the types, capabilities, and sensitivities of blast monitoring equipment and identification of the monitoring procedures and locations.

(3) Blasting operations within 500 feet of active underground mines shall require approval of the cabinet, MSHA, and the Office of Mine Safety and Licensing.

Section 27. MRP; Disposal of Excess Spoil. (1) Each application shall contain descriptions, including appropriate maps and cross-section drawings, of the proposed disposal site and design of the spoil disposal structures according to 405 KAR 16:130. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal if appropriate, of the site and structures.

(2) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including:

(a) The character of bedrock and any adverse geologic conditions in the disposal area;

(b) A survey identifying all springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the disposal site;

(c) An assessment of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(d) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and

(e) A stability analysis including strength parameters, pore pressures, and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(3) If, under 405 KAR 16:130, Section 1(4), rock toe buttresses or key way cuts are required, the application shall include:

(a) The number, location, and depth of borings or test pits that shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and

(b) Engineering specifications utilized to design the rock toe buttresses or key way cuts that shall be determined in accordance with subsection (2)(e) of this section.

Section 28. MRP; Transportation Facilities. (1) Each application shall contain a transportation facilities plan including a description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross-sections, and:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure;

(b) A report of appropriate geotechnical analysis, if approval of the cabinet is required for alternative specifications, or for steep cut slopes under 405 KAR 16:220;

(c) A description of measures to be taken to obtain approval of the cabinet for alteration or relocation of a natural drainageway under 405 KAR 16:220; and

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the cabinet under 405 KAR 16:220.

(2) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

Section 29. MRP; Surface Mining Near Underground Mining. For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 405 KAR 16:010, Section 3.

Section 30. MRP; Protection of Public Parks and Historic Places. (1) For any publicly-owned parks or any places listed on the National Register of Historic Places that ***could[~~may~~]*** be adversely affected by the proposed operations, each plan shall describe the measures to be used to prevent adverse impact or, if valid existing rights exist or joint agency approval is to be obtained under 405 KAR 24:040, Section 2(4), to minimize adverse impacts.

(2) The cabinet may, pursuant to 30 C.F.R. 780.31, require the applicant to protect historic or archaeological properties listed or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures. These measures need not be completed prior to permit issuance, but shall be completed before the properties are affected by surface mining activities.

Section 31. MRP; Protection of Public Roads. Each application shall describe, with appropriate maps and drawings, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 405 KAR 24:040, Section 2(6), the applicant seeks to have the cabinet approve:

(1) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(2) Relocating a public road.

Section 32. MRP; Protection of the Hydrologic Balance. (1) Each application shall contain a description, as ***established[~~set forth~~]*** in this subsection, of the measures to be taken to minimize disturbances to the hydrologic balance within the permit area and adjacent area and to prevent material damage to the hydrologic balance outside the permit area.

(a) The description shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, shall be specific to local hydrologic conditions.

(b) The description shall identify the protective measures to be taken to enable the operation to meet, at a minimum, each of the hydrologic requirements referenced in this paragraph, or shall demonstrate that protective measures are not necessary for the operation to:

1. Meet applicable water quality statutes, administrative regulations, standards, and effluent limitations as required by 405 KAR 16:060, Section 1(3);

2. Avoid acid or toxic drainage as required by 405 KAR 16:060, Sections 4, 5, and 6;

3. Control the discharge of sediment to streams located outside the permit area as required by 405 KAR 16:060, Section 2;

4. Control the drainage and discharge of water within the permit area as required by 405 KAR 16:060, Sections 1(4), 3, 9, and 12, and 405 KAR 16:080;

5. Restore the approximate premining recharge capacity of the permit area as required by 405 KAR 16:060, Section 5; and

6. Protect or replace the water supply of present users as required by 405 KAR 16:060, Section 8.

(c) The cabinet may require that the description include protective measures in addition to those identified under paragraph (b) of this subsection, if additional measures are needed to protect the hydrologic balance in accordance with 405 KAR 16:060.

(2) Each application shall include the design of any necessary protective measures ***established[~~identified~~]*** under subsection (1) of this section. The design shall be prepared in a manner and detail ***to clearly depict[~~acceptable to the cabinet including~~]***, as appropriate, calculations, maps, drawings, and written explanations ***[~~as~~]***necessary to document the design.

(3) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations for the permit area and adjacent area.

(a) The determination shall be based upon the baseline geologic, hydrologic, and other information required by Sections 12 through 16 of this administrative regulation and other appropriate information, and may include information statistically representative of the site.

(b) The determination shall be completed according to the parameters and in the detail necessary to enable the cabinet to prepare a cumulative impact assessment, and shall take into account the anticipated effects of protective measures required by this chapter.

(c) For surface water systems, the determination shall, at a minimum, include probable impacts on:

1. Peak discharge rates, emphasizing the potential for flooding;

2. Settleable solids at peak discharge;

3. Low-flow discharge rates, emphasizing the potential for

water supply diminution;

4. Suspended solids at low flow; and

5. pH, at low flow, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(d) For groundwater systems, the determination shall, at a minimum, include probable impacts on:

1. Water quantity, emphasizing water levels and the potential for water supply diminution for existing users, and dewatering of aquifers that are not currently being used for water supply but have the potential to be developed as a water supply source; and***[.]***

2. pH, emphasizing the potential for acid drainage conditions, including depressed levels of alkalinity and elevated levels of iron, manganese, acidity, sulfate, and total dissolved solids or specific conductance, which are generally associated with acid drainage conditions.

(e) The determination shall include a finding on if the proposed surface mining activities ***could[~~may~~]*** proximately result in contamination, diminution, or interruption of an underground or surface source of water within the permit area or adjacent areas that is used for domestic, agricultural, industrial, or other legitimate use upon application.

(f) An application for a major revision to a permit shall be reviewed by the cabinet to determine if a new or updated determination of the probable hydrologic consequences shall be required.

(4)(a) The application shall include a plan for the collection, recording, and reporting of groundwater and surface water quantity and quality data to monitor the effects of the mining and reclamation operations on the hydrologic balance, according to 405 KAR 16:110.

(b) The monitoring plan shall be based on the geologic and hydrologic baseline information, the mining and reclamation plan, and the determination of probable hydrologic consequences; and shall:

1. Identify the quantity and quality parameters to be monitored, sampling frequency, and monitoring site locations; and

2. Describe how the data may be used to determine the impacts of the operation on the hydrologic balance.

(5) An application for a major revision to a permit shall be reviewed by the cabinet to determine if a new or updated cumulative hydrologic impact assessment shall be made.

Section 33. MRP; Diversions. Each application shall contain descriptions, including maps and cross-sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 405 KAR 16:080.

Section 34. MRP; Impoundments and Embankments. (1) General. Each application shall include detailed design plans for each proposed sedimentation pond, water impoundment, and coal mine waste bank, dam, or embankment within the proposed permit area. Each plan shall:

(a) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer;

(b) Contain a description, map, and appropriate cross-sections and drawings of the structure and its location;

(c) Contain all hydrologic and geologic information and computations necessary to demonstrate compliance with the design and performance standards of 405 KAR Chapter 16 and all information utilized by the applicant to determine the probable hydrologic consequences of the mining operations under Section 32(3) of this administrative regulation;

(d) Contain an assessment of the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred;

(e) Include any geotechnical investigation, design, and construction requirements for the structure;

(f) Describe the operation and maintenance requirements for each structure; and

(g) Describe the timetable and plans to remove each structure, if appropriate.

(2) Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 405 KAR 16:090 and 16.100.

(3) Permanent and temporary impoundments. Permanent and temporary impoundments shall be designed to comply with the requirements of 405 KAR 16:100. Each plan for an impoundment meeting the size or other criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216-1 and 77.216-2. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA.

(4) Coal mine waste banks. Coal mine waste banks shall be designed to comply with the requirements of 405 KAR 16:140.

(5) Coal mine waste dams and embankments. Coal mine waste dams and embankments shall be designed to comply with the requirements of 405 KAR 16:100 and 16:160. The plan for an impounding structure that is required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application. After the plan has been approved by MSHA, the applicant shall submit to the cabinet a copy of the final approved plan, a copy of all correspondence from MSHA regarding the plan, a copy of any technical support documents requested by MSHA during its review, and a notarized statement by the applicant that the copy submitted to the cabinet is a complete and correct copy of the final plan approved by MSHA. Each plan shall comply with the requirements of MSHA, 30 C.F.R. 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation that will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to:

(a) The number, location, and depth of borings and test pits determined using current prudent engineering practice for the size of the dam or embankment, quantity or material to be impounded, and subsurface conditions;

(b) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions that ***could[~~may~~]*** affect the particular dam, embankment, or reservoir site;

(c) All springs, seepage, and groundwater flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan; and

(d) Consideration of the possibility of mud flows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(6) If the structure is Class B-moderate hazard or Class C-high hazard under 405 KAR 7:040, Section 5, and 401 KAR 4:030, or if the structure meets the size or other criteria of MSHA, 30 C.F.R. 77.216(a), each plan under subsections (2), (3), and (5) of this section shall include a stability analysis of the structure. The stability analysis shall include strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

Section 35. MRP; Air Pollution Control. For all surface mining activity, the application shall contain an air pollution control plan that includes:

(1) An air quality monitoring program, if required by the cabinet, to provide sufficient data to evaluate the effectiveness of

the fugitive dust control practices under subsection (2) of this section to comply with applicable federal and state air quality standards; and

(2) A plan for fugitive dust control practices, as required under 405 KAR 16:170.

Section 36. MRP; Fish and Wildlife Protection and Enhancement. (1) Each application shall include a description of how, to the extent possible using the best technology currently available, the permittee will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during the surface coal mining and reclamation operations, and how enhancement of these resources will be achieved as practicable.

(2) This description shall:

(a) Apply, at a minimum, to species and habitats ***established[~~identified~~]*** under Section 20 of this administrative regulation;

(b) Include protective measures that will be used during the active mining phase of operation. Protective measures may include the establishment of buffer zones, the selective location and special design of haul roads and powerlines, and the monitoring of surface water quality and quantity; and

(c) Include enhancement measures that will be used during the reclamation and postmining phase of operation to develop aquatic and terrestrial habitat. Enhancement measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and the replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

(3) Upon request, the cabinet shall provide the protection and enhancement plan required under this section to the U.S. Department of the Interior, Fish and Wildlife Service regional or field office for their review. This information shall be provided within ten (10) days of receipt of the request from the Service.

(4)(a) A fish and wildlife protection and enhancement plan shall be required for amendments and revisions that:

1. Propose extension into a wetland;

2. Propose significant disturbance in a new watershed in which the permit area or adjacent area includes an important stream;

3. Seek to obtain a stream buffer zone variance under 405 KAR 16:060, Section 11, or seek to modify an existing stream buffer zone variance;

4. Propose extension of the permit boundary that involves a new surface disturbance of five (5) acres or more; or

5. Involve new permit or adjacent areas likely to contain, or that could reasonably be expected to contain, a state or federal endangered or threatened species or its critical habitat.

(b) For other amendments and revisions, a determination of if a protection and enhancement plan is necessary shall be made ***[~~on a case-by-case basis~~]***in consultation with Kentucky Department of Fish and Wildlife Resources and U.S. Fish and Wildlife.

(5) This section shall apply to applications for permits, amendments and revisions submitted to the cabinet on or after November 17, 1992.

Section 37. MRP; Postmining Land Use. (1) Each plan shall contain a description of the proposed land use or uses following reclamation of the land within the proposed permit area, including:

(a) A discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans;

(b) A discussion of how the proposed postmining land use is to be achieved and the necessary support activities that ***could[~~may~~]*** be needed to achieve the proposed land use, including management practices to be conducted during the liability period for the commercial forest land, cropland (including hayland), and pastureland land uses;

(c) If a land use different from the premining land use is proposed, all supporting documentation required for approval of the proposed alternative use under 405 KAR 16:210;

(d) A discussion of the consideration that has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable state and local land use plans and programs; and

(e) A copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface of the proposed permit area and the state and local government agencies, if any, which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

(2) Approval of the initial postmining land use plan pursuant to this section, shall not preclude subsequent consideration and approval of a revised postmining land use plan in accordance with the applicable requirements of 405 KAR Chapters 7 through 24.

Section 38. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standard Methods for the Examination of Water and Wastewater", (14th Edition, 1975), American Public Health Association, American Water Works Association, and Water Pollution Control Federation;

(b) "Corps of Engineers Wetlands Delineation Manual", (January, 1987 Edition), U. S. Army Corps of Engineers;

(c) "U. S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7", (September 26, 1990), U. S. Army Corps of Engineers;

(d) "National Lists of Plant Species that Occur in Wetlands and Biological Reports and Summary", (May, 1988 Edition), Fish and Wildlife Service, U. S. Department of the Interior; and

(e) "List of Hydric Soils of the United States, All Kentucky Counties", (December, 1991 Edition), Soil Conservation Service, U. S. Department of Agriculture;

(2) This material may be inspected, copied, or obtained at the Department for Natural Resources, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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 Permits
(As Amended at ARRS, January 13, 2020)

405 KAR 10:050. Bond forfeiture.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.130, 350.131, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 [~~in pertinent part~~] requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to ***ensure[~~insure~~]*** that satisfactory reclamation is accomplished. This administrative regulation ***establishes[~~sets forth~~]*** the procedures and criteria by means of which a bond may be forfeited to the cabinet. This administrative regulation ***establishes[~~sets forth~~]*** that certain violations of KRS Chapter 350 and administrative regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This administrative regulation ***establishes[~~sets forth~~]*** that a hearing may be requested before forfeiture can be effected. This administrative regulation ***establishes the[~~specifies a~~]*** method to determine the amount of bond forfeiture. This administrative regulation establishes criteria under which unused forfeited bond funds shall be returned to the person from whom they were collected.

Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any permit or increment pursuant to the

procedures and criteria of this administrative regulation.

(2) The cabinet may withhold forfeiture if the permittee or the surety agrees to a compliance schedule to correct the violations of the permit or bond conditions.

(3) The cabinet shall withhold forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the postmining land use approved by the cabinet, and will undertake to do so within a reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other financial institution shall employ anyone to perform the measures who has been barred from mining pursuant to the provisions of KRS Chapter 350.

Section 2. Procedures. (1) ***Except as established in subsection (2) of this section,*** if forfeiture of the bond is required by Section 3 of this administrative regulation, the cabinet shall:

(a) Send written notification by certified mail, return receipt requested, to the permittee, and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of the bond and the reasons for the forfeiture;

(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 400 KAR 1:110, Section 9; and

(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, ***[~~the secretary shall~~]***enter a final order of forfeiture and ***[~~the cabinet shall~~]***proceed in an action for collection on the bond.

(2) The cabinet may, as an alternative to following the procedures of subsection (1) of this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant to 400 KAR 1:110, Section 5.

(3) The cabinet shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. The funds shall be deposited in an appropriate account for the payment of these costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or setoff the proceeds under state law.

(4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the permittee or operator shall be liable for remaining costs. The cabinet may complete, or authorize completion of, reclamation of the bonded area and may recover from the permittee or operator all costs of reclamation in excess of the amount forfeited.

(5) Return of unused forfeited bond funds for interim or permanent program permit area overlapped by permanent program permit area. If the cabinet has not completed the reclamation plan on a permit area under 30 C.F.R. Part 715[~~405 KAR Chapter 1 or 3~~] for which the bond was forfeited on or after July 15, 1988, or if the cabinet has not completed the reclamation plan on a permit area under 405 KAR Chapters 7-24 for which the bond was forfeited, and if the permit area and any related off-permit disturbances are entirely contained within the permit area of a subsequent valid permit under 405 KAR Chapters 7-24 for which the bond is in force, the cabinet shall retain the funds from the forfeited bond until the entire overlapped permit area and any related off-permit disturbances have been disturbed by the overlapping permittee and then shall return the unused funds to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or set off the proceeds under state law.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the cabinet finds that:

(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the conditions of the permit or 405 KAR Chapters 7 through 24 within the time required;

(c) The permit for the area or increment under bond has been revoked or the operation terminated, unless the permittee, surety, or other financial institution providing bond assumes liability pursuant to an agreement for the completion of reclamation; or

(d) The permittee, surety, or other financial institution providing bond has failed to comply with a compliance schedule approved pursuant to Section 1(2) or (3) of this administrative regulation.

(2) A bond may be forfeited if the cabinet finds that:

(a)1. The permittee has become insolvent; or

2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and

(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit.

(3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or fines (if all reclamation requirements have been fully met) and retain the bond proceeds, or portion thereof as necessary to offset the penalty or fine owed (including administrative costs incurred by the cabinet), but the cabinet shall forfeit a bond under this circumstance only after the five (5) year liability period has expired; except that for surety bonds or bonds secured by a letter of credit***.[:]***

(a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by a letter of credit under this circumstance until reclamation phase I and II monies have been released and the five (5) year liability period has expired; and

(b) If a forfeiture of a surety bond or a bond secured by a letter of credit under this circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of credit or any proceeds thereof and the permittee shall continue to be responsible for payment of the penalties or fines as well as administrative costs incurred by the cabinet.

Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for the permit area or increment.

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
(As Amended at ARRS, January 13, 2020)

405 KAR 16:100. Permanent and temporary impoundments.

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.420, 350.455, 350.465, 30 C.F.R. Parts 730-733, 735, 816.49, 917, 30 U.S.C. 1253, 1255, 1265

STATUTORY AUTHORITY: KRS 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.49, 917, 30 U.S.C. 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(2), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for surface mines. This administrative regulation differs from federal regulations as follows: (1) Section 1 of this administrative regulation provides criteria related to the stability, settlement, embankment height and width, and freeboard of impoundments which is not found in the federal regulations. These criteria have been retained because they have long been effective guidelines for embankment safety and stability. (2) Section 1(9)(c) of this administrative regulation provides an exemption from engineering inspection for certain types of

impoundments without embankments. These inspections are unnecessary because the embankments do not present a safety hazard or environmental concern that would warrant routine, detailed inspection. (3) Section 1(10)(b) of this administrative regulation provides an exemption from quarterly inspections for certain small nonhazardous impoundments without embankment structures. These inspections are unnecessary because the structures cannot develop the hazardous conditions which the inspections were intended to detect.

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1)(a) Impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application in accordance with 405 KAR 8:030, Section 34(3).

(b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined ***by***[~~in~~] KRS 151.100, shall comply with 405 KAR 7:040, Section 5 and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet ***in accordance with 405 KAR Chapters 7 through 24***. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a)1. Permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2. 2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement, unless it has been demonstrated to the cabinet that the material used and the design ***shall***[~~will~~] ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based ***on site and slope stability***[~~upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet~~], the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 16:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet ***pursuant to subsection (2) of this section***.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 16:190, Section 6.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments ***that***[~~which~~] have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. If an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined ***by***[~~at~~] KRS 151.100***(12)***; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways***,*** which shall be designed and constructed to safely pass the design precipitation event ***established***[~~specified~~] in this subsection unless the cabinet requires a ***design based on a larger precipitation event due to site specific conditions***[~~larger event~~]. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event ***established***[~~specified~~] in this subsection.

(a) Except as ***established***[~~provided~~] in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, six (6) hour precipitation event if it is a permanent structure.

(b) Class A structures that meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the 100 year, six (6) hours precipitation event.

(c) Class B and C structures and all permanent ***"dams," as defined by KRS 151.100(12)***[~~dams as defined in KRS 151.100~~] shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 C.F.R. 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified registered professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness***,*** or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation***,*** and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change. A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines ***and notifies the permittee in writing[~~on a case-by-case basis~~]*** that engineering inspection and certification are necessary to ***ensure[~~insure~~]*** public health and safety or environmental conditions***[~~, in which case the cabinet shall establish appropriate inspection and certification requirements for the impoundment that shall apply in lieu of the requirements of this subsection and shall notify the permittee in writing~~]***.

(10) Operator examinations.

(a) Impoundments subject to 30 C.F.R. 77.216, and Class B and C impoundments, shall be examined in accordance with 30 C.F.R. 77.216-3.

(b) Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examination within a quarter are required ***based on evidence of structural weakness or hazardous conditions***. Reports of the examinations shall be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, Disaster and Emergency Services. The permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

(12) Maintenance. An owner or operator of an impoundment shall:

(a) Cut vegetative growth where necessary to facilitate inspection and repairs;

(b) Clean any ditches and spillways; and

(c) Remove any combustible material present on the surface, other than that used for stability***,*** such as mulch or dry vegetation.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon ***compliance with subsections (1) through (6) of this section.[~~the following demonstration:~~]***

(1) The size and configuration of the impoundment will be adequate for its intended purposes.

(2) The quality of impounded water ***shall[~~will~~]*** be suitable on a permanent basis for its intended use and, after reclamation, ***shall comply with[~~will meet~~]*** applicable state and federal water quality standards, and discharges from the impoundment ***shall comply with[~~will meet~~]*** applicable effluent limitations and ***shall[~~will~~]*** not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level ***shall[~~will~~]*** be sufficiently stable and be capable of supporting the intended use.

(4) Final grading ***shall provide[~~will provided~~]*** for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment ***shall[~~will~~]*** not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment ***shall[~~will~~]*** be suitable for the approved postmining land use.

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
(As Amended at ARRS, January 13, 2020)

405 KAR 16:210. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.405, 350.410, 350.450, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.465, 30 C.F.R. Parts 730-733, 735, 816.133, 917, 30 U.S.C. 1253, 1255, 1265

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465[~~KRS Chapter 350 in pertinent part~~] requires the cabinet to promulgate [~~rules and~~] administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during surface mining activities and for restoration and reclamation of surface areas affected by mining activities. This administrative regulation ***establishes[~~sets forth~~]*** requirements for restoring land use capability after completion of surface mining activities***[~~,~~]*** and specific criteria for approval of postmining land uses ***that[~~which~~]*** differ from the premining land use.

Section 1. General. (1) Prior to the final release of performance bond, affected areas shall be restored in a timely manner:

(a) To conditions capable of supporting the uses ***that[~~which~~]*** the areas were capable of supporting before any mining; or

(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

(2) The following land uses shall apply under this administrative regulation:

(a) Cropland;

(b) Pastureland;

(c) Forest land;

(d) Residential;

(e) ***Industrial or commercial[~~Industrial/commercial~~]***;

(f) Recreation;

(g) Fish and wildlife;

(h) Developed water resources; ***and***

(i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses ***that[which]*** the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area***[; however,]*** More than one (1) land use ***may[can]*** exist within a proposed permit boundary.

(2)(a) The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR[~~Chapter 1 or 3 or~~] Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining.[~~; except~~]

(b) If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved ***that[which]*** is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of this section and Section 3 of this administrative regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use***; or[.]***

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. ***The[These]*** limitations ***in this subsection*** shall apply to permits issued after ***November 26, 1991[the effective date of this amendment]***. Portions of the permit area with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2), and mountaintop removal operations shall comply with 405 KAR 8:050, Section 4(3).

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses.

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses ***shall[may]*** be approved by the cabinet if the following criteria are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and the proposed alternative postmining land use is consistent with applicable land use policies and plans;

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

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
(As Amended at ARRS, January 13, 2020)

405 KAR 18:100. Permanent and temporary impoundments.

RELATES TO: KRS 151.100, 151.250(3), 350.100, 350.151, 350.420, 350.455, 350.465, 30 C.F.R. ***77.216, 77.216-3,*** Parts 730-733, ***Part*** 735, 817.49, ***Part*** 917, 30 U.S.C. 1253, 1255, 1266

STATUTORY AUTHORITY: KRS 350.028***(1), (5)***, 350.151***(1)***, 350.465***(2)***, 30 C.F.R. Parts 730-733, ***Part*** 735, 817.49, ***Part*** 917, 30 U.S.C. 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the ***Energy and Environment*** Cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for the design, construction, certification, inspection, and maintenance of temporary and permanent impoundments for underground mines. This administrative regulation differs from federal regulations as follows: (1) Section 1 of this administrative regulation provides criteria related to the stability, settlement, embankment height and width, and freeboard of impoundments***,*** which ***are[is]*** not found in the federal regulations. These criteria have been retained because they have long been effective guidelines for embankment safety and stability. (2) Section 1(9)(c) of this administrative regulation provides an exemption from engineering inspection for certain types of impoundments without embankments. These inspections are unnecessary because the embankments do not present a safety hazard or environmental concern that would warrant routine, detailed inspection. (3) Section 1(10)(b) of this administrative regulation provides an exemption from quarterly inspections for certain small nonhazardous impoundments without embankment structures. These inspections are unnecessary because the structures cannot develop the hazardous conditions which the inspections were intended to detect.

Section 1. General Requirements. The requirements of this section apply to both temporary and permanent impoundments.

(1)(a) Impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), shall comply with the requirements of 30 C.F.R. 77.216 and this administrative regulation. The plan required to be submitted to the district manager of MSHA under 30 C.F.R. 77.216 shall be submitted to the cabinet as part of the permit application after the plan has been approved by MSHA.

(b) All impoundments classified as Class B-moderate hazard or Class C-high hazard, and all permanent "dams," as defined in KRS 151.100***(12)***, shall comply with 405 KAR 7:040, Section ***4[5]*** and with 401 KAR 4:030.

(2) Design certification. The design of impoundments shall be certified by a qualified ***licensed[registered]*** professional engineer as designed to meet the requirements of this administrative regulation using current, prudent engineering practices, and any design criteria established by the cabinet ***in 405 KAR Chapters 7 through 24***. The qualified ***licensed[registered]*** professional engineer shall be experienced in the design and construction of impoundments.

(3) Stability.

(a) 1. Permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), all Class B and C impoundments, and all permanent impoundments, shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at

least 1.2.

2. Impoundments not included in subparagraph 1 of this paragraph, except coal mine waste impoundments, shall have a minimum static safety factor of 1.3 for the normal pool with steady state seepage saturation conditions.

(b) The constructed height of the dam shall be increased a minimum of five (5) percent over the design height to allow for settlement***. Upon request, the minimum height increase may be reduced if[, unless it has been demonstrated to the cabinet that]*** the material used and the design ***shall[will]*** ensure against all settlement.

(c) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(d) Unless the cabinet approves steeper slopes, based ***on site and slope stability [upon a satisfactory demonstration of stability by the applicant acceptable to the cabinet]***, the sum of the upstream and downstream side slopes (h/v) of the settled embankment shall not be less than 5h:1v, with neither slope steeper than 2h:1v. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(e) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil and shall not contain coal mine waste except for coal mine waste impounding structures pursuant to 405 KAR 18:160.

(f) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of thickness as is required to facilitate compaction and meet the design requirement of this administrative regulation. Compaction shall be conducted as specified in the design approved by the cabinet ***pursuant to subsection (2) of this section***.

(g) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with 405 KAR 18:190, Section 4.

(h) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(4) Freeboard. Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume. The minimum elevation at the top of the settled embankment shall be one (1.0) foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this one (1.0) foot minimum elevation requirement shall apply at all times, including the period after settlement. Freeboard requirements shall not apply to incised impoundments ***that[which]*** have no embankment or levee.

(5) Foundation.

(a)1. Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment and shall be designed based on adequate and accurate information on the foundation conditions.

2. For permanent and temporary impoundments meeting the criteria of MSHA, 30 C.F.R. 77.216(a), for all Class B and C impoundments, and for all permanent impoundments, foundation investigations as well as any necessary laboratory testing of materials shall be performed in order to determine the design requirements for foundation and embankment stability.

3. If an approved temporary impoundment has been constructed and the permittee subsequently seeks a permit revision to upgrade the structure to a permanent impoundment, the cabinet may waive the foundation investigations and laboratory testing required by subparagraph 2 of this paragraph under the following circumstances:

a. The structure has been recently verified as being a Class A-low hazard structure;

b. The structure does not meet the definition of the term "dam," as defined at KRS 151.100; and

c. The cabinet approves conservative, assumed values for the strength parameters used in the stability analyses to ensure compliance with subsection (3)(a) of this section.

(b) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Impoundments shall include a combination of principal and emergency spillways ***that[which]*** shall be designed and constructed to safely pass the design precipitation event specified in this subsection, unless the cabinet requires a ***design based on a*** larger ***precipitation*** event ***due to site specific conditions***. Twenty-four (24) hours may be used in lieu of six (6) hours for the duration of a design precipitation event specified in this subsection.

(a) Except as provided in paragraph (c) of this subsection, Class A structures that do not meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the:

1. Twenty-five (25) year, six (6) hour precipitation event if it is a temporary structure; or

2. The fifty (50) year, six (6) hour precipitation event if it is a permanent structure.

(b) Class A structures that do meet the criteria of MSHA, 30 C.F.R. 77.216(a), shall pass the 100 year, six (6) hour precipitation event.

(c) Class B and C structures and all permanent dams as defined in KRS 151.100***(12)*** shall comply with the criteria established in 401 KAR 4:030.

(7) Class A impoundments not meeting the criteria of MSHA, 30 C.F.R. 77.216(a), may use a single spillway (if allowed pursuant to subsection (1)(b) of this section) if the spillway:

(a) Is an open channel of nonerodible construction and capable of maintaining sustained flows; and

(b) Is not earth or grass lined.

(8) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of the highwall to provide adequate safety and access for the proposed water users.

(9) Engineer inspections. A qualified ***licensed[registered]*** professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the design and construction of impoundments.

(a) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(b) The qualified ***licensed[registered]*** professional engineer shall promptly, after each inspection, provide to the cabinet a certified report that the impoundment has been constructed and maintained as designed and in accordance with the plan approved in the permit and 405 KAR Chapters 7 through 24. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation**,** and any other aspects of the structure affecting stability. The report shall also confirm the hazard classification of the impoundment, or if the hazard classification has changed, the report shall contain a detailed explanation of the change and the conditions causing the change. A copy of the report shall be retained at or near the mine site.

(c) An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, that is not a sedimentation pond or coal mine waste impoundment and is not otherwise intended to facilitate active mining, shall be exempt from this subsection unless the cabinet determines ***and notifies the permittee in writing[on a case-by-case basis]*** that engineering inspection and certification are necessary to ***ensure[***~~insure~~***]*** public health and safety or environmental conditions***[, in which case the cabinet shall***

~~***establish appropriate inspection and certification requirements for the impoundment that shall apply in lieu of the requirements of this subsection and shall notify the permittee in writing]***~~.

(10) Operator examinations.

(a) Impoundments subject to 30 C.F.R. 77.216, and Class B and C impoundments, shall be examined in accordance with 30 C.F.R. 77.216-3.

(b) Impoundments not included in paragraph (a) of this subsection shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions. Quarterly examinations shall be conducted each calendar quarter (i.e., January-March, April-June, July-September, and October-December) and no two (2) examinations shall be within thirty (30) days of each other unless additional examinations within a quarter are required ***based on evidence of structural weakness or hazardous conditions***. Reports of the examinations shall be retained at or near the mine site. An impoundment with no embankment structure, that is completely incised or is created by a depression left by backfilling and grading, shall be exempt from this paragraph.

(11) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall immediately notify the department and the Kentucky Division of Water, or if these agencies cannot be reached, ***Kentucky Emergency Management***~~***[Disaster and Emergency Services]***~~. The permittee shall immediately implement emergency procedures formulated for public protection and remedial action. If adequate emergency procedures cannot be formulated or implemented by the permittee, the cabinet shall be notified, and the cabinet shall notify the appropriate agencies that other emergency procedures are required to protect the public.

(12) Maintenance. An owner or operator of an impoundment shall:

(1) Cut vegetative growth where necessary to facilitate inspection and repairs;

(2) Clean any ditches and spillways; and

(3) Remove any combustible material present on the surface, other than that used for stability such as mulch or dry vegetation.

Section 2. Permanent Impoundments. A permanent impoundment of water may be created, if authorized by the cabinet in the approved permit based upon the following demonstration:

(1) The size and configuration of the impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users. Perimeter slopes shall be stable and shall be protected against erosion.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

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
(As Amended at ARRS, January 13, 2020)

405 KAR 18:220. Postmining land use capability.

RELATES TO: KRS 350.093, 350.095, 350.100, 350.151, 350.410, 350.450, 350.465, 30 C.F.R. Parts 730-733, ***Part*** 735, 817.133, ***Part*** 917, 30 U.S.C. 1253, 1255, 1266

STATUTORY AUTHORITY: KRS ***[***~~***Chapter 13A,***~~***]*** 350.020, 350.028***(1), (5)***, 350.151, 350.465, 30 C.F.R. Parts 730-733, ***Part*** 735, 817.133, ***Part*** 917, 30 U.S.C. 1253, 1255, 1266

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.465[~~KRS Chapter 350 in pertinent part~~] requires the ***Energy and Environment*** Cabinet to promulgate[~~rules and~~] administrative regulations establishing performance standards for protection of people and property, land, water and other natural resources, and aesthetic values, during underground mining activities and for restoration and reclamation of surface areas affected by underground mining activities. This administrative regulation ***establishes***~~***[sets forth]***~~ requirements for restoring surface land use capability after completion of underground mining activities, and specific criteria for approval of postmining land uses ***that***~~***[which]***~~ differ from the premining land use.

Section 1. General. (1) Prior to the final release of the performance bond, affected areas shall be restored in a timely manner:

(a) To conditions capable of supporting the uses which the areas were capable of supporting before any mining; or

(b) To conditions capable of supporting higher or better alternative uses as approved by the cabinet under Section 4 of this administrative regulation.

(2) The following land uses shall apply under this administrative regulation:

(a) Cropland;
(b) Pastureland;
(c) Forest land;
(d) Residential;
(e) Industrial/commercial;
(f) Recreation;
(g) Fish and wildlife;
(h) Developed water resources;
(i) Undeveloped land or no current use or land management.

Section 2. Premining and Postmining Land Use. (1) The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land has not been previously mined. The premining land use for a specific area shall be determined based on the prevalent or dominant use, vegetative types, and features present at that area; ***except that***~~***[however,]***~~ more than one (1) land use can exist within an area to be affected by surface operations and facilities.

(2)***(a)*** The postmining land use for land that has been previously mined, and not reclaimed in compliance with 405 KAR[~~Chapter 1 or 3 or~~] Chapters 7 through 24, shall be judged on the basis of the land use that existed prior to any mining.[~~; except~~]

(b) If the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(3) Prime farmland that has been historically used for cropland that is not exempted by 405 KAR 8:050, Section 3 shall have a postmining land use of cropland.

(4)(a) The land use category of "undeveloped land or no current use or land management" shall not be used to designate a postmining land use.

(b) If the premining land use is "undeveloped land or no current use or land management", and if consistent with subsection (2) of

this section and Section 3 of this administrative regulation:

1. If trees are dominant on the area prior to mining, the area may be designated as forestland for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

2. For all other cases, the area may be designated as fish and wildlife for the postmining land use without compliance with the procedures and criteria for an alternative postmining land use.

(5) Slope limitations for specific postmining land uses. ***The limitations in this subsection[~~These limitations~~]*** shall apply to permits issued after ***November 26, 1991[~~the effective date of this amendment~~]***. Portions of the area affected by surface operations and facilities with slopes greater than twenty (20) percent (eleven and three-tenths (11.3) degrees) shall not be designated as cropland, including hay production.

(6) Steep slope operations with variances from approximate original contour shall comply with the requirements of 405 KAR 20:060, Section 3(2).

Section 3. Historical Land Use. If the premining use of the land was changed within five (5) years of the date of application for a permit to conduct surface coal mining and reclamation operations, the historical use of the land as well as the land use immediately preceding the date of application shall be considered in establishing the premining capability of the land to support a variety of feasible uses.

Section 4. Alternative Postmining Land Use. Higher or better alternative postmining land uses ***shall[~~may~~]*** be approved by the cabinet if the following criteria are met:

(1) There is a reasonable likelihood that the land use will be achieved;

(2) The use will not be impractical or unreasonable;

(3) The landowner or the land management agency having jurisdiction over the lands has been consulted, and the proposed alternative postmining land use is consistent with applicable land use policies and plans;

(4) The proposed use will not present an actual or probable hazard to public health or safety or threat of water pollution or diminution of water availability;

(5) The proposed use will not involve unreasonable delays in implementation; and

(6) The proposed use will not cause or contribute to violation of federal, state, or local law.

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
(As Amended at ARRS, January 13, 2020)

405 KAR 20:040. Prime farmland.

RELATES TO: KRS 350.100, 350.405, 350.415, 350.450, 350.465***, 30 C.F.R. Parts 715, 823***

STATUTORY AUTHORITY: KRS ***350.020[~~Chapter 13A~~]***, 350.028***(1), (5)***, 350.100, 350.450, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS ***350.020, 350.028(1), (5), and 350.450 require[~~Chapter 350 in pertinent part requires~~]*** the ***Energy and Environment*** Cabinet to promulgate environmental protection performance standards specifically including special requirements for the protection of prime farmland. This administrative regulation ***establishes[~~specifies~~]*** special requirements for the removal, stockpiling, replacement, and revegetation of prime farmland.

Section 1. Scope and Purpose. This administrative regulation ***establishes[~~sets forth~~]*** special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

Section 2. Responsibilities. (1) ***[~~The federal regulations at~~]*** 30 C.F.R. Part 823 ***requires[~~require that~~]*** the U.S. Soil Conservation Service (SCS) within each state ***to*** establish specifications for prime farmland soil removal, storage, replacement, and reconstruction. ***The Kentucky specifications are established in "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland."***

(2) ***[~~The federal regulations at~~]*** 30 C.F.R. Part 823 ***requires[~~require that~~]*** the cabinet ***to*** use the soil-reconstruction specifications established by the SCS, as referenced in subsection (1) of this section, to carry out its responsibilities.[~~Therefore, the following document is incorporated herein by reference: "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland," January 1986. Copies may be obtained from the Soil Conservation Service, 333 Waller Avenue, Lexington, Kentucky.~~]

Section 3. Applicability. The requirements of this administrative regulation, including the SCS prime farmland specifications of Section 2 of this administrative regulation, shall apply to prime farmland affected by surface coal mining and reclamation operations except that which has been excluded in accordance with 405 KAR 8:050, Section 3(1).

Section 4. Soil Removal and Stockpiling. (1) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

(2) The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of Section 5(1) of this administrative regulation.

(3) Soil removal and stockpiling operations on prime farmland shall be conducted to:

(a) Separately remove the topsoil, or remove other suitable soil materials where ***the[~~such~~]*** other soil materials will create a final soil having a greater productive capacity than that which ***exists[~~exist~~]*** prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials; and

(b)***1. Except as provided by subparagraph 2 of this paragraph,*** separately remove the B or C horizon or other suitable soil material to provide the thickness of suitable soil required by Section 5(1) of this administrative regulation. If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials.

2. If[~~Where~~] combinations of ***the[~~such~~]*** soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling ***shall[~~is~~]*** not ***be required[~~necessary~~]***.

(4) Stockpiles shall be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than thirty (30) days, stockpiles shall meet the requirements of 405 KAR 16:050 or 18:050.

Section 5. Soil Replacement. (1) The minimum depth of soil and substitute soil material to be reconstructed shall be forty-eight (48) inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. The determination of whether a horizon inhibits or prevents root penetration shall be in accordance with the SCS specifications under Section 2 of this administrative regulation.

(2) The operator shall replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

(3) The operator shall replace the B horizon, C horizon, or other suitable material specified in Section 4(3)(b) of this

administrative regulation to the thickness needed to meet the requirements of subsection (1) of this section.

(4) The operator shall replace the topsoil or other suitable soil materials specified in Section 4(3)(a) of this administrative regulation as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

Section 6. Revegetation and Restoration of Soil Productivity. (1) ***[~~Requirements for~~]*** Revegetation and demonstration of successful restoration of soil productivity ***shall comply with the requirements established[~~are set forth~~]*** in "Kentucky Prime Farmland Revegetation and Crop Production Restoration After Mining," Kentucky Department for Natural Resources in consultation with the U.S. Soil Conservation Service[~~, June 1985. This document is incorporated herein by reference. Copies may be obtained from the department~~].

(2) Data on crop yields from restored prime farmland soils shall be verified by the cabinet. The permittee shall notify the appropriate regional office of the department of harvest dates in order to provide the opportunity for cabinet personnel to monitor yield measurements. This notification shall be in writing at least thirty (30) days prior to anticipated harvest dates and shall be followed up by telephone prior to actual harvest dates.

(3)[~~Irrespective of the provisions of 405 KAR 1:005,~~] This section shall also apply to prime farmland mined under the interim regulatory program under 30 C.F.R. Part 715[~~405 KAR 1:250~~].

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Soil Conservation Service, Kentucky Standard and Specifications for Land Restoration, Currently Mined Prime Farmland", January 1986;

(b) "Kentucky Prime Farmland Revegetation and Crop Production Restoration after Mining", June 1985.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Mine Permits, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 13, 2020)

704 KAR 8:080. Required academic standards in career studies and financial literacy.

RELATES TO: KRS ***156.070(1), 156.160, 158.645[~~156.160, 156.070(1)~~]***, 158.1411, 158.1413, ***158.6451[~~158.645, 158:6451~~]***, 158.6453, 160.290

STATUTORY AUTHORITY: KRS ***156.070(1), 156.160[~~156.160, 156.070(1)~~]***, 158.1411***[~~,~~]***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. Beginning with the 2019-2020 school year, KRS 158.1413 requires each school district to implement essential workplace ethics programs that promote characteristics that are critical to success in the workplace. KRS 158.1411 requires that the ninth grade class of the 2020-2021 school year and each year thereafter, successfully complete one (1) or more courses or programs that meet the financial literacy standards as a Kentucky public high school graduation requirement. This administrative regulation incorporates by reference the Kentucky Academic Standards for Career Studies, which contain the academic content standards of essential skills, career exploration, and financial literacy for use in Kentucky's common schools.

Section 1. (1) The academic standards for career studies outline the minimum content standards that Kentucky students shall learn within each respective grade band. The standards are organized by three (3) domains: essential skills, careers, and financial literacy.

(2) Kentucky schools shall utilize the financial literacy domain standards for grades nine (9) through twelve (12) to design courses and programs that meet the Kentucky high school graduation requirement established in KRS 158.1411.

(3) Pursuant to KRS 158.1413, the essential skills domain standards for all grade bands shall be utilized to design and implement essential workplace ethics programs and to ensure that all students in elementary, middle, and high school receive essential workplace ethics instruction.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Career Studies", August 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 13, 2020)

780 KAR 2:040. Live work projects.

RELATES TO: KRS 156.802(3)[~~151B.025(3)~~]

STATUTORY AUTHORITY: KRS 156.802(3), 156.852 [~~151B.025(3)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.802(3)[~~151B.025(3)~~] ***authorizes*** ***[~~gives~~]*** the Kentucky Department of Education ***to have***[~~Office of Career and Technical Education~~] ***[~~the~~]*** responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area vocational education and technology centers. This administrative regulation establishes the procedures for accepting live work projects in a Kentucky TECH facility.

Section 1. Definitions. (1) "Kentucky TECH" means the system of state-operated secondary technical education programs.

(2) "Live work" means a project, which meets a curriculum requirement, completed for an individual or organization.

Section 2. A Kentucky TECH school may accept live work projects if the administrative and instructional staffs deem them appropriate for training purposes.

Section 3. A Kentucky TECH school that accepts live work shall adhere to the requirements established in this section. (1) All services performed shall be documented on a completed Work Order - Agreement[~~Work Order~~] form.

(2) The school administrator shall be responsible for all unused ***Work Order - Agreement[~~work order~~]*** forms and assigning and recording all services performed in a work order log[~~book~~].

(3) An individual or organization requesting live work shall be provided a copy of the school's policy for accepting and performing live work. A person committing live work shall sign the Work Order - Agreement form[~~policy form~~] indicating that he or she understands the policies and agrees with them.

(4) A live ***Work Order - Agreement form[~~work order~~]*** shall be approved and initialed by the school administrator and by the instructor of the class. Live work shall not be approved for an instructor in his or her program for his or her own personal use.

(5) If a live work project requires more than one (1) hour labor, the individual or organization requesting the live work shall pay the fee established in 780 KAR 2:140, Section 8[~~9~~].

(6)(a) Except as provided in paragraph (b) of this subsection, a person or organizations for whom live work is accepted shall purchase the necessary materials for the job to be completed.

(b) With the permission of the person or organization, the school may purchase the materials and recover the costs of the materials plus twenty (20) percent for handling.[~~The Kentucky TECH school may require the students participating in the live work project to reimburse or purchase the materials required for the project~~].

(7) A payment shall not be handled by an instructor. Live work orders shall not be released until payment for parts, supplies, and other cost items has been made and documented by authorized personnel in the school.

(8) Projects of a family member or other individual shall not be accepted in the name of a student or the instructor.

(9) A school employee shall not:

(a) Guarantee or be liable for live work; or

(b) Be responsible for the theft or loss of an article left in a school.

Section 4. A Kentucky TECH school shall not be obligated to accept live work projects. ***A Kentucky TECH school shall not perform*** live work of a production nature and in competition with business or industry or for the purpose of making a profit ***[~~shall not be done~~]***.

Section 5. Incorporation by Reference. (1) "[~~Education~~]Work Order - Agreement form", August 2019[~~July 2008~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education[~~Office of Career and Technical Education~~], 300 Sower Boulevard, 5th Floor[~~Capital Plaza Tower, 20th Floor, 500 Mero Street~~], Frankfort, Kentucky 40601, Monday through Friday, 8 to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

PUBLIC PROTECTION CABINET
Department of Insurance
(As Amended at ARRS, January 13, 2020)

806 KAR 13:040. Automobile fleet insurance defined.

RELATES TO: KRS 304.13-121

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 ***authorizes*** ***[~~provides that~~]*** the Commissioner[~~Executive Director~~] of Insurance ***to*** ***[~~may~~]*** make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides a uniform definition for purposes of "fleet" insurance on automobiles.

Section 1. For purposes of[~~A fleet of automobiles for either~~] vehicle damage or liability coverage, a fleet of automobiles is defined as five (5) or more private passenger or commercial automobiles owned and operated by an individual partnership, firm, or corporation.

Section 2.[~~For the purposes of this definition,~~] A leased automobile may be construed as an "owned automobile," if:

(1)[~~provided~~] There is a written agreement of lease for a term of not less than one (1) year; and

(2)[~~.~~] The lease agreement stipulates[~~shall stipulate~~] that lessor shall not enjoy the use or[~~of~~] control of the leased vehicle during the term of the lease.

Section 3. Buses leased[~~to and operated~~] by the Commonwealth [~~through any of its agencies or the common school system~~] may be written as a fleet if[~~even though the period of the lease is for a term of less than one (1) year and notwithstanding the fact that the lessor operates or controls said leased vehicles; however,~~] the term of the insurance is[~~must~~] not[~~be for a~~] longer[~~period~~] than the term of the lease.

CONTACT PERSON: DJ Wasson, 215 W. Main St., Frankfort, Kentucky 40601, phone (502) 782-5262, fax (502) 564-1453, email DJ.Wasson@ky.gov.

PUBLIC PROTECTION CABINET
Department of Insurance
(As Amended at ARRS, January 13, 2020)

806 KAR 15:090. Notice of rights as an owner of a life insurance policy.

RELATES TO: KRS 304.14-120, 304.15-075

STATUTORY AUTHORITY: KRS 304.2-110, 304.15-075(1)***, (3), (4)***

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code [~~as defined in KRS 304.1-010~~]. KRS 304.15-075(1) requires the commissioner to develop a notice to inform the owner of a policy of life insurance issued in this state of his or her rights as an owner of a life insurance policy. KRS 304.15-075***(4)*** authorizes[~~also allows~~] the commissioner to promulgate administrative regulations to establish that the notice be made only with respect to policies with a net death benefit that is $100,000 or greater. This administrative regulation establishes the notice that ***shall*** ***[~~must~~]*** be provided to owners of life insurance policies at times specified in KRS 304.15-075(3) and exempts insurers from providing notice to owners whose life insurance policy has a net death benefit that is less than $100,000.

Section 1. When required by KRS 304.15-075(3)[~~(1) Except as provided in Section 2 of this administrative regulation~~], an insurer

shall provide the [following notice to the] owner of an individual life insurance policy with a net death benefit ***of $100,000 or greater*** ***[greater than one hundred thousand dollars ($100,000)]*** with either of the following[at the times specified in KRS 304.15-075(3)]:

(1)[(a)] Important Information About Your Life Insurance Policy, Notice 126, 8/2010; or

(2)[(b)] A notice developed by the insurer which [shall]:

(a)[1.] Meets[Meet] the requirements of KRS 304.15-075(2); and

(b)[2.] Has been[Be filed with and] approved by the commissioner.

Section 2.[in accordance with KRS 304.14-120 and 806 KAR 14:005.

(2) An insurer may include specific contact information in the notice required pursuant to subsection (1)(a) of this section.

Section 2. An insurer shall not be required to provide the notice set forth in Section 1 of this administrative regulation if the net death benefit of the owner's life insurance policy, per policy, is less than $100,000.

Section 3.] Incorporation by Reference. (1) "Important Information About Your Life Insurance Policy", Notice 126, 8/2010, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, 500 Mero St.[215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the department web site at http://insurance.ky.gov.

CONTACT PERSON: DJ Wasson, Executive Advisor, 215 W. Main St., Frankfort, Kentucky 40601, phone (502) 782-5262, fax (502) 564-1453, email DJ.Wasson@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, January 13, 2020)

900 KAR 2:050. Transfer and discharge rights.

RELATES TO: KRS 216.510(2), 216.525, 216.555, 216.557, 216.560, 216B.015(13), 42 U.S.C. 1395, 1396, 42 C.F.R. 483.15, 483.204

STATUTORY AUTHORITY: KRS 216.515(4), 42 C.F.R. 483.204

NECESSITY, FUNCTION, AND CONFORMITY: 42 C.F.R. 483.204 requires that the state shall provide a process for appeals related to involuntary transfer and discharge. This administrative regulation establishes guidelines for this process for long-term care facilities, including long-term care facilities certified in accordance with 42 C.F.R. Part 483. This administrative regulation also establishes the requirements for reasonable notice of involuntary transfer or discharge pursuant to KRS 216.515(4) and appeal rights[of the Kentucky Nursing Home Reform Act, KRS Chapter 216, as it relates to residents' transfer and discharge rights].

Section 1. Definitions. (1) "Discharge" or "transfer" means:

(a) Relocation of a resident from a long-term care facility to a noninstitutional setting or another health[care] facility as defined by KRS 216B.015(13)[Chapter 216B]; or

(b) Any intrafacility relocation of a resident, except between beds within the same distinct Medicare or Medicaid certified or noncertified part of the facility.

(2) "Facility" means a long-term care facility as defined by KRS 216.510(1), except for family care homes licensed pursuant to 902 KAR 20:041.

(3) "Resident" is defined by KRS 216.510(2)[means a resident of a facility or any legal representative or individual acting on behalf of the resident].

(4) "Transfer or discharge rights" means those rights of notification and appeal guaranteed in KRS 216.515(4) and (26), and as outlined in this administrative regulation.

Section 2. Transfer and Discharge Rights. (1) Transfer and discharge requirements. The facility shall permit each resident to remain in the facility, and shall not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(c) The safety of individuals in the facility is endangered;

(d) The health of individuals in the facility would otherwise be endangered;

(e) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid, or state supplementation) a stay at the facility; or

(f) The facility ceases to operate.

(2) Documentation. Before a facility transfers or discharges a resident under any of the circumstances specified in subsection (1)(a) through ***(f)[(e)]*** of this section, the reasons for the transfer or discharge shall be documented in the resident's clinical record. The documentation shall be made by:

(a) The resident's physician if transfer or discharge is necessary under subsection (1)(a) or (b) of this section; and

(b) A physician if transfer or discharge is necessary under subsection (1)**(c) or** (d) of this section.

(3) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:

(a) Notify the resident and the responsible party, responsible[if known, a] family member, or guardian[or legal representative of the resident], in writing, of the transfer or discharge and the reasons for the relocation in a language and manner they understand;

(b) Record the reasons in the resident's clinical record; and

(c) Include in the notice the items described in subsection (5) of this section.

(4) Timing of the notice.

(a) Except as specified in paragraph (b) of this subsection, the notice of transfer or discharge required under subsection (3) of this section shall be made by the facility at least thirty (30) days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge if:

1. An immediate transfer or discharge is required by the resident's urgent medical needs, under subsection (1)(a) of this section;

2. The resident's health improves sufficiently to allow a more immediate transfer or discharge, under subsection (1)(b) of this section;

3. The safety of individuals in the facility would be endangered, under subsection (1)(c) of this section;

4. The health of individuals in the facility would be endangered, under subsection (1)(d) of this section; or

5. The resident has not resided in the facility for thirty (30) days.

(5) Contents of the notice. The written notice specified in subsection (3) of this section shall include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) A statement that the resident, responsible party, responsible family member, or guardian has the right to appeal the action to the cabinet;

(e) The name, address (mailing and email), and telephone number of the cabinet office responsible for receiving requests for appeal;

(f) Information on how to obtain assistance with submitting a

request for appeal;

(g) The name, address (mailing and email), and telephone number of the state long-term care ombudsman; and

(h)[(f)] For a nursing facility resident[residents] with a developmental disability[disabilities,] or mental illness[who are mentally ill], the mailing and email address and telephone number of Kentucky Protection and Advocacy.

(6) Orientation for transfer or discharge. A facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) Notice of bed-hold policy and readmission.

(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident, responsible party, responsible[and a] family member, or legal guardian[representative] that specifies the following:

1. The duration of the bed-hold policy, which shall be requested if available under the Medicaid state plan and provider agreement, during which a resident who receives Medicaid or has a pending application for Medicaid benefits is permitted to return and resume residence in the facility;

2. The facility's policies regarding bed-hold periods, which shall be consistent with paragraph (c) of this subsection, permitting a resident to return; and

3. For a resident[residents] who does[do] not receive or does[do] not have an application pending for Medicaid, the facility's established policy governing readmission.

(b) Notice upon transfer. Upon transfer of a resident to a hospital or for therapeutic leave, a long-term care facility shall provide written notice to the resident, responsible party, responsible [and a] family member, or legal guardian. The notice shall specify [representative, which specifies] the duration of the bed-hold policy described in paragraph (a) of this subsection.

(c) Permitting resident to return to facility. A long-term care facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the Medicaid state plan, is notified and readmitted to the facility immediately upon the first availability of a bed in a semiprivate room if the resident:

1. Chooses to be readmitted;

2. Requires the services provided by the facility; and

3. Is eligible for Medicaid nursing facility services and the facility is certified to participate in Title XVIII, 42 U.S.C. 1395, or Title XIX, 42 U.S.C. 1396, of the Social Security Act.

(8) Equal access to quality care. A facility shall establish and maintain identical policies and practices regarding transfer, discharge, and the provision of service under the Medicaid state plan for all individuals regardless of source of payment.

Section 3. Appeal[Appeals] Rights. (1) A resident, responsible party, responsible family member, or guardian may appeal any discharge.

(2) A resident, responsible party, responsible family member, or guardian may appeal a transfer if the resident[he or she] is transferred from:

(a) A certified bed into a noncertified bed; or

(b) A bed in a certified entity to a bed in an entity that[which] is certified as a different provider.

(3) A resident, responsible party, responsible family member, or guardian has no appeal rights if the resident[he or she] is moved from a certified bed into another certified bed of the same certification in the same facility.

(4) A resident, responsible party, responsible family member, or guardian[or any person acting on behalf of the resident,] may request that the cabinet review any proposed transfer or discharge. The cabinet shall investigate the proposed transfer or discharge to ascertain whether there has been a violation of the resident's transfer or discharge rights.

(5)(a) A resident, responsible party, responsible family member, or guardian may appeal any discharge or appealable transfer to the cabinet.

(b) The resident, responsible party, responsible family member, or guardian shall inform the cabinet in writing of his or her intent to appeal within fifteen (15) days from[the resident's] receipt of notice of the facility's intent to transfer or discharge and include:

1. A copy of the notice of the facility's intent to transfer or discharge the resident; and

2. If not included on the notice, the name and address of the facility.

(c) Hearing procedures for appeals shall be followed, as established in 900 KAR 2:060.

(6) Penalties. The cabinet shall enforce the provision of this administrative regulation pursuant to KRS 216.555, 216.557, and 216.560.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care
(As Amended at ARRS, January 13, 2020)

902 KAR 20:450. Ambulatory infusion agencies.

RELATES TO: KRS 17.500(8), 216B.042, 439.3401, 42 C.F.R. 486.500–486.525, 42 C.F.R. 488.1000–488.1050, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2–1320d-8

STATUTORY AUTHORITY: KRS 216B.042

NECESSITY, FUNCTION AND CONFORMITY: KRS 216B.042(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary for the proper administration of the licensure function, which includes establishing licensure standards and procedures to ensure safe, adequate, and efficient health facilities and health services. This administrative regulation establishes minimum licensure requirements for the operation of ambulatory infusion agencies that provide infusion therapy services in a patient's home or in an ambulatory infusion center.

Section 1. Definitions. (1) "Ambulatory infusion center" means an outpatient treatment center that provides infusion therapy services, excluding an off-campus, Kentucky-hospital owned center or service that meets the licensing exemption criteria of 900 KAR 6:130, Section 3(3).

(2) "Home" means a place of residence used as the home of an individual, including an institution that is used as a home. An institution used as a home shall not include a:

(a) Hospital, including critical access hospital; or

(b) Long-term care facility defined by KRS 216.510(1).

(3) "Infusion drug" means a parenteral drug or biological administered intravenously, or subcutaneously for an administration period of fifteen (15) minutes or more, in the patient's home or in an ambulatory infusion center through:

(a) An injection; or

(b) A pump that is an item of durable medical equipment, excluding:

1. An insulin pump system; or

2. A self-administered drug or biological on a self-administered drug exclusion list.

(4) "Infusion therapy services" means the preparation, administration, or furnishing of parenteral medications, parenteral nutritional services, or administration of drugs intrathecally to an individual in:

(a) The individual's home; or

(b) An ambulatory infusion center.

Section 2. Licensure Application and Fees. (1) An applicant for an initial, provisional license or annual renewal as an ambulatory infusion agency shall submit to the Office of Inspector General:

(a) A completed Application for License to Operate an

Ambulatory Infusion Agency; and

(b) An accompanying fee in the amount of $500, made payable to the Kentucky State Treasurer.

(2)(a) Name change. An ambulatory infusion agency shall:

1. Notify the Office of Inspector General in writing within ten (10) calendar days of the effective date of a change in the agency's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) Change of location. An ambulatory infusion agency shall not change the location where a facility is operated until an Application for License to Operate an Ambulatory Infusion Agency accompanied by a fee of $100 is filed with the Office of Inspector General.

(c) Change of ownership.

1. The new owner of an agency shall submit to the Office of Inspector General an Application for License to Operate an Ambulatory Infusion Agency accompanied by a fee of $500 within ten (10) calendar days of the effective date of the ownership change.

2. A change of ownership for a license shall be deemed to occur if more than twenty-five (25) percent of an existing ambulatory infusion agency or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(3) An extension site location shall not be allowed for any entity licensed under this administrative regulation.

(4) An ambulatory infusion agency shall have an office location in Kentucky.

Section 3. Scope of Operation and Services. (1) A licensee:

(a) Shall furnish infusion therapy services to an individual with an acute or chronic condition that requires administration of infusion drugs in the home or an ambulatory infusion center;

(b) Shall ensure the safe and effective provision and administration of infusion therapy services on a seven (7) day-a-week, twenty-four (24) hour-a-day basis, if provided in the patient's home;

(c) Shall be accredited by a national accrediting organization that meets the requirements of 42 C.F.R. 488.1000 to 488.1050 within one (1) year of initial, provisional licensure;

(d) Shall ensure that each patient's plan of care is established by a physician***, or other prescribing practitioner as authoriazed under the practitioner's scope of practice,*** who shall be responsible for:

1. Prescribing the type, amount, and duration of the infusion therapy services that are to be furnished; and

2. Review of each patient's plan of care:

a. At least every thirty (30) days; or

b. As often as deemed necessary in accordance with the ***physician or prescribing practitioner's[~~physician's~~]*** order on file in the patient's medical record;

(e) Shall provide the skilled nursing services component of infusion therapy services in accordance with the patient's plan of care, including:

1. Clinical notes that shall be signed, recorded, and incorporated in the patient's medical record within three (3) working days of providing the service;

2. Notifying the pharmacist, prescribing practitioner, and applicable agency staff regarding any significant change in the patient's condition; and

3. Patient education and monitoring; and

(f) May provide other professional services in addition to the skilled nursing services component, such as pharmacy services or durable medical equipment required for the delivery of infusion therapy services.

(2)(a) If an ambulatory infusion agency has not obtained accreditation in accordance with subsection (1)(c) of this section within one (1) year of initial licensure, the agency may request an extension to complete the accreditation process.

(b) A request for extension shall:

1. Be submitted in writing to the Office of Inspector General at least sixty (60) days prior to the date of annual renewal;

2. Include evidence that the agency has initiated the process of becoming accredited within sixty (60) days of initial, provisional licensure and is continuing its efforts to obtain accreditation; and

3. Include an estimated timeframe by which approval of accreditation is anticipated, not to exceed two (2) years from the date of initial, provisional licensure.

(3) A licensee's provisional licensure status shall end on the date that the agency obtains accreditation.

(4) Proof of accreditation shall be provided to the Office of Inspector General:

(a) Upon receiving accreditation; and

(b) At the time of annual renewal.

(5) If an ambulatory infusion agency loses its accreditation or becomes accredited by a different accrediting organization, the licensee shall notify the Office of Inspector General no later than thirty (30) days from the date that:

(a) The licensee's accreditation was terminated; or

(b) Accreditation by a different organization that meets the requirements of 42 C.F.R. 488.1000 to 488.1050 took effect.

(6) The cabinet shall revoke a license if an ambulatory infusion agency fails to meet one (1) of the following requirements:

(a) Become accredited in accordance with subsection (1)(c) of this section;

(b) Request an extension in accordance with subsection (2) of this section;

(c) Achieve accreditation within two (2) years from the date of initial, provisional licensure if a request for extension is submitted; or

(d) Maintain accreditation.

Section 4. Inspections. (1) If an ambulatory infusion agency demonstrates evidence of full accreditation, the annual renewal process shall not require an on-site survey by the cabinet.

(2) Nothing in this administrative regulation shall prevent the cabinet from:

(a) Conducting an investigation related to a complaint; or

(b) Making an on-site survey of a fully accredited ambulatory infusion agency if the cabinet deems necessary.

Section 5. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for:

(a) The operation of the ambulatory infusion agency;

(b) Ensuring compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the agency;

(c) Designating an administrator who shall be responsible for the daily operation of the agency;

(d) Establishing and implementing written administrative policies covering all aspects of operation, including:

1. A description of the agency's organizational structure, staffing, and allocation of responsibility and accountability;

2. Procedures for the evaluation of personnel performance; and

3. A narrative describing in detail:

a. The services offered by the agency; and

b. Qualifications of personnel involved in the delivery of services, including verification that each nurse employed directly or by contract has a license in good standing from the Kentucky Board of Nursing;

(e) Establishing procedures for the handling and administration of drugs and biologicals;

(f) Developing written infection control policies that are consistent with Centers for Disease Control guidelines, available at https://www.cdc.gov/infectioncontrol/pdf/guidelines/environmental-guidelines-P.pdf, including:

1. Prevention of disease transmission; and

2. Cleaning, disinfection, and sterilization methods used for equipment and the environment; and

(g) Establishing guidelines to ensure the coordination of treatment with other health facilities and practitioners that deliver services to patients of the agency.

(2) Background checks. All owners and agency personnel in a

position that involves providing direct services shall:

(a) Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police;

(b) Not have a criminal conviction, or plea of guilty, to a:

1. Sex crime as specified in KRS 17.500(8);

2. Violent crime as specified in KRS 439.3401;

3. Felony offense related to:

a. Theft;

b. Abuse, possession, or sale of illegal drugs; or

c. Abuse, neglect, or exploitation of a child or an adult; or

4. Misdemeanor offense related to abuse, neglect, or exploitation of a child or an adult; and

(c) Not be listed on the following:

a. Central registry established by 922 KAR 1:470;

b. Nurse aide or home health aide abuse registry established by 906 KAR 1:100; or

c. Caregiver misconduct registry established by 922 KAR 5:120.

(3) Personnel record. A personnel record shall be kept on each staff member and shall contain the following items:

(a) Name and address;

(b) Verification of all training and experience, including documentation of the employee's professional licensure status, if applicable;

(c) Verification of submission to the background check requirements of subsection (2) of this section;

(d) Annual performance appraisals; and

(e) Employee incident reports.

Section 6. Patient records. (1) Ownership.

(a) Medical records shall be the property of the ambulatory infusion agency.

(b) The original medical record shall not be removed except by court order.

(c) Copies of medical records or portions thereof may be used and disclosed in accordance with the requirements established in this administrative regulation.

(2) Confidentiality and Security: Use and Disclosure.

(a) The agency shall maintain the confidentiality and security of patient records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law.

(b) The agency may use and disclose patient records. Use and disclosure shall be as established or required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or as established in this administrative regulation.

(c) An ambulatory infusion agency may establish higher levels of confidentiality and security than those required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164.

(d) Retention of records. After a patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for at least:

1. Six (6) years; or

2. Three (3) years after the patient reaches the age of majority in accordance with KRS 2.015, whichever is longer.

(3) The agency shall:

(a) Designate a specific location for the maintenance and storage of the agency's medical records;

(b) Have provisions for storage of medical records in the event the agency ceases to operate; and

(c) Safeguard the record and its content against loss, defacement, or tampering.

Section 7. Incorporation by Reference. (1) The form, OIG 008, "Application for License to Operate an Ambulatory Infusion Agency", September 2019 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 4062, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

LABOR CABINET
Department of Workers' Claims
(Amended After Comments)

803 KAR 25:260. Treatment guidelines.

RELATES TO: KRS 342.0011(13), 342.020, 342.035.

STATUTORY AUTHORITY: 342.035, 342.260, 342.265, 342.270, 342.275.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department and the work of administrative law judges so long as those administrative regulations are consistent with KRS Chapter 342 and KRS Chapter 13A. KRS 342.035 requires the commissioner to develop or adopt practice parameters or evidence-based treatment guidelines for medical treatment for use by medical providers under KRS Chapter 342 and promulgate administrative regulations to implement the developed or adopted treatment guidelines. This administrative regulation adopts treatment guidelines and provides guidance to implement them. **This administrative regulation does not abrogate the right of the injured employee to choose his treating physician as provided in KRS 342.020.**

Section 1. Definitions. (1) "Carrier" **is defined by KRS 342.001(6)/or "insurance carrier" means any insurer authorized to insure the liability of employers arising under Chapter 342 of the Kentucky Revised Statutes, an employer authorized by the commissioner to pay directly the compensation provided in Chapter 342 of the Kentucky Revised Statutes as those liabilities are incurred, a self-insured group, and any person acting on behalf of or as an agent of the insurer, self-insured employer, or self-insured group]**.

(2) "Commissioner" means the commissioner charged in KRS 342.228 to administer the Department of Workers' Claims and whose duties are stated in KRS 342.230.

(3) "Department" or "Department of Workers' Claims" means the governmental agency whose responsibilities are provided in KRS 342.228.

(4) "Employee" means those natural persons constituting an employee subject to the provisions of the Act as defined in KRS 342.640 and the employee's legal counsel.

(5) "Employer" means those persons constituting an employer as defined in KRS 342.630, the employer's **carrier,** insurance carrier, self-insured group or other payment obligor, third party administrator, other person acting on behalf of the employer in a workers' compensation matter, and the employer's legal counsel.

(6) "Evidence-based medicine" means the process and use of relevant information from peer-reviewed clinical and epidemiologic research to address a clinical issue thereby weighing the attendant risks and benefits to determine whether proposed diagnostic or therapeutic procedures are appropriate in light of their high probability of producing the best and most favorable outcome.

(7) "**Insurance carrier" is defined by KRS 342.0011(22).**

(8) "Maximum medical improvement" means the point of stabilization in an employee's recovery from a work injury where substantial improvement in the human organism is no longer likely.

(9)[(8)] "Medical emergency" means the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that in the absence of immediate medical attention could reasonably be expected to result in placing the patient's health or bodily functions in serious jeopardy or serious dysfunction of any body organ or part.

(10) "Medical payment obligor" means any employer, carrier, insurance carrier, self-insurer, and any person acting on behalf of or as an agent of the employer, carrier, insurance carrier, or self-insurer.

(11)[(9)] "Medical provider" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, osteopathic and chiropractic practitioners, physician assistants, and advanced practice registered nurses, acting within the scope of their license;

(12)[(10)] "Medically necessary" or "medical necessity" means healthcare services, including medications, that a medical provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are:

(a) In accordance with generally accepted standards of medical practice; and

(b) Clinically appropriate, in terms of type, frequency, extent, site and duration; and considered effective for the patient's illness, injury or disease. Treatment primarily for the convenience of the patient, physician, or other healthcare provider does not constitute medical necessity.

(13) "Physician" is defined by KRS 342.0011(32).

(14)[(11)] "Preauthorization" means the process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(15)[(12)] "Statement for services" is defined by 803 KAR 25:096, Section 1(5).

(16)[(13)] "Treatment guidelines" or "guidelines" are the treatment guidelines developed or adopted by the commissioner pursuant to KRS 342.035(8)(a).

(17)[(14)] "Utilization Review" is defined by 803 KAR 25:190, Section 1(6).

Section 2. Purpose and Adoption. (1) The purpose of the treatment guidelines is to facilitate safe and appropriate treatment of work-related injuries and occupational diseases.

(2) The commissioner adopts the **[current edition and any future published updates of the]** ODG treatment guidelines **as[currently]** published by MCG Health for use by medical providers in the treatment of work related injuries and occupational diseases. The commissioner shall review the guidelines not less than annually and update or amend this administrative regulation, if necessary, to ensure that the guidelines are consistent with the provisions of KRS 342.020 and KRS 342.035.

Section 3. Application. (1) The treatment guidelines do not apply to treatment provided in a medical emergency.

(2) The treatment guidelines do not apply to urine drug screens. KRS 342.020(13) governs an employer's liability for urine drug screens.

(3) The treatment guidelines shall be applied in the utilization review decision-making process.

(4) Treatment **designated as "Recommended" under the guidelines shall be[recommended in the guidelines is]** presumed **[to be]** reasonable and necessary **and shall not require preauthorization**. This presumption shall apply to utilization review and in the resolution of medical disputes**. This presumption[, and]** shall be rebuttable only by clear and convincing evidence.

(5) **If a medical provider seeks preauthorization for treatment designated as "Conditionally Recommended" and furnishes sound medical reasoning in support of undertaking that treatment, a medical payment obligor shall consider and address that sound medical reasoning and shall not deny preauthorization solely on the basis that conditions precedent have not been met. The failure of a medical payment obligor to comply with the time requirements in 803 KAR 25:190, Section 5(2) and (3), may result in sanctions.**

(6) Treatment designated as "Not Recommended" under the guidelines[Treatment not recommended] or not addressed in the guidelines shall require preauthorization.

(7)[(6)] The employer shall not be responsible for payment of medical treatment **designated as "Not Recommended" under the guidelines[not recommended]** or not addressed in the treatment guidelines unless it was provided in a medical

emergency; was authorized by the **medical payment obligor[employer]**; or was approved through the dispute resolution process by an administrative law judge.

(8)[(7)] Medical providers proposing treatment **designated as "Not Recommended" under the guidelines [not recommended]** or not addressed in the treatment guidelines shall articulate in writing sound medical reasoning for the proposed treatment, which may include:

(a) Documentation that reasonable treatment options allowable in the guidelines have been adequately trialed and failed;

(b) The clinical rationale that justifies the proposed treatment plan, including criteria that will constitute a clinically meaningful benefit; or

(c) Any other circumstances that reasonably preclude recommended or approved treatment options.

(9) Sound medical reasoning furnished by a medical provider shall be considered before preauthorization of treatment may be denied.

(10)[(8) Before an employer denies preauthorization of treatment not recommended or not addressed in the treatment guidelines, it must consider any sound medical reasoning furnished by the medical provider.

(9)**]** The treatment guidelines are not intended to establish a standard for determining professional liability. **The guidelines are not a standard or mandate. Exceptions to and the proper application of the guidelines require assessment of each individual course of treatment.**

(11)[(10)] The pharmaceutical formulary adopted in 803 KAR 25:270 shall be part of the medical treatment guidelines.

(12)[(11)] Maximum medical improvement shall not preclude the provision of medical treatment necessary for the cure and relief from the effects of an injury or occupational disease if the treatment is medically necessary to maintain function at the maximum medical improvement level or to improve function following an exacerbation of the injured employee's condition.

Section 4. Preauthorization. (1) Requests for preauthorization shall be subject to utilization review unless the **medical payment obligor[employer]** waives utilization review. **The failure of a medical payment obligor to comply with the time requirement in 803 KAR 25:190, Section 5(2) and (3) may result in sanctions**

(2) Except as modified in this Section, 803 KAR 25:190, Sections 5, 7, and 8 apply to all treatment for which preauthorization is required or requested under this administrative regulation. If the medical provider has provided sound medical reasoning for treatment, the **medical payment obligor[employer]** shall not deny the treatment solely on the basis that it is not **designated as "Recommended" under the guidelines[recommended**] or not addressed in the guidelines.

(3) If the **medical payment obligor[carrier]** denies preauthorization following utilization review, **It shall issue a written notice of denial as required by 803 KAR 25:190, Section 7.** The medical provider **whose recommendation for treatment is denied** may request reconsideration**, and may require the reconsideration[of the denial to]** include a peer-to-peer conference with a **second** utilization review physician. The request for a peer-to-peer conference shall be made by electronic communication and shall provide:

(a) A telephone number for the reviewing physician to call;

(b) A date or dates for the conference not less than five (5) business days after the date of the request; and

(c) A one (1)-hour period during the date or dates specified during which the requesting medical provider, or a designee, will be available to participate in the conference between the hours of 8:00 a.m. and 6:00 p.m. (Eastern Time), Monday through Friday.

(4) The **reviewing physician participating in the** peer-to-peer conference must be **[conducted by a physician]** of the same specialty as the medical provider requesting reconsideration.

(5) Failure of the reviewing physician to participate during the date and time specified shall result in the approval of the request for preauthorization and approval of the recommended treatment unless good cause exists for the failure to participate. In the event of good cause for failure to participate in the peer-to-peer conference, the reviewing physician shall contact the requesting medical provider to reschedule the peer-to-peer conference. The rescheduled peer-to-peer conference shall be held no later than two (2) business days following the original conference date. Failure of the requesting medical provider or its designee to participate in the peer-to-peer conference during the time he or she specified availability may result in denial of the request for reconsideration.

(6) **[Pursuant to 803 KAR 25:190, Section 8(1)(c)]**, A written reconsideration decision shall be rendered within five (5) **business** days of date of the peer-to-peer conference. The written decision shall be entitled "FINAL UTILIZATION REVIEW DECISION."

(7) If a Final Utilization Review Decision is rendered denying authorization for treatment before an award has been entered by or agreement approved by an administrative law judge, the requesting medical provider or the injured employee may file a medical dispute pursuant to 803 KAR 25:012. If a Final Utilization Review Decision is rendered denying authorization for treatment after an award has been entered by or agreement approved by an administrative law judge, the employer shall file a medical dispute pursuant to 803 KAR 25:012.

(8) **[The employer shall not be required to file a medical dispute pursuant to 803 KAR 25:012, Section 1(6), to challenge a statement for services for treatment not recommended or not addressed by the guidelines when preauthorization was not requested. If the basis for denial of a statement for services is that the treatment was not recommended or not addressed in the guidelines, within two (2) business days of receipt of the statement for services, the insurance carrier shall provide notice to the employee and medical provider of the denial and the basis for the denial.**

(9)] Pursuant to KRS 342.285(1), a decision of an administrative law judge on a medical dispute is subject to review by the workers' compensation board under the procedures set out in 803 KAR 25:010, Section 22.

Section 5. Effective Dates. (1) The treatment guidelines apply to all treatment administered on and after **September[July]** 1, 2020.

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: January 15, 2020

FILED WITH LRC: January 15, 2020 at 10 a.m.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email dale.hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation adopts treatment guidelines for treatment provided for the cure of and relief of a work injury or occupational disease and provides guidance for its implementation and use.

(b) The necessity of this administrative regulation: KRS 342.035(8) requires the commissioner to develop or adopt treatment guidelines and promulgate an administrative regulation to implement the treatment guidelines.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.035 requires the commissioner to develop or adopt treatment guidelines for the cure of and relief of a work injury or occupational disease and to promulgate an administrative regulation to implement the treatment guidelines.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 342.020 provides an employer is responsible to pay for the cure and relief from the effects of an injury or occupational disease as may reasonably be required at the time of injury and thereafter during disability or as may be required for the cure and treatment of an occupational disease. KRS 342.035 requires the commissioner to develop or adopt treatment guidelines for the cure of and relief of a work injury or occupational disease. This administrative regulation provides guidance to the employee and employer with respect to the treatment guidelines.

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

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All injured employees, physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, insurance carriers, self-insurance groups, self-insured employers, insured employers, and third party administrators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians and medical providers are required to use the treatment guidelines adopted by the commissioner. Employers and their payment obligors will apply the treatment guidelines when reviewing and paying for treatment as required by KRS 342.020.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to the payment obligors cannot be ascertained until treatment is sought and provided to the injured employee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Injured employees are less likely to receive inappropriate treatment and more likely to receive the appropriate treatment in a more timely fashion. Employees may discover treatment is received in a more timely fashion and employers may experience a long-term reduction in medical benefit costs.

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

(a) Initially: None

(b) On a continuing basis: The cost associated with this administrative regulation is the cost of maintaining information about the treatment guidelines on the Cabinet's Web site.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied; the regulation applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and all agencies or departments of government with employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.020, 342.035, 342.260, 342.265, 342.275.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no direct effect on expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The cost of maintaining information about the treatment guidelines on the cabinet's Web site is nominal.

(d) How much will it cost to administer this program for subsequent years? Other than the cost to maintain information about the treatment guidelines on the cabinet's Web site, it does not appear there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: It is possible the application of the treatment guidelines will cause treatment costs to stabilize or reduce, providing a reduction of costs to the workers' compensation system as a whole.

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
(Amended After Comments)

815 KAR 20:055. Water heating[heater] devices.

RELATES TO: KRS 318.200[, EO 2009-535]

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130, 318.200

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate administrative regulations establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.200 requires that all retailers, wholesalers, and installers selling or offering for sale[of] water heating devices, within thirty (30) days of[forward] the date of sale, forward a list of names and addresses of purchasers[name and address of each purchaser] along with the serial number of the device purchased to the department[office] or to the appropriate agency of county or city government having jurisdiction. This administrative regulation establishes the requirements for water heating devices.

Section 1. Installation Requirements. (1) General requirements.

(a) A water heater shall be:

1. Properly connected to the hot and cold water supply; and

2. Accessible for inspection, repair, and replacement.

(b) Temperature and pressure relief valves shall be installed in accordance with manufacturer's requirements.

(2) A water heater designed for use as an appliance for

supplying potable hot water for domestic or commercial purposes may be used for space heating if the water temperature does not exceed 140 degrees Fahrenheit.

(3) Crawl space.

(a) A water heater installed in a crawl space shall:

1. Have adequate access with a travel path no less than five (5) feet of vertical distance; and

2. Be installed on at least a two (2) inch thick corrosion resistant material adequate to support the water heater.

(b) The replacement of a water heater that was originally installed in a crawl space prior to September 1, 2006 shall be exempt from vertical distance requirement in paragraph (a)1. of this subsection.

(4) Attic or wood flooring.

(a) A water heater installed in an attic or on wood flooring in the occupied space of a building constructed after April 1, 2020 shall be:

1. Installed with a corrosion resistant water tight pan below the water heater;[within thirty (30) days of the purchase. EO 2009-535, effective June 12, 2009, reorganized the Office of Housing, Buildings and Construction as the Department of Housing, Buildings] and

2. Equipped with at least a three-fourths (3/4) inch drain to be piped similarly to a temperature and pressure relief valve discharge line.

(b) A temperature and pressure relief valve may discharge into the drain pan if the drain pan pipe:

1. Is equipped with a one (1) inch drain;

2. Is of a material suitable for hot water; and

3. Discharges through an air gap to a sump basin, service sink, open receptacle[Construction, and established the commissioner, rather than executive director], or other point of discharge approved by the division.

(5) Fuel-fired water heaters.

(a) A fuel-fired water heater shall be connected to a flue or a chimney. The flue or chimney shall:

1. Be of a size at least as large as required by the water heater manufacturer's instructions;

2. Extend two (2) feet above the roof of the building;

3. Be properly flashed; and

4. Not terminate within six (6) feet of a door or window.

(b) A fuel-fired water heater vent shall not be connected to a flue serving a coal-burning apparatus.

(c) A fuel-fired water heater shall not be placed in any bathroom, toilet room, or a room used for sleeping unless it has a direct-vent or through the wall vent system.

(d) A fuel-fired water heater shall not be placed in a closed room or closet unless the space:

1. Has a louver door; or

2. Is ventilated to provide combustion air and circulation that satisfies the requirements of the National Fuel Gas Code in Chapter 35 of the Kentucky Building Code incorporated by reference in 815 KAR 7:120.

(6) Gas-fired direct vent water heaters.

(a) A residential gas-fired direct vent and through the wall type water heater shall be:

1. Vented in accordance with the manufacturer's instructions; and

2. Installed to satisfy the requirements of the National Fuel Gas Code in Chapter 35 of the Kentucky Building Code incorporated by reference in 815 KAR 7:120.

(b)1. The vent terminal of a direct vent water heater with an input of 50,000 BTUs per hour or less shall be located at least nine (9) inches from any opening through which flue gases may enter the building.

2. The vent terminal of a direct vent water heater with an input over 50,000 BTUs per hour shall be located at least twelve (12) inches from any opening through which flue gases may enter the building.

(c) The bottom of the vent terminal and the air intake of a direct vent water heater shall be located at least twelve (12) inches above grade.

(7) Instantaneous water heaters. An instantaneous water heater not listed in 815 KAR 20:020 shall:

(a)1. Be certified to ANSI Z21.10.1 for units including but not exceeding 75,000 BTUs; or

2. Be certified to ANSI Z21.10.3 for units exceeding 75,000 BTUs;

(b) Have a minimum of three-fourths (3/4) inch inlet and outlet;

(c) Be installed with a properly sized pressure relief valve not exceeding 150 pounds per square inch; and

(d) Be installed to enable flushing without altering the installation,[as the head of the department. This administrative regulation establishes the requirements for submitting the information to the department.

Section 1. Reporting Requirements. (1)] if required by the manufacturer to be periodically flushed.

Section 2. Water Heaters Subject to Additional Requirements. Water heaters shall be considered pressure vessels and shall comply with KRS Chapter 236 and 815 KAR Chapter 15 if the water heater exceeds:

(1) Heat input of 200,000 BTU/Hr.;

(2) Water temperature of 210 degrees Fahrenheit; or

(3) Water storage capacity of 120 gallons.

Section 3. Domestic Solar Water Heaters. A domestic solar water heater may have a "single wall heat exchanger" if:

(1) The solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or an equivalent;

(2) The heat exchanger is pretested by the manufacturer to 450 pounds per square inch;

(3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and

(4) A pressure relief valve is installed at the highest point in the solar panel.

Section 4. Domestic[KRS 318.200 to submit information to the department, rather than to a local jurisdiction, a wholesaler, retailer, or installing contra tractor selling a] Water Heater Preheating[heating] Device. (1) A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump heater.

(2) Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided.

(3)(a) The water inlet to the heat exchange vessel shall be provided with a check valve. An approved pressure relief valve set to relieve at five (5) pounds per square inch above the maximum water pressure at the point of installation shall be provided adjacent to and at the outlet side of the check valve, if the heat exchange units contain more than twenty (20) pounds of refrigerants.

(b) This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the pre-heater device.

(4)(a) Condensate drain water shall be piped in accordance to the Kentucky Plumbing Code and shall not:

1. Drain into a crawl space, sewer, or vent stack; or

2. Be installed in an area subject to freezing.

(b) A condensate pump shall be used if a drain is:

1. Not available; or

2. Located above the vent.

Section 5. Temperature and Pressure Relief Devices. (1) Only temperature and pressure relief devices approved by the department as established in 815 KAR 20:020 and 815 KAR 20:120 shall be installed.

(2) A temperature and pressure relief device shall be installed:

(a) On each water heater on the hot water side not more than three (3) inches from the top[submit to the Department of Housing,

Buildings and Construction, Division of Plumbing, the name and address of each purchaser, including the serial number] of the water heater;[,] and

(b) According to the manufacturer's recommendation, if a marked opening is provided on the[on Form PLB-94,] water heater by the manufacturer for a temperature and pressure relief device.

(3)(a) In a location with a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor.

(b) In a location without a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell (Is this a word?) turned down and piped to within four (4) inches of the surface of the ground.

(4) The relief device may discharge through an air gap to a sump basin, service sink, open receptacle, or other point of discharge in which equivalent safety[Report Form.

(2) An installing contractor] shall be provided as approved by the department.

Section 6. Water Distribution for Fan Coil Units. (1) If a domestic water heater is used for heating purposes through a fan coil medium, the water temperature shall not exceed 140 degrees Fahrenheit.

(2) The fan coil unit shall use not less than three-fourths (3/4) inch piping and its run shall not exceed 140 feet between the water heater and the heating unit.

(3) The applicable requirements established in 815 KAR 20:070 shall be met.

Section 7.[exempt from the] Reporting Requirements. (1) Except as established in[of] subsection (2)[(1)] of this section, a wholesaler, retailer, or installer who sells a water heating device shall submit to the division Form PLB-94, Water Heater Report Form, within thirty (30) days of the date of sale.

(2) An installing contractor who obtains[the contractor has if purchased] an installation permit for the installation of a water heating device shall be exempt from the reporting requirements of subsection (1) of this section. The installation[water heater. The] permit shall serve as the reporting requirement for the installer[Division of Plumbing] as required by KRS 318.200.

Section 8[2]. Incorporation by Reference. (1) Form PLB-94, "Water Heater Report Form", October 2019[December 2009], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, Division of Plumbing, 500 Mero St.[101 Sea Hero Road, Suite 100], Frankfort, Kentucky 40601-5412[40601-5405], Monday through Friday, 8 a.m. to 4:30[430] p.m. and is available online at http://dhbc.ky.gov/Pages/default.aspx.

STEVEN A. MILBY, Commissioner
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: October 11, 2019

FILED WITH LRC: October 14, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on December 23, 2019 at Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on December 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Max Fuller, Staff Attorney, Department of Housing, Buildings and Construction, 500 Mero Street, 1 SW, Frankfort, Kentucky 40601, phone (502) 573-0365, fax (502) 573-1057, email max.fuller@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Max Fuller

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for water heating devices.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures. KRS 318.200 requires that all retailers, wholesalers, and installers selling or offering for sale water heating devices to forward a list of names and addresses of purchasers along with the serial number of the device purchased to the department or to the appropriate agency of county or city government having jurisdiction within thirty (30) days of purchase.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administration regulation establishes the requirements for the installation, alteration, and reporting of water heating devices.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates sections regarding water heaters previously found in other administrative regulations to make the administrative regulation more accessible and user-friendly. This amendment further corrects grammatical errors, errors with manufacturer's numbers, and removes superfluous language.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to assist the Division of Plumbing in carrying out its duty to monitor and inspect the construction, installation, and alteration of plumbing and plumbing fixtures and appliances in the Commonwealth. This amendment is also necessary to aid in clarity and accessibility of the administrative regulation to the public and licensees installing or servicing water heaters.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code to regulate plumbing. KRS 318.200 requires that all retailers, wholesalers, and installers selling or offering for sale water heating devices to forward a list of names and addresses of purchasers along with the serial number of the device purchased to the department within thirty (30) days of purchase. KRS 198B.040(10) requires the department to promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures. This administrative regulation establishes the installation and reporting requirements for water heating devices.

(d) How the amendment will assist in the effective administration of the statutes: This amendment makes the administrative regulation easier to understand and more accessible to both individuals engaged in the plumbing industry and plumbing inspectors. This amendment places water heating device requirements in a single, concise administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: All individuals engaged in the plumbing industry, Department of Housing, Buildings and Construction personnel, and water heater retailers.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: This amendment will not impose any additional requirements on any of the regulated entities identified in question (3).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This amendment will not impose any additional costs on any of the regulated entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities: It will help the entities in question (3) read and understand the administrative regulation. Individuals engages in the plumbing trade and plumbing inspectors will now have a single, concise administrative regulation that contains the requirements for water heating devices.

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

(a) Initially: There are no anticipated additional initial costs to administer these regulatory amendments.

(b) On a continuing basis: There are no anticipated additional costs on a continuing basis to administer these regulatory amendments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation of these amendments is anticipated to result in no additional costs to the Department. Any costs resulting from these administrative amendments will be met with existing agency funds.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees established by this administrative regulation amendment. There are also no fees directly or indirectly increased by this administrative regulation amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as all individuals in the plumbing industry and Department personnel are affected by the amended requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Housing, Buildings and Construction, Division of Plumbing will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized and required by KRS 198B.040(10) and 318.130.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? There are no anticipated additional costs to administer this regulatory amendment for the first year.

(d) How much will it cost to administer this program for subsequent years? There are no anticipated additional costs to administer this regulatory amendment for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PERSONNEL BOARD
(Amendment)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.005, 18A.0751(1)(e), (4)(e), 18A.111
STATUTORY AUTHORITY: KRS 18A.005, 18A.075(1), 18A.0751(1)(e), (4)(e)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(e) requires the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.0751(4)(e) authorizes the Personnel Board to promulgate administrative regulations to establish an initial probationary period in excess of six (6) months for specific job classifications. This administrative regulation establishes the requirements relating to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or final month, depending upon the length of initial probationary period, except as established in KRS 18A.111.
(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

Title Code	Job Classification	Length of Initial Probationary Period
20000538	Golf Course Superintendent I	9 months
20000539	Golf Couse Superintendent II	9 months
20000558	Parks Golf Professional	9 months
20000677	State Park Ranger I	9 months
20000562	Resort Park Manager I	12 months
20000563	Resort Park Manager II	12 months
20000564	Resort Park Manager III	12 months
20000568	Parks Program Services Supervisor	9 months
20000569	Parks Camping/Boat Dock Manager	9 months
20000570	Park Business Manager I	12 months
20000571	Park Business Manager II	12 months
20000572	Park Manager I/Historic Site Manager	12 months
20000573	Park Manager II	12 months
20000574	Park Manager III	12 months
20000609	Conservation Officer Recruit	12 months
20000616	Veterans Benefits Field Rep I	9 months
20000618	Veterans Benefits Regional Administrator	9 months
20000672	Facilities Security Sergeant	12 months
20000673	Facilities Security Lieutenant	12 months
20000676	State Park Ranger Recruit	12 months
20000680	Facilities Security Officer II	12 months
20000683	Mounted Patrol Officer Recruit	12 months
20000687	Police Telecommunicator I	12 months
20000688	Police Telecommunicator II	12 months
20000689	Police Telecommunications Shift Supervisor	12 months
20000690	Police Telecommunications Supervisor	12 months
20000692	CVE Inspector I	12 months
20000694	CJIS (Criminal Justice Information System) Compliance Specialist I	12 months
20000695	CJIS Compliance Specialist II	12 months
20000696	CJIS Compliance Specialist III	12 months
20000697	CJIS Compliance Supervisor	12 months
20000698	Transportation Operations Center Specialist I	12 months
20000703	Polygraph Examiner II	12 months
20000704	Polygraph Examiner I	12 months
20000713	Driver's Test Administrator	12 months
20000719	Law Enforcement Training Instructor I	12 months
20000722	Law Enforcement Training Instructor I - Telecommunications	12 months
20000813	Boiler Inspector I	12 months
20000817	HVAC Inspector I	12 months
20000820	Fire Protection Systems Inspector	12 months
20000821	Industrial Hygienist I	12 months
20000834	OSH Compliance Officer I	12 months
20000852	OSH Safety Consultant I	12 months
20000856	Industrial Hygienist Consultant I	12 months
20000888	Insurance Fraud Investigator I	12 months
20000889	Insurance Fraud Investigator II	12 months
20000890	Insurance Fraud Investigator Supervisor	12 months
20000938	Forensic Firearms and Toolmark Examiner I	12 months
20000940	Forensic Chemist I	12 months
20000941	Forensic Chemist II	12 months
20000943	Forensic Biologist I	12 months
20000944	Forensic Biologist II	12 months
20000953	Forensic Computer Examiner I	12 months
20000954	Forensic Computer Examiner II	12 months
20000955	Forensic Computer Examiner III	12 months
20000963	Therapy Program Assistant	9 months
20000974	Audiologist I	12 months
20001001	Patient Aide I	9 months
20001037	Medical Investigator I	12 months
20001038	Medical Investigator II	12 months
20001105	KSB/KSD Administrator III	12 months
20001107	KSB/KSD Administrator V	12 months
20001122	Disability Adjudicator I	12 months
20001125	Social Service Worker I	9 months
20001132	Field Services Supervisor	12 months
20001135	Juvenile Facility Superintendent I	12 months
20001136	Juvenile Facility Superintendent III	12 months
20001137	Facilities Regional Administrator	12 months
20001138	Youth Services Program Supervisor	12 months
20001139	Juvenile Facility Superintendent II	12 months
20001140	Family Services Office Supervisor	12 months
20001142	Human Rights Specialist	12 months
20001157	Administrative Hearing Officer I	12 months
20001159	Human Rights Enforcement Branch Manager	12 months
20001162	Human Rights Research/Information Compliance Supervisor	12 months
20001163	Human Rights Housing Compliance Supervisor	12 months
20001164	Human Rights Employment/Public Accommodations Compliance Supervisor	12 months

20001165	Human Rights Compliance Enforcement Officer II	12 months
20001166	Probation and Parole Officer I	12 months
20001171	Youth Worker I	12 months
20001174	Youth Worker Supervisor	12 months
20001175	Juvenile Services District Supervisor	12 months
20001184	Service Region Administrator	12 months
20001185	Service Region Administrator Associate	12 months
20001186	Service Region Clinical Associate	12 months
20001788	Revenue Field Auditor I	12 months
20001807	Revenue Auditor I	12 months
20001841	Criminal Intelligence Analyst I	12 months
20001842	Criminal Intelligence Analyst II	12 months
20001882	Public Advocate Investigator I	12 months
20001895	Environmental Administrative Hearing Officer	12 months
20001899	Mitigation Specialist I	12 months
20001904	Investigator I	12 months
21000900	Financial Institutions Examiner I	12 months
21000901	Financial Institutions Examiner II	12 months
21002025	Highway Technician Assistant I	12 months
21002026	Highway Technician Assistant II	12 months
21002027	Highway Technician I	12 months
21002028	Highway Technician II	12 months
21002029	Highway Technician III	12 months
21002030	Highway Technician IV	12 months
21002031	Highway Technician Superintendent I	12 months
21002032	Highway Technician Superintendent II	12 months
21002326	Apprentice I	12 months
21002327	Apprentice II	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. If an employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. A written notification shall be sent to the employee to advise the employee of the effective date of reversion. A copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) Except as established in KRS 18A.111, the promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the appropriate month following promotion as established in KRS 18A.005(27).

(4) The promotional probationary period shall be the same length as the initial probationary period for each job classification.

Section 3. Probationary Period Upon Reinstatement. (1) An employee who is reinstated to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status. This shall include an employee ordered reinstated pursuant to KRS 18A.111(3), unless the board rules otherwise.

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

STAFFORD EASTERLING, General Counsel

APPROVED BY AGENCY: January 13, 2020

FILED WITH LRC: January 14, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 24, 2020, at 9:00 a.m. Eastern Time at the Kentucky Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky. 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 canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m., March 31, 2020. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Stafford Easterling, General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email: stafford.easterling@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation sets forth the classifications for which an initial probationary period in excess of six (6) months is required.

(b) The necessity of this administrative regulation: To establish the appropriate probationary periods for classifications throughout state government.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.0751(4)(e) requires the Personnel Board to promulgate an administrative regulation listing the job classifications for which an initial probationary period in excess of six (6) months is required. It also makes clear that a promotional probationary period shall mirror the initial promotional period for a particular job classification.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation sets forth the classifications for which an initial probationary period in excess of six (6) months is required.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment would increase the initial probationary period for the Law Clerk, Law Enforcement Training Instructor I, Law Enforcement Training Instructor I-Telecommunications, Nursing Investigator, Advanced Practice Registered Nurse Investigator, HVAC Inspector I, and Boards and Commissions Support Specialist from six months to twelve months. The proposed amendment would reduce the initial probationary period for the Mitigation Specialist I and Public Advocate Investigator from 12 months to 6 months.

(b) The necessity of the amendment to this administrative regulation: The Secretary of the Personnel Cabinet, in consultation with the respective agencies, has recommended changes in the duration of the initial probationary period for the enumerated classifications.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment consists of changes to the

list of classifications for which an initial probationary period in excess of six (6) months is required. It also makes clear that a promotional probationary period shall mirror the initial promotional period for a particular job classification.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will amend the initial probationary period for certain enumerated classifications, which will assist in the recruitment and retention of qualified employees across state government.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state employees appointed to the listed classifications and the state government agencies that employ them.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An enhanced ability to recruit and retain qualified employees.

(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: Not applicable.

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

(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. This regulation must apply equally to all classified employees in all state agencies with classified employees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Justice and Public Safety Cabinet/Department of Public Advocacy; Justice and Public Safety Cabinet/Department of Criminal Justice Training; Justice and Public Safety Cabinet/Department of Kentucky State Police (who does not oppose the request); Board of Nursing; Public Protection Cabinet/Department of Building Housing Building and Construction, and Public Protection Cabinet/Board of Medical Licensure (who does not oppose the request).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.0751 and 18A.111

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? Not applicable

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

(c) How much will it cost to administer this program for the first year? Not applicable

(d) How much will it cost to administer this program for subsequent years? Not applicable

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: It is not anticipated that this administrative regulation will have a fiscal impact.

BOARDS AND COMMISSIONS
Board of Pharmacy
(Amendment)

201 KAR 2:230. Special limited pharmacy permit – Central Fill[~~pharmacy~~].

RELATES TO: KRS 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.020, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020 requires that prescription drugs, medicines, and pharmaceuticals be dispensed or manufactured by a licensed pharmacist. KRS 315.035 and KRS 315.0351 require[~~requires~~] that all pharmacies hold a permit issued by the board. This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those pharmacies that package, label and distribute central fill[~~refill~~] prescriptions to pharmacies in the Commonwealth.

Section 1. Definition. "Central fill[~~refill~~] pharmacy" means a pharmacy [~~located in the Commonwealth~~] that provides packaging, labeling and delivery of a [~~refill~~] prescription product to another pharmacy for the purpose of the dispensing[~~refilling~~] of a valid prescription.

Section 2. The central fill[~~refill~~] pharmacy shall:

(1) Either:

(a) Have a written contract with the pharmacy which has custody of the original prescription authorization for [~~refill~~] dispensing; or

(b) Be under common ownership with that pharmacy;

(2) Prepare the label for the [~~refill~~] prescription product which clearly identifies the name and address of the pharmacy preparing the product for [~~refill~~] dispensing and the name and address of the pharmacy that will receive the prepared product for dispensing to the patient;

(3) In addition to its obligation to maintain complete and accurate records of drug products received and otherwise disposed of, maintain complete and accurate records of the preparation of the [~~refilled~~] prescription product, including the name of the:

(a) Pharmacist who verified the accuracy of the [~~refilled~~] prescription product;

(b) Pharmacy preparing the [~~refilled~~] prescription product; and

(c) Pharmacy to which the prepared [~~refill~~] prescription product is delivered;

(4) Provide the originating pharmacy with written information that describes how a patient may contact the central fill[~~refill~~] pharmacy if the patient has any questions about the preparation of the prescription [~~refill~~]; and

(5) Be responsible for ensuring that the order has been properly prepared and verified by a pharmacist.

Section 3. The pharmacy to which a prepared centrally filled

prescription [~~refill~~] product is delivered shall:

(1) In addition to its obligation to maintain complete and accurate records of drug products received and otherwise disposed of, maintain complete and accurate records of the receipt and dispensing of the centrally filled[~~refilled~~] prescription product, including the name of the:

(a) Pharmacist who verified the accuracy of the [~~refilled~~] prescription product prior to its dispensing; and

(b) Pharmacy preparing the [~~refilled~~] prescription product;

(2) Be responsible for ensuring that the centrally filled prescription product [~~refill~~] has been properly prepared, packaged and labeled;

(3) Provide the patient with written information that described how a patient may contact either:

(a) The central fill[~~refill~~] pharmacy if the patient has any questions about the preparation of the prescription [~~refill~~]; or

(b) The dispensing pharmacy if the patient has any questions about the use of the medication; and

(4) Be responsible for adherence to the requirements of 201 KAR 2:230.

Section 4. Effective January 1, 2020, a pharmacist who provides a pharmacy service on a prescription dispensed in Kentucky shall be licensed in Kentucky.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: December 26, 2019

FILED WITH LRC: December 27, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2020, at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, 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 March 31, 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: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those pharmacies that package, label and distribute central fill prescriptions to pharmacies in the Commonwealth.

(b) The necessity of this administrative regulation: KRS 315.020 requires that prescription drugs, medicines, and pharmaceuticals be dispensed or manufactured by a licensed pharmacist. KRS 315.035 and KRS 315.0351 require that all pharmacies hold a permit issued by the board. This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those pharmacies that package, label and distribute central fill prescriptions to pharmacies in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statues: This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those pharmacies that package, label and distribute central fill prescriptions to pharmacies in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Retitle this regulation; Special limited pharmacy permit – Central Fill. Cleanup language to allow for both initial fills and refills. Add KRS 315.0351 to include non-resident pharmacies.

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

(a) How the amendment will change this existing administrative regulation: Retitle this regulation; Special limited pharmacy permit – Central Fill. Cleanup language to allow for both initial fills and refills. Add KRS 315.0351 to include non-resident pharmacies.

(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies. KRS 315.191(1)(a) directs the Board of Pharmacy to promulgate administrative regulations regarding reference material and equipment suitable for pharmaceutical practice.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by providing the most accurate and up to date information regarding accreditation agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation 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: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(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 expected costs for the identities to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those pharmacies that package, label and distribute central fill prescriptions to pharmacies in the Commonwealth.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists and sponsors that

desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Pharmacy 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 315.191(1)(a).

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

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

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

(c) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No costs are required 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. N/A

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Board of Medical Licensure
(Amendment)

201 KAR 9:270. Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

RELATES TO: KRS 311.530-311.620, 311.990

STATUTORY AUTHORITY: KRS 311.565(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for physicians practicing in Kentucky who prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Minimum Qualifications for Prescribing or Dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone. Except as provided in Section 3 of this administrative regulation, a licensed physician shall not prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone unless that physician possesses the minimum qualifications established in this section.

(1) The physician shall obtain and maintain in good standing a waiver and license as issued by the Drug Enforcement Administration (DEA) to prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for the treatment of opioid use disorder[~~dependence~~] in the Commonwealth of Kentucky.

(2) The physician shall successfully complete the approved educational programs required by this subsection.

(a) The prescribing physician shall be a DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone and shall have obtained Buprenorphine certification through completion of a Substance Abuse and Mental Health Services Administration ("SAMHSA") certified course.

(b) For each three (3) year continuing education cycle, each DEA-licensed prescriber of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall complete at least twelve (12) hours of continuing medical education certified in Category I specific to addiction medicine as part of the required continuing medical education hours set forth in 201 KAR 9:310.

(3) The physician shall enroll in the Kentucky Health Information Exchange to the extent necessary to query and pull information from the Kentucky Health Information Exchange. The physician shall not report the prescribing or dispensing of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or as maintenance treatment for a patient diagnosed with opioid use disorder[~~dependence~~] into the Kentucky Health Information Exchange unless otherwise required by law.

Section 2. Professional Standards for Prescribing or Dispensing transmucosal Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for Medically-Supervised Withdrawal or the Treatment of Opioid Use Disorder[~~Dependency~~].

(1)(a) Except as provided in paragraphs (b) and (c) of this subsection, transmucosal Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall only be prescribed or dispensed for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder[~~dependence~~].

(b) Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be used for the treatment of pain or any other condition, unless delivered in a Federal Drug Administration (FDA) approved form and for an FDA approved purpose[~~Transdermal delivery and buccal film delivery of Buprenorphine-Mono-Product may be used for treatment of pain in patients with pain severe enough to require daily, around-the-clock, long-term opioid treatment and for whom alternative treatment options are ineffective, not tolerated, or would be otherwise inadequate to provide sufficient management of pain. Transdermal delivery and buccal film delivery of Buprenorphine-Mono-Product shall not be prescribed or dispensed as an as-needed (prn) analgesic.~~

~~(c) Intravenous and intramuscular delivery of Buprenorphine-Mono-Product may be administered in a physician's office or other healthcare facility for treatment of acute pain severe enough to require an opioid analgesic and for which alternate treatments have not been tolerated or are expected not to be tolerated, or have not provided adequate analgesia or are not expected to provide adequate analgesia~~].

(2) Buprenorphine-Mono-Product shall not be prescribed or dispensed for medically-supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder[~~dependence~~], except:

(a) To a pregnant patient;

(b) To a patient with demonstrated hypersensitivity to naloxone; [~~or~~]

(c) As [~~an implant-delivered or injectable treatment~~] administered under supervision in a physician's office or other healthcare facility, including hospitals, urgent care settings, surgical care centers, residential treatment facilities, and correctional facilities; or

(d) To a patient transitioning from methadone to buprenorphine, limited to a period of no longer than one week.

(3)(a) Except as provided in paragraph (b) of this section, Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone shall not be prescribed or dispensed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants or other opioids, without consultation of a physician who is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of

Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry.

(b) A physician may prescribe or dispense Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address an extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Except as provided in Section 3 of this administrative regulation, each licensed physician who prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for medically-supervised withdrawal or for the treatment of opioid use disorder[~~dependence~~] shall fully comply with the professional standards established in this subsection.

(a) Prior to or at least within two (2) weeks of initiating treatment, the prescribing or dispensing physician shall:

1. Obtain and record a complete and appropriate evaluation of the patient which shall at a minimum include:

a. The patient's history of present illness;

b. The patient's history of substance use;

c. The patient's social and family history;

d. The patient's past medical and psychiatric histories;

e. A focused physical examination of the patient;

f. [~~The patient's injection use history, which shall include~~] Screening for HIV and hepatitis serology; and

g. Arranging appropriate laboratory tests, which shall include a CBC, a drug screen, and a CMP;

2. Obtain the patient's consent and authorizations in order to obtain the patient's prior medical records.

a. Upon receipt of the medical records, the prescribing or dispensing physician shall review and incorporate the information from the records into the evaluation and treatment of the patient.

b. If the prescribing or dispensing physician is unable, despite best efforts, to obtain the patient's prior medical records, the physician shall document those efforts in the patient's chart;

3. Obtain and review a KASPER report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives and the risks and the benefits of treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to the patient;

5. Obtain written informed consent from the patient in a manner that meets professional standards; and

6. If the patient is a female of child-bearing age and ability, meet the requirements of paragraph (b) of this subsection.

(b) Except as provided in Section 3 of this administrative regulation, the requirements of this paragraph shall apply to the treatment of a female of child-bearing age and ability.

1. Prior to initiating treatment, the physician shall require that the patient [~~first~~] submit to a pregnancy test and, if pregnant, the physician shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with current SAMHSA guidance[~~patient education material on neonatal abstinence syndrome from the American Congress of Obstetricians and Gynecologists, American Academy of Pediatrics, American Society of Addiction Medicine (ASAM) and the Kentucky Department for Public Health, and offer means to prevent pregnancy~~].

2.a. A physician who prescribes or dispenses[~~shall not prescribe or dispense~~] Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone to a patient who is pregnant or breastfeeding shall first obtain and document[~~unless the prescribing physician first obtains and documents~~] consultation with another independent physician that[~~for an opinion as to whether~~] the potential benefit of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone use outweighs the potential risk of use.

b. The consultation shall be obtained from a physician who is certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry or from an obstetrician or maternal-fetal medicine specialist[~~who is also qualified to prescribe buprenorphine~~].

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the prescribing or dispensing physician shall comply with the requirements of this paragraph.

1. The prescribing or dispensing physician shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the prescribing or dispensing physician shall supervise[~~conduct~~] the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the prescribing or dispensing physician shall appropriately record the circumstances in the patient chart [~~and shall implement a SAMHSA-recognized or ASAM-recognized home-based induction protocol~~].

2. The prescribing or dispensing physician shall document the presence of opioid withdrawal before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The prescribing or dispensing physician shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists [~~and is not improving~~]; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse and has not had a lapse in treatment, the prescribing or dispensing physician shall:

1. Document that fact;

2. Educate the patient about the potential for precipitated withdrawal; and

3. Continue maintenance treatment of the patient on the same or less dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection.

(e) After initial induction of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone, the prescribing or dispensing physician shall meet the requirements established in this paragraph.

1. If the physician prescribes or dispenses Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone medication, the physician shall implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that may include counseling or a twelve (12) step facilitation.

2. The physician shall prescribe or dispense to the patient an amount of Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone that:

a. Is necessary to minimize craving and opiate withdrawal;

b. Does not produce opiate sedation;

c. Except as provided in subclauses (i) and (ii) of this clause, is to be taken no more frequently than once daily;

(i) If the patient is pregnant, is to be taken no more than twice daily; or

(ii) If the patient is receiving a daily dosage of less than 16mg, is to be taken no more than twice daily; and

d. Is able only to supply the patient until the next physician visit, which shall be scheduled as required by subparagraph 3. of this paragraph.

3.a. The prescribing or dispensing physician shall ensure that the patient is seen [~~by the physician~~]:

(i) No later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction; and

(ii) At intervals of no more than fourteen (14) days for the second month after induction.

b.(i) If the patient demonstrates objective signs of positive treatment progress, the prescribing or dispensing physician shall ensure that the patient is seen at least once monthly thereafter.

(ii) If two (2) years after initiation of treatment, the patient is being prescribed Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone for opioid use disorder[~~dependence~~] and the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives for at least two (2) years, then the prescribing or dispensing physician may require that the patient be seen only by the prescribing or dispensing physician at least once every three (3) months.

(iii) The prescribing or dispensing physician shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

c. If extenuating circumstances arise that require a patient to unexpectedly reschedule a physician visit, the prescribing or dispensing physician shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

4. At least every three (3) months after initiation of treatment, the prescribing or dispensing physician shall evaluate the patient to determine whether the patient's dosage should be continued or modified and shall appropriately document that evaluation and clinical reasoning in the patient's chart.

5. At least once every three (3) months, the prescribing or dispensing physician shall obtain KASPER reports to help guide the treatment plan.

a. If the KASPER indicates any abnormal findings, the prescribing or dispensing physician shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

b. Appropriate clinical reasoning may include adjustment of dose strength, adjustment of [~~or~~] frequency of visits, increased drug screening, a consultation with a specialist, or an alternative treatment.

c. Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet per day and the prescribing or dispensing physician is not certified by the American Board of Addiction Medicine, the American Board of Preventive Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry, then the prescribing or dispensing physician shall obtain a[~~refer the patient for~~] consultation from[~~by~~] a physician who is certified by the American Board of Addiction Medicine, the American Board of Medical Specialties (ABMS) in psychiatry, or an American Osteopathic Association (AOA) certifying board in addiction medicine or psychiatry for an opinion as to whether continued treatment and dosage is appropriate and shall accurately document the results of that consultation in the patient chart.

d. The prescribing or dispensing physician shall adjust dosages according to the individual patient's condition and within acceptable and prevailing medical standards, with the goal of improving the patient's quality of life and ability to function in the community.

e. Every twelve (12) months following initiation of treatment, the prescribing or dispensing physician shall evaluate for and document the medical necessity for continued treatment at the established dose.

f. The prescribing or dispensing physician shall ensure that the patient is drug tested. A patient in early stages of treatment shall be tested at least once weekly and as the patient becomes more stable in treatment, the frequency of drug testing may be decreased, but shall be performed at least on a monthly basis. Individual consideration may be given for less frequent testing if a patient is in sustained remission. If the patient returns to substance use after a period of abstinence, the prescribing or dispensing physician shall resume the early treatment testing schedule, in conjunction with an adapted or intensified treatment plan. [~~obtain at least eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan. For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, the prescribing or dispensing physician shall obtain at least six (6) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.~~]

(i) [~~At least two (2) of the drug screens shall be random and shall be coupled with a pill count.~~

(~~ii~~)] Each drug screen shall at a minimum screen for buprenorphine, methadone, [~~oxycodone, other~~] opioids, THC, benzodiazepines, amphetamines, and cocaine.

(ii)[~~(iii)~~] If a drug screen indicates any abnormal findings, the prescribing or dispensing physician shall incorporate those findings into appropriate clinical reasoning to support the continuation or modification of treatment and shall accurately document the same in the patient record.

(iii)[~~(iv)~~] Appropriate clinical reasoning may include adjustment of dose strength, adjustment of [~~or~~] frequency of visits, increased drug screening, a consultation with a specialist, or an alternative treatment.

6. The prescribing or dispensing physician shall document a plan for handling any lost or stolen medication, which[~~:~~]

[~~a.~~] shall not provide for the automatic replacement of medication prior to the specified interval date [~~; and~~

~~b. If the prescribing or dispensing physician determines that it is necessary to minimize improper or illegal diversion of medications under the circumstances, shall require the patient to first report the lost or stolen medications to police or other law enforcement agencies~~].

Section 3. Use of transmucosal buprenorphine-mono-product or buprenorphine-combined-with-naloxone for treatment of opioid use disorder in an emergency situation or inpatient setting. (1) In an emergency, including in a hospital emergency department or similar outpatient urgent care setting, or in an inpatient setting, physicians may offer and initiate buprenorphine treatment to patients who present with opioid use disorder, without meeting the requirements established in Sections 1 and 2 of this administrative regulation and to the extent permitted by federal law, if:

(a) The physician has determined that the use of buprenorphine-mono-product or buprenorphine-combined-with-naloxone will not result in a harmful interaction with other medications or substances in the patient's system, including benzodiazepines, sedative hypnotics, carisoprodol, or tramadol;

(b) The physician obtains and documents written informed consent from the patient specific to risks and benefits of buprenorphine treatment; and

(c) The physician provides the patient with written instructions and contact information for appropriate follow up care, including bridge-provider services, residential treatment providers, and outpatient treatment providers.

(2) The physician shall initiate buprenorphine treatment under an observed induction protocol with an initial dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which may be followed by subsequent doses, up to a maximum of twenty-four (24) milligrams buprenorphine generic tablet, if withdrawal persists and is not improving.

Section 4. Violations. Failure to comply with or a violation of the professional standards established in Sections[~~Section~~] 2 and 3 of this administrative regulation shall constitute a "departure from, or failure to conform to the standards of acceptable and prevailing medical practice within the Commonwealth of Kentucky," in violation of KRS 311.595(12) and (9), as illustrated by KRS 311.597(4) and may constitute a violation of KRS 311.595(9), as illustrated by KRS 311.597(3), subjecting the licensed physician to

sanctions authorized by KRS 311.595.

SANDRA R. SHUFFETT, M.D., President

APPROVED BY AGENCY: January 8, 2020

FILED WITH LRC: January 9, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Tuesday, March 24, 2020 at 10:00 a.m., at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by Tuesday, March 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This hearing will not be transcribed 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 March 31, 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118, email Leanne.Diakov@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish acceptable and prevailing medical standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for individual physicians prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for individual physicians prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment changes references of “opioid dependence” to the more acceptable medical terminology of “opioid use disorder”; is more specific to use of transmucosal buprenorphine products for the treatment of opioid use disorder (other delivery-methods (injections, etc) being inherently less subject to abuse or diversion) and limits the use of buprenorphine products for other purposes to FDA-approved forms and uses; expands provisions for the use of transmucosal buprenorphine products for the treatment of opioid use disorder in hospitals, urgent care centers, surgical care centers, and correctional facilities in newly proposed Section 3; incorporates by reference “current SAMHSA guidance” in regard to testing female patients for pregnancy and providing counseling on neonatal abstinence syndrome; and allows physicians to prescribe/dispense to a patient after the physician obtains a specialty consult, where appropriate, rather than requiring the patient to be referred out to a specialist, thus increasing patient access to treatment.

(b) The necessity of the amendment to this administrative regulation: It was necessary to amend the regulation in order to ensure that the regulation reflects updated and widely recognized acceptable and prevailing practice standards in a fast-developing area of medical practice and to increase patient access to quick and appropriate treatment.

(c) How the amendment conforms to the content of the authorizing statutes: This amended regulation acts specifically to further clarify and update the acceptable and prevailing medical practices for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: This amended regulation acts specifically to further clarify and update the acceptable and prevailing medical practices for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in the Commonwealth of Kentucky who prescribe, dispense or administer Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians will be required to follow the professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone in the Commonwealth of Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with the requirements of this administrative regulation known to the Board.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Benefits to the physician including having updated professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone which will help curb the prescription drug epidemic in the Commonwealth of Kentucky and increase patient access to appropriate treatment.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it 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 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? The Kentucky Board of Medical Licensure 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 311.565(1)(a)

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

BOARDS AND COMMISSIONS
Board of Cosmetology
(Amendment)

201 KAR 12:030. Licensing, permits, and examinations.

RELATES TO: KRS 317A.020, 317A.050, 317A.060[~~, 317.145~~]

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing licenses in cosmetology, esthetic practices, and nail technology, including the operation of schools and salons of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes procedures for examinations and licensing.

Section 1. Fees. License and permit fees are set forth in 201 KAR 12:260.

Section 2. Prior Felony Convictions. An applicant for any license, permit, or examination issued or conducted by the board convicted of a prior felony shall include with his or her application:

(1) A signed letter of explanation from the applicant;

(2) A certified copy of the judgment and sentence from the issuing court; and

(3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

Section 3. Reciprocal Licensing. (1) [~~A license issued by another state shall be considered comparable if the laws of that state require at a minimum:~~

~~(a) 1,500 hours of curriculum for cosmetology;~~

~~(b) 450 hours of curriculum for nail technology;~~

~~(c) 750 hours of curriculum for esthetics; or~~

~~(d) 750 hours of curriculum for instructors.~~

~~(2)~~] An applicant licensed in another state may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:

(a) Digital certification showing proof of a passing score on a board-approved nationally recognized theory and practical exam;

(b) Current digital certification of the out of state license from the issuing state board <u>showing a license in active and good standing</u>;

(c) Diploma or certified testing documents proving 12th grade equivalency education;

(d) Payment of the applicable license and endorsement fees required by 201 KAR 12:260;

(e) A copy of the applicant's government-issued photo identification; and

(f) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(3) An applicant from a state whose licensing requirements fail to meet subsection (1) of this section shall apply for a reciprocal license by submitting:

(a) Documentation required by subsection (2)(a) through (f) of this section; and

(b) Payment of the applicable examination fees established in 201 KAR 12:260.

(4) Active duty military and family members shall apply for a reciprocal license by submitting:

(a) All documents required by subsection 2(a) through (f) of this section;

(b) The Military Transfer Application;

(c) A copy of the sponsor's active-duty <u>or discharge</u> orders listing the applicant as sponsor or an accompanying family member; and

(d) Payment of a twenty-five (25) dollar license fee.

(5) All requests for certification of hours or a license shall use the Certification Request Form accompanied by a copy of the applicant's government-issued photo identification and payment of the fee as set forth in 201 KAR 12:260. Certifications shall <u>only</u> be transmitted digitally to the reciprocal state agency.

Section 4. Permits. (1) Any person who engages in the practice of threading, makeup artistry, or eyelash artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

(a) A copy of the applicant's government-issued photo identification;

(b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;

(c) Proof of completion of a board-approved sanitation course within the (1) year period preceding the application; and

(d) Proof of completion of a board-approved program, if applying for an eyelash artistry permit.

Section 5. Examination Registration. (1) Applicants shall register as follows:

(a) A student of a licensed cosmetology school shall register with the board at least eight (8) months prior to graduation [~~for the requested cosmetologist examination date~~];

(b) A nail technician student shall register with the board at least forty-five (45) days prior to graduation [~~for the requested nail technician examination date~~]; and

(c) An esthetician student shall register with the board at least four (4) months prior to graduation [~~for the requested esthetician examination date~~].

(2) A completed Application for Examination or Out of State Application for Examination shall be received in the Board office no later than ten (10) business days prior to the examination date to be scheduled for either the theory test or the practical demonstration component of the exam. Each exam component shall be scheduled using a separate application and payment of the fee set forth in 201 KAR 12:260.

(3) All examination applicants shall submit a two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(4) Theory examination dates shall be valid for ninety (90) days from student notification.

(5) A passing score for the theory examination, proper application, and payment of fees shall be required prior to being scheduled for the practical examination.

(6) An applicant with curriculum hours obtained in another state shall include with the Out of State Application for Examination the following:

(a) Certification of curriculum hours from the state licensing

board or agency where the hours were obtained, if the state requires the reporting of curriculum hours; or

(b) Certification of the valid licensing status of the school attended from the state board or licensing authority and an official transcript certified by the school.

(7) Examination applicants shall wear a full set of solid color medical scrubs and bring all instruments and supplies as listed on the board Web site for the practical examination. White colored scrubs or other clothing is prohibited.

Section 6. Examination Components. (1) The examination shall consist of a theory test and a practical demonstration taken from the curriculum requirements specified in 201 KAR 12:082.

(2) The practical demonstration shall be performed on a:

(a) Mannequin head and hand for the cosmetology practical examination;

(b) Mannequin head for the esthetician or blow drying services practical examination; or

(c) Mannequin hand for the nail technician practical examination.

(3) The applicant shall provide a mannequin head or hand as needed for an examination.

Section 7. Grading. (1) A minimum passing grade of seventy (70) percent on the theory test and the practical demonstration shall be required for the cosmetologist, esthetician, and nail technician examinations

(2) A minimum passing grade of eighty (80) percent on the theory test and eighty-five (85) percent on the practical demonstration shall be required for all instructor examinations.

(3) All passing exam scores shall be valid for six (6) months from completion.

Section 8. Practice before Examination Prohibited. A student engaging in the practice of cosmetology, esthetic practices, or nail technology prior to the board examination shall be ineligible to take the examination for a period of one (1) year from the date of the unauthorized practice.

Section 9. License Application. (1) An applicant who passes the examination shall have ninety (90) days following the examination to apply for a license by submitting the License Application form and the following documentation:

(a) Diploma or certified testing documents proving 12th grade equivalency education;

(b) Payment of the applicable license fee required by 201 KAR 12:260;

(c) A copy of the applicant's government-issued photo identification; and

(d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(2) Failure to apply for a license as required by subsection (1) of this section shall require payment of the appropriate restoration and licensing fees set forth in 201 KAR 12:260 before a license may be issued.

(3) An applicant may apply for an apprentice instructor license to be used for training in an approved program after one (1) year of professional licensing. Applicants shall submit the Apprentice Instructor License Application and provide the following documentation:

(a) Diploma or certified testing documents proving 12th grade equivalency education;

(b) Payment of the applicable license fee required by 201 KAR 12:260;

(c) A copy of the applicant's government-issued photo identification; and

(d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

Section 10. Retaking Examinations. (1) Any applicant who fails either the theory test or the practical demonstration may retake that portion of the examination upon submitting a new Application for Examination with a two (2) by two (2) inch passport photo of the applicant taken within the preceding six (6) months, and paying the examination fee required by 201 KAR 12:260.

(a) After three (3) failed attempts, the examinee shall be required to wait six (6) months before retaking either portion of the examination. If the examinee does not receive a passing score after the third attempt, then the individual shall take an eighty (80) hour supplemental course in theory studies at a school licensed by the board prior to being eligible to retake the examination.

(b) Following the supplemental course, the examinee may attempt the examination two (2) additional times. If the examinee fails both attempts the examinee shall be prohibited from taking the examination within three (3) years from the date of the final failed attempt.

(2)An applicant caught cheating or impersonating another shall not be allowed to retake the examination for a minimum of one (1) year from the date of the original examination.

(3) Any applicant who fails to report for the examination on the date specified by the board shall submit a new examination application and examination fee prior to being rescheduled for examination. The board may waive the examination fee for good cause shown. "Good cause" includes:

(a) An illness or medical condition of the applicant that prohibits the applicant from reporting for the examination; or

(b) A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting for the examination.

(4) Documents and certificates submitted with an Application for Examination are valid for one (1) year following the date of submission after which time applicants shall submit updated documents and a new examination application.

Section 11. Duplicate Licenses, Renewal, and Restoration. (1) If a license is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The licensee shall submit a statement verifying the loss of the license using the Duplicate License Application that includes a copy of a government-issued photo identification, and pay the duplicate license fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) The annual license renewal period is July 1 through July 31. All licenses and permits shall:

(a) Be renewed using the Renewal Application or by using the board's online portal;

(b) Include the required copy of a government-issued photo identification;

(c) Include payment of the fee set forth 201 KAR 12:260; and

(d) Include payment of any outstanding fines associated with a prior disciplinary action as described in KRS 317A.145.

(3) To restore an expired license or permit, a Restoration Application shall be submitted to the board with payment of the restoration fee as set forth in 201 KAR 12:260 for each year the license has been expired, the total of which shall not exceed $300 per license restored, along with the following:

(a) For an expired individual license or permit, a copy of a government-issued photo identification;

(b) For an expired salon license or limited facility permit, a new Salon Application or Limited Facility Permit Application; or

(c) For an expired school license, a new School Application

Section 12. Salon and Facility Applications. (1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or limited facility shall submit the Salon Application or Limited Facility Permit Application with required copies of state identification and driver's licenses, pay the applicable fee set forth in 201 KAR 12:260, and [~~be inspected~~] request an inspection by the board inspector in writing a minimum of five (5) business days prior to opening for business.

(2) A new or relocating salon or facility shall comply with all applicable city, county, state zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a

nursing home or assisted living facility if the salon or facility meets all requirements of this section.

(4) Any salon or facility located in a residence shall have a separate outside entrance for business purposes only. This subsection shall not apply to a nursing home or assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or facility shall not open for business prior to issuance of its license or permit.

(6) Each salon shall maintain a board licensed manager properly licensed in the services
the salon provides at all times.

(7) Salon and limited beauty salon licenses and facility permits shall be mailed to the Kentucky mailing address on the application.

Section 13. Change in Salon Ownership or Transfer of Interest.

(1) The owners, firm, or corporation operating a licensed salon shall submit to the board a new Salon Application, Limited Facility Permit Application, or Manager Change Form and payment of the license or change fee as set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership [~~or changing managers~~].

(2) All manager changes shall be made with the board within ten (10) business days.

(3)[(~~2~~)] No transfer of ownership interest in a salon shall take effect while the salon license to be transferred is the subject of ongoing disciplinary action pursuant to KRS 317A.145.

Section 14. School Licenses. (1) Each person, firm, or corporation applying for a license to operate a school shall submit a School Application and the applicable fee set forth in 201 KAR 12:260.

(2) The School Application shall be accompanied by:

(a) A proposed student contract listing all financial charges to enrolling students; and

(b) A proposed floor plan drawn to scale by a draftsman or architect.

(3) Each school shall comply with city, county, and state zoning, building, and plumbing laws, administrative regulations and codes.

(4) Prior to license issuance and following the receipt of a completed application with all accompanying materials, the board inspector and board administrator, or their designee shall conduct an inspection.

(5)(a) The inspection shall be completed within twelve (12) months of the date that the School Application and all accompanying materials are received unless the board extends the time period for good cause. "Good cause" includes:

1. An illness or medical condition of the applicant that prohibits the applicant from completing the final preparations; or

2. A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from completing the final preparations.

(b) Requests for an extension of time shall be submitted in writing to the board and include the following:

1. The reason for the extension and the term of the request; and

2. Supportive documentation of the extension request.

(6) A license to operate a school shall be valid only for the location and person, firm, or corporate owner named on the application. A school license shall not be transferable from one (1) location to another or from one (1) owner to another.

(7) The school license shall contain:

(a) The name of the proposed school; and

(b) A statement that the proposed school may operate educational programs beyond secondary education.

(8) Each licensed school shall maintain a board licensed instructor as school manager at all times.

Section 15. Change in School Ownership or Management. (1) The owners, firm, or corporation operating a licensed school shall submit to the board a new School Application or a Manager Change Form and payment of the applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership. [~~or changing school managers.~~]

(2) All manager changes shall be made with the board within ten (10) business days.

(3)[(~~2~~)] A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A and 201 KAR Chapter 12, and obtain approval of the board prior to assuming operation of the school.

Section 16. Classification as School. Any person, establishment, firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 shall comply with KRS Chapter 317A and 201 KAR Chapter 12.

Section 17. Owner and Manager Student Prohibited. An owner, partner, stockholder, corporate officer, or a manager of a licensed school shall not be enrolled as a student in the school.

Section 18. Board Member Disclosure. A board member shall disclose to the board a financial interest in a salon or school when submitting an application for a salon or school license.

Section 19. Demonstration Permits. Professional services performed outside a licensed facility shall have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Out of State Transfer Application", December [~~June~~] 2019;

(b) "Military Transfer Application", October 2018;

(c) "Certification Request Form" October 2018;

(d) "Permit Application", December [~~January~~] 2019;

(e) "Application for Examination", June 2019;

(f) "Out of State Application for Examination", October 2018;

(g)"License Application", June 2019;

(h) "Apprentice Instructor License Application", June 2019;

(i) "Duplicate License Application", January 2019;

(j) "Renewal Application", January 2019;

(k) "Restoration Application", June 2019;

(l) "Salon Application", June 2019;

(m) "Limited Facility Permit Application", December [~~June~~] 2019;

(n) "Manager Change Form", October 2018;

(o) "School Application", October 2018;and

(p) "Demonstration Permit Application", October 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JEANETTA THORNBURY, Chair

APPROVED BY AGENCY: January 14, 2020

FILED WITH LRC: January 15, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:30 AM on March 23, 2020 at 111 St. James Court, STE A, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM

on March 31, 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 below.

Contact person: Julie Campbell, Board Administrator, 111 St. James Court, STE A, Frankfort, Kentucky 40601, phone 1-502-564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for all examinations, licenses, and permits provided by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This amendment is necessary to establish the procedures to apply for examinations, permits, and licenses issued by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317A.050 requires KBC to issue licenses once certain statutory requirements are met. All applicants for any license type are required to submit the appropriate application for licensure. This administrative regulation conforms to KRS 317A.050 by establishing the content and supporting documentation necessary to apply for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides a specific process for any interested person to apply for and receive a permit or license to practice cosmetology, esthetics, shampoo and style, or nail technology 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 expands the type of training programs that may be approved by the board for issuance of an eyelash permit, provides clarity regarding how the restoration of license fees are processed, and provides additional forms that inadvertently were not included during the previous amendment to this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include new forms that inadvertently were not included during the previous amendment of this administrative regulation, to expand the training programs available for board approval so that more eye lash permits may be issued, and to provide clarity regarding the process of how restoration of license fees are processed.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides the necessary steps to apply for a license or permit as authorized by KRS 317A.050.

(d) How the amendment will assist in the effective administration of the statutes: Through one concise administrative regulation, this amendment will facilitate the public's ability to apply for and receive the necessary examination, permit, and licensing to practice or teach cosmetology, esthetics, shampoo and style, or nail technology in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All students with finalized exam scores, approximately 5000 at any given time, are affected by this amendment. Any person choosing to apply for an apprentice license will also be affected.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Students applying for a cosmetology or apprentice license will not have to take additional action as a result of this amendment. These individuals were already required to submit an application pursuant to KRS 317A.050. This regulation merely states the documentation that had always been required to be submitted pursuant to the application instructions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no anticipated costs to the regulated entities due to this amendment.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment will simplify the process for applicants receiving a first time or new license and implement a form to support the requirements of licensure in the apprentice instructor program.

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

(a) Initially: There are no additional costs involved due to this amendment.

(b) On a continuing basis: There are no additional costs involved due to this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KBC is entirely self-funded through collecting fees for examinations, permits, and licenses. Funds necessary for the implementation and enforcement of this administrative regulation are derived from the fees collected for KBC services.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment does not create an increase in fees. Prior KBC policy required that a licensee attempting to restore an expired license pay a restoration fee equal to the renewal fee for each year the license had been expired. This amendment caps that amount at $300 per license being restored, whereas prior policy did not provide a cap on the potential restoration fee.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not directly or indirectly increase fees. In fact, this amendment places a cap on a fee that under previous regulation could in theory have resulted in substantial license restoration costs.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this amendment apply equally to all applicants, permit-tees, and 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? Kentucky Board of Cosmetology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050, KRS 317A.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The new licenses being issued are for students already in contact with schools and programs through this agency.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Licensure guidelines here are only enforcing a process for current students or licensees looking to complete licensure or enroll in an apprentice instructor program.

(c) How much will it cost to administer this program for the first year? There are no new costs involved only a formalization of the

forms and accompanying documents needed for initial licensure.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs involved only a formalization of the forms and accompanying documents needed for initial licensure. There is an ever changing base of students being trained in this profession and there is no way to predict that volume at this time.

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

Revenues (+/-): Increase.

Expenditures (+/-): Increase.

Other Explanation: At this time, it is unclear how many applicants will avail themselves of the a new license. The expected increase in revenue and expenditures associated with the new licenses contained in this amendment can not be accurately assessed at this time. The individuals seeking new licensure using the forms in this amendment are already students or licensees of the agency.

BOARDS AND COMMISSIONS
Kentucky Board of Cosmetology
(Amendment)

201 KAR 12:060. Inspections.

RELATES TO: KRS 317A.060, 317A.140, 317B.020

STATUTORY AUTHORITY: KRS 317A.060, 317B.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 and 317B.020 require[~~requires~~] the board to promulgate administrative regulations governing the operation of any schools and salons of cosmetology, nail technology, threading, and esthetics, and to protect the health and safety of the public. This administrative regulation establishes inspection and health and safety requirements for all schools and salons of cosmetology, nail technology, threading, and esthetics.

Section 1. Public Display.

(1)(a) Each licensee or permit holder shall attach his or her picture to the license or permit and place it in an accessible and[~~a~~] conspicuous area in the salon or school.

(b) Each licensed facility's license shall be posted in an accessible and[~~a~~] conspicuous area with the information required by this subsection.

(2) A conspicuous area shall be visible to the public and shall include:

(a) The main entrance door or window of the premises; and

(b) The workstation of the employee.

(3) A salon or school manager shall have the manager's license posted with a picture in an accessible and[~~a~~] conspicuous area at all times.

(4) A school shall, at all times, display in a centralized and accessible conspicuous public place the student permits of all students enrolled.

(5) Each licensed salon, facility, or school shall post the most recent inspection report in an accessible[~~a~~] conspicuous area.

Section 2. Inspections.

(1) Any board member, administrator, or inspector may enter any establishment licensed by this board or any place purported to be practicing cosmetology, nail technology, threading, or esthetics, during normal working hours or at any time when the establishment is open to the public, for the purpose of determining if an individual, salon, or school is complying with KRS Chapter 317A or 317B, and 201 KAR Chapter 12.

(2) A board member, administrator, or inspector may require the licensee or permittee to produce for inspection and copying books, papers, or records required by the board or pertaining to licensed activity.

(3) Each establishment licensed by the board shall be inspected a minimum of two (2) times per year.

(4) A salon or school shall schedule an inspection of the salon or school after an inspector twice attempts, but is unable, to inspect the salon or school.

(5) Failure of the salon or school owner or manager to schedule an inspection within thirty (30) days of two (2) consecutive failed inspection attempts shall constitute unprofessional conduct.

(6) The owner and manager of each establishment licensed by the board shall be responsible for compliance with KRS Chapters 317A and 317B, and 201 KAR Chapter 12.

Section 3. Unprofessional Conduct. Unprofessional conduct under KRS 317A.140 includes the following:

(1) Intentionally withholding information or lying to a board member or board employee who is conducting a lawful inspection or investigation of an alleged or potential violation of KRS Chapter 317A or 201 KAR Chapter 12;

(2) A salon or school remaining open to the public if not appropriately licensed by the board;

(3) Providing cosmetology, nail technology, esthetic, or threading services unless appropriately licensed or permitted by the board under 201 KAR Chapter 12; or

(4) Failure to comply with the lawful request of the board, or the board administrator, inspector, or agent for the following:

(a) Permit inspection of the licensed premises; or

(b) Permit inspection of or the copying or production of books, papers, documents, or records of information or material pertaining to activity licensed by the board or related to the provisions of KRS Chapter 317A or the administrative regulations promulgated by the board.

(5) Any attempt by a license or permit holder to bribe a Kentucky Board of Cosmetology representative.

Section 4. Signage. The main entrance to any establishment licensed by the board shall display a sign indicating a beauty salon, nail salon, esthetic salon or cosmetology school. The sign shall indicate the name of the salon or school as it is registered with the Kentucky Board of Cosmetology and shall be clearly visible at the main entrance of the establishment.

JEANETTA THORNBURY, Board Chair

APPROVED BY AGENCY: January 14, 2020

FILED WITH LRC: January 15, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2020, at 10:00, at Kentucky Board of Cosmetology. 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 11:59 p.m. on March 31, 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: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes compliance standards for all licensees under the jurisdiction of the Kentucky Board of Cosmetology.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to standardize compliance for cosmetology schools, salons, cosmetologists, estheticians, and nail technicians.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets compliance standards as the Board is authorized to do under KRS Chapter 317A. This amendment updates specific compliance requirements for all licensed persons and establishments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation clarifies and facilitates compliance by licensees and the Board's enforcement of KRS Chapter 317A. The administrative regulation outlines and defines all compliance standards in one understandable administrative regulation.

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

(a) How the amendment will change this existing administrative regulation: There are minor wording adjustments to clarify the compliance directives of the board.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to assist current and prospective licensees in understanding compliance standards enforced by the board.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides compliance standards for all licensees based on current statutory requirements in KRS Chapter 317A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide a simple and straightforward regulatory scheme for all compliance issues consistent with the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 38,000 licensees affected by the existing administrative regulations that address the various issues of compliance.

(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 does not change the current processes, definitions, or requirements of the administrative regulations compiled.

(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 cost to licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There will be a higher rate of compliance with the law due to the clarity in this amendment. Current and prospective licensees will gain an easier and better understanding of the regulatory requirements for maintaining licensure.

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

(a) Initially: No additional funds are necessary initially to implement this administrative regulation.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current funding will not change.

(7) Provide an assessment of whether an 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 changes or increases in fees will be needed at this time.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created or increased directly or indirectly by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this amendment apply equally to all current and prospective licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Cosmetology 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 317A.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This amendment will not have any added effect beyond those resulting from existing administrative regulations.

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

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

(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 (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation: None.

BOARDS AND COMMISSIONS
Kentucky Board of Cosmetology
(Amendment)

201 KAR 12:082. Education requirements and school administration.

RELATES TO: KRS 317A.020, 317A.050, 317A.090

STATUTORY AUTHORITY: KRS 317A.060, 317A.090

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060(1)(h) requires the board to promulgate administrative regulations governing the hours and courses of instruction at schools of cosmetology, esthetic practices, and nail technology KRS 317A.090 establishes licensing requirements for schools of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions required for students and faculty for schools of cosmetology, esthetic practices, and nail technology.

Section 1. Subject Areas. The regular courses of instruction for cosmetology students shall contain courses relating to the subject areas identified in this section.

(1) Basics:

(a) History and Career Opportunities;

(b) Life Skills;

(c) Professional Image; and

(d) Communications.

(2) General Sciences:

(a) Infection Control: Principles and Practices;

(b) General Anatomy and Physiology;

(c) Skin Structure, Growth, and Nutrition;

(d) Skin Disorders and Diseases;
(e) Properties of the Hair and Scalp;
(f) Basic Chemistry; and
(g) Basics of Electricity.
(3) Hair Care:
(a) Principles of Hair Design;
(b) Scalp Care, Shampooing, and Conditioning;
(c) Hair Cutting;
(d) Hair Styling;
(e) Braiding and Braid Extensions;
(f) Wig and Hair Additions;
(g) Chemical Texture Services; and
(h) Hair Coloring.
(4) Skin Care:
(a) Hair Removal;
(b) Facials; and
(c) Facial Makeup.
(5) Nails:
(a) Manicuring;
(b) Pedicuring;
(c) Nail Tips and Wraps;
(d) Monomer Liquid and Polymer Powder Nail Enhancements; and
(e) Light Cured Gels.
(6) Business Skills:
(a) Preparation for Licensure and Employment;
(b) On the Job Professionalism; and
(c) Salon Businesses.

Section 2. A school of cosmetology, esthetic practices, and nail technology shall teach the students about the various supplies and equipment used in the usual salon practices.

Section 3. Instructional Hours.
(1) A cosmetology student shall receive not less than 1,500 hours in clinical class work and scientific lectures with a minimum of:
(a) 375 lecture hours for science and theory;
(b) 1,085 clinic and practice hours; and
(c) Forty (40) hours on the subject of applicable Kentucky statutes and administrative regulations.
(2) A cosmetology student shall not perform chemical services on the public until the student has completed a minimum of 250 hours of instruction.

Section 4. Training Period for Cosmetology Students, Nail Technician Students, Esthetician Students, and Apprentice Instructors.
(1) A training period for a student shall be no more than ten (10) hours per day, forty (40) hours per week.
(2) A student shall be allowed thirty (30) minutes per eight (8) hour day or longer for meals or a rest break. This thirty (30) minute period shall not be credited toward a student's instructional hours requirement.

Section 5. Laws and Regulations.
(1) At least one (1) hour per week shall be devoted to the teaching and explanation of the Kentucky law as set forth in KRS Chapter 317A and 201 KAR Chapter 12.
(2) Schools of cosmetology, esthetic practices, and nail technology, shall provide a copy of KRS Chapter 317A and 201 KAR Chapter 12 to each student upon enrollment.

Section 6. Nail Technician Curriculum. The nail technician course of instruction shall include the following:
(1) Basics:
(a) History and Opportunities;
(b) Life Skills;
(c) Professional Image; and
(d) Communications.
(2) General Sciences:
(a) Infection Control: Principles and Practices;
(b) General Anatomy and Physiology;
(c) Skin Structure and Growth;
(d) Nail Structure and Growth;
(e) Nail Diseases and Disorders;
(f) Basics of Chemistry;
(g) Nail Product Chemistry; and
(h) Basics of Electricity.
(3) Nail Care:
(a) Manicuring;
(b) Pedicuring;
(c) Electric Filing;
(d) Nail Tips and Wraps;
(e) Monomer Liquid and Polymer Powder Nail Enhancements;
(f) UV and LED Gels; and
(g) Creative Touch.
(4) Business Skills:
(a) Seeking Employment;
(b) On the Job Professionalism; and
(c) Salon Businesses.

Section 7. Nail Technology Hours Required.
(1) A nail technician student shall receive no less than 450 hours in clinical and theory class work with a minimum of:
(a) 150 lecture hours for science and theory;
(b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
(c) 275 clinic and practice hours.
(2) A nail technician student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 8. Apprentice Instructor Curriculum. The course of instruction for an apprentice instructor shall include no less than 750 hours, 425 hours of which shall be in direct contact with students. 325 hours of the required theory instruction may be taken in person or online, in the following areas:
(1) Orientation;
(2) Psychology of student training;
(3) Introduction to teaching;
(4) Good grooming and professional development;
(5) Course outlining and development;
(6) Lesson planning;
(7) Teaching techniques (methods);
(8) Teaching aids, audio-visual techniques;
(9) Demonstration techniques;
(10) Examinations and analysis;
(11) Classroom management;
(12) Recordkeeping;
(13) Teaching observation;
(14) Teacher assistant; and
(15) Pupil teaching (practice teaching).

Section 9. Supervision. An apprentice instructor shall be under the immediate supervision and instruction of a licensed instructor during the school day. An apprentice instructor shall not assume the duties and responsibilities of a licensed supervising instructor.

Section 10. Instructors Online Theory Course. All online theory instruction completed to comply with Section 8 of this administrative regulation shall be administered from an approved digital platform at a licensed Kentucky school of cosmetology, esthetic practices, or nail technology.

Section 11. Additional Coursework. Apprentice Esthetics and Nail Technology Instructors shall also complete an additional fifty (50) hours of advanced course work in that field within a two (2) year period prior to the instructor examination.

Section 12. Schools may enroll persons for a special supplemental course in any subject.

Section 13. Esthetician Curriculum. The regular course of instruction for esthetician students shall consist of courses relating to the subject areas identified in this section. (1) Basics:
(a) History and Career Opportunities;
(b) Professional Image; and
(c) Communication.
(2) General Sciences:
(a) Infection Control: Principles and Practices;
(b) General Anatomy and Physiology;
(c) Basics of Chemistry;
(d) Basics of Electricity; and
(e) Basics of Nutrition.
(3) Skin Sciences:
(a) Physiology and Histology of the Skin;
(b) Disorders and Diseases of the Skin;
(c) Skin Analysis; and
(d) Skin Care Products: Chemistry, Ingredients, and Selection.
(4) Esthetics:
(a) Treatment Room;
(b) Basic Facials;
(c) Facial Message;
(d) Facial Machines;
(e) Hair Removal;
(f) Advanced Topics and Treatments; and
(g) Makeup.
(5) Business Skills:
(a) Career Planning;
(b) The Skin Care Business; and
(c) Selling Products and Services.

Section 14. Esthetician Hours Required.
(1) An esthetician student shall receive no less than 750 hours in clinical and theory class work with a minimum of:
(a) 250 lecture hours for science and theory;
(b) Thirty-five (35) hours on the subject of applicable Kentucky statutes and administrative regulations; and
(c) 465 clinic and practice hours.
(2) An esthetician student shall have completed 115 hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first 115 hours.

Section 15. Blow Drying Services License Subject Areas. The regular courses of instruction for blow drying services license students shall contain courses relating to the subject areas identified in this section.
(1) Basics:
(a) History and Career Opportunities;
(b) Life Skills;
(c) Professional Image; and
(d) Communications.
(2) General Sciences:
(a) Infection Control: Principles and Practices;
(b) General Anatomy and Physiology of head, neck and scalp;
(c) Skin Disorders and Diseases of head, neck and scalp;
(d) Properties of the Hair and Scalp; and
(e) Basics of Electricity.
(3) Hair Care:
(a) Principles of Hair Design;
(b) Scalp Care, Shampooing, and Conditioning;
(c) Hair Styling;
(d) Blow drying;
(e) Roller Placement;
(f) Finger waves/ pin curls;
(g) Thermal curling;
(h) Flat iron styling;
(i) Wig and Hair Additions; and
(j) Long hair styling.
(6) Business Skills:
(a) Preparation for Licensure and Employment;
(b) On the Job Professionalism; and
(c) Salon Businesses.

Section 16. Blow Drying Services License Hours Required.
(1) A blow drying services license student shall receive no less than 400 hours in clinical and theory class work with a minimum of:
(a) 150 lecture hours for science and theory;
(b) Twenty-five (25) hours on the subject of applicable Kentucky statutes and administrative regulations; and
(c) 275 clinic and practice hours.
(2) A blow drying services license student shall have completed sixty (60) hours before providing services to the general public. Clinical practice shall be performed on other students or mannequins during the first sixty (60) hours.

Section 17. Extracurricular Events. Each cosmetology, nail technician, and esthetician student shall be allowed up to sixteen (16) hours for field trip activities pertaining to the profession of study, sixteen (16) hours for attending educational programs, and sixteen (16) hours for charitable activities relating to the field of study, totaling not more than forty-eight (48) hours and not to exceed eight (8) hours per day. Attendance or participation shall be reported to the board within ten (10) business days of the field trip, education show, or charitable event on the Certification of Student Extracurricular Event Hours form.

Section 18. Student Records. Each school shall:
(1) Maintain a <u>legible and accurate</u> daily attendance record for all full-time students, part-time students, and apprentice instructors <u>records shall be recorded using a digital biometric time keeping program.</u>;
<u>(a) All beginning, end, break and lunch times shall be recorded;</u>
<u>(b) All instructors also shall comply with the biometric time keeping system;</u>
<u>(c) Previously licensed schools will have six (6) months from enactment to comply.</u>
(2) Keep a record of each student's practical work and work performed on clinic patrons;
(3) Maintain a detailed record of all student enrollments, withdrawals, and dismissals for a period of five (5) years; and
(4) Make records required by this section available to the board and its employees upon request.

Section 19. Certification of Hours.
(1) Schools shall forward to the board digital certification of a student's hours completed within ten (10) business days of a student's withdrawal, dismissal, completion, or the closure of the school.
(2) No later than the 10th day of each month, a licensed school shall submit to the board via electronic delivery a certification of each student's total hours obtained for the previous month and the total accumulated hours to date for all students enrolled. Amended reports shall not be accepted by the board without satisfactory proof of error. Satisfactory proof of error shall require, at a minimum, a statement signed by the school manager certifying the error and the corrected report.

Section 20. No Additional Fees. Schools shall not charge students additional fees beyond the contracted amount.

Section 21. Instructor Licensing and Responsibilities.
(1) A person employed by a cosmetology, nail technology, or esthetic practices school for the purpose of teaching or instruction shall be licensed by the board as an instructor and shall post his or her license as required by 201 KAR 12:060.
(2) A licensed instructor or apprentice instructor shall supervise all students during a class or practical student work.
(3) An instructor or apprentice instructor shall render services only incidental to and for the purpose of instruction.
(4) Licensed schools shall not permit an instructor to perform services in the school for compensation during school hours.
(5) An instructor shall not permit students to instruct or teach other students in the instructor's absence.

(6) Except as provided in subsection (7) of this section, schools may not permit a demonstrator to teach in a licensed school.

(7) A properly qualified, licensed individual may demonstrate a new process, preparation, or appliance in a licensed school if a licensed instructor is present.

(8) Licensed schools of cosmetology, esthetic practices, and nail technology shall, at all times, maintain a minimum faculty to student ratio of one (1) instructor for every twenty (20) students enrolled and supervised.

(9) Licensed schools of cosmetology, esthetic practices, and nail technology shall, at all times, maintain a minimum ratio of one (1) instructor for every two (2) apprentice instructors enrolled and supervised.

(10) Within ten (10) business days of the termination, employment, and other change in school faculty personnel, a licensed school shall notify the board of the change.

Section 22. School Patrons.

(1) All services rendered in a licensed school to the public shall be performed by students. Instructors may teach and aid the students in performing the various services.

(2) A licensed school shall not guarantee a student's work.

(3) A licensed school shall display in the reception room, clinic room, or any other area in which the public receives services a sign to read: "Work Done by Students Only." The letters shall be a minimum of one (1) inch in height.

Section 23. Enrollment.

(1) Any person enrolling in a school for a cosmetology, nail technician, or esthetics course shall furnish proof that the applicant has:

(a) A high school diploma,

(b) A General Educational Development (GED) diploma; or

(c) Results from the Test for Adult Basic Education indicating a score equivalent to the successful completion of the twelfth grade of high school.

(2) The applicant shall provide with the enrollment a passport photograph taken within thirty (30) days of submission of the application.

(3) A student enrolling in a licensed school who desires to transfer hours from an out of state school shall, prior to enrollment, provide to the board certification of the hours to be transferred from the state agency that governs the out of state school.

(4) If the applicant is enrolled in a board approved program at an approved Kentucky high school, the diploma, GED, or equivalency requirement of this Section is not necessary until examination.

Section 24. Certificate of Enrollment.

(1) Schools shall submit to the board the student's digital enrollment, accompanied by the applicant's proof of education, as established in Section 23 of this administrative regulation, within ten (10) business days of enrollment.

(2) All student identification information on the school's digital enrollment shall exactly match a state or federal government-issued identification card to take the examination. If corrections shall be made, the school shall submit the Enrollment Correction Application and the enrollment correction fee in 201 KAR 12:260 within ten (10) days of the erroneous submission. Students with incorrect enrollment information shall not be registered for an examination.

Section 25. Student Compensation.

(1) Schools shall not pay a student a salary or commission while the student is enrolled at the school.

(2) Licensed schools shall not guarantee future employment to students.

(3) Licensed schools shall not use deceptive statements and false promises to induce student enrollment.

Section 26. Transfer. A student desiring to transfer to another licensed school shall:

(1) Notify the school in which the student is presently enrolled of the student's withdrawal; and

(2) Complete a digital enrollment as required for the new school.

Section 27. Refund Policy. A school shall include the school's refund policy in school-student contracts.

Section 28. Student Complaints. A student may file a complaint with the board concerning the school in which the student is enrolled, by following the procedures outlined in 201 KAR 12:190.

Section 29. Student Leave of Absence. The school shall report a student's leave of absence to the board within ten (10) business days. The leave shall be reported:

(1) In writing from the student to the school; and

(2) Clearly denote the beginning and end dates for the leave of absence.

Section 30. Student Withdrawal. Within ten (10) business days from a student's withdrawal, a licensed school shall report the name of the withdrawing student to the board.

Section 31. Credit for Hours Completed. The board shall credit hours previously completed in a licensed school as follows:

(1) Full credit (hour for hour) for hours completed within five (5) years of the date of school enrollment; and

(2) No credit for hours completed five (5) or more years from the date of school enrollment.

Section 32. Program Transfer Hours. If a current licensee chooses to enter into the practice of cosmetology, they shall complete and submit the Program Transfer form. Upon receiving a completed Program Transfer form, the board shall treat the transferred license as earned credit hours in a cosmetology program subject to the following:

(1) Transfer of a current esthetics license shall credit the transferee no more than 400 hours in a cosmetology program;

(2) Transfer of a current nail technologist license shall credit the transferee no more than 200 hours in a cosmetology program;

(3) Transfer of a current blow drying services license shall credit the transferee no more than 300 hours in a cosmetology program; or

(4) Transfer of a current barber license shall credit the transferee no more than 750 hours in a cosmetology program.

(5) Credit hours transferred pursuant to this section shall only take effect upon the transferee's completion of the remaining hours necessary to complete a cosmetology program.

Section 33. Incorporation by Reference. The following material is incorporated by reference:

(1)(a) "Certification of Student Extracurricular Event Hours", October 2018;

(b) "Enrollment Correction Application", October 2018; and

(c) "Program Transfer Form", January 2019.

[~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

JEANETTA THORNBURY, Board Chair Date

APPROVED BY AGENCY: January 14, 2020

FILED WITH LRC: January 15, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2020, at 9:00 a.m., at Kentucky Board of Cosmetology. 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 11:59 p.m. on March 31, 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: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the hours and courses of instruction, reporting, education requirements, and administrative functions for licensed schools of cosmetology, esthetics, and nail technology in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure standardized education that complies with state statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to all aspects of KRS 317A.050 and 317A.090.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines and defines education standards and the quantity of course hours required for licensed schools and students seeking Kentucky licensure by the board.

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

(a) How the amendment will change this existing administrative regulation: The amendment will revise the details of current school administrative records. Requiring biometrics for the safety of the students attendance and create a more accessible record for auditing purposes.

(b) The necessity of the amendment to this administrative regulation: This amendment will create clarity in records management for schools.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides clarity in the records process, implements biometric time keeping and allows current schools a grace period for compliance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated regulatory scheme for licensed schools that complies with the governing statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 62 licensed cosmetology schools this will only effect those facilities and any individuals planning on opening a school.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each licensed entity will have 6 months from enactment to purchase and implement the proper biometric systems for time keeping.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of the devices start at $100 and go up. It will be a nominal cost at this price point to implement the practice.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment requires licensed schools to keep digital time records for all student and instructor attendance. This will assist the board in auditing records for regulatory and statutory compliance by the schools as well as create accurate records for accrediting entities.

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

(a) Initially: No additional funds are necessary initially to implement this amendment.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: All Kentucky Board of Cosmetology funding comes from fees collected from licensees and applicants. Current funding will not change as a result 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 changes or increases in fees are anticipated as a result of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created directly or indirectly for the agency by this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation apply equally to all licensed schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Board of Cosmetology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.050 and KRS 317A.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 effect on state or local government agency revenue as a result of this amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue is anticipated as a result of 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? No additional revenue is anticipated as a result of this amendment.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated 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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

BOARDS AND COMMISSIONS
Kentucky Board of Cosmetology
(Amendment)

201 KAR 12:140. School equipment.

RELATES TO: KRS 317A.060, 317A.090

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to set standards by administrative regulation for licensed schools of cosmetology, esthetic practices, and nail technology to meet relating to quantity and quality of

equipment, supplies, and furnishings. This administrative regulation establishes the necessary physical requirements for licensed schools.

Section 1. Equipment and Supplies.

(1) A licensed school of cosmetology, esthetic practices, and nail technology shall have all equipment and supplies needed to meet the curriculum outlined in 201 KAR 12:082, including at a minimum:

(a) Shampoo bowls;

(b) Pedicure equipment;

(c) Hydraulic styling chairs;

(d) Station mirrors;

(e) Chemicals, cleansers, and emulsions;

(f) Cutting and styling implements; and

(g) Proper storage.

(2) A licensed school of esthetic practices shall have:

(a) A private student or client changing area;

(b) A minimum of one (1) fully equipped facial machine in the esthetics area;

(c) A minimum of one (1) sink in the clinic area with hot and cold running water;

(d) A minimum of one (1) steamer for hot towels; and

(e) A Sharps container.

(3) All equipment and supplies shall be available for student use and practice.

Section 2. Physical Characteristics.

(1) A licensed school shall be physically separated from any beauty salon or barber shop, or any other place of business.

(2) A licensed school shall maintain, at a minimum:

(a) Thirty-six (36) square feet per student in the clinical area;

(b) Eighteen (18) square feet per student in the mannequin or nail table area;

(c) A reasonable amount of area allotted for training of students in all other areas;

(d) A separate room for demonstration and study with all necessary charts and equipment to carry out the curriculum; and

(e) Booths or partitions in the clinical area that permit observation of students.

(3) All licensed schools must provide a biometric digital time keeping system to be used by all students and instructors.

JEANETTA THORNBURY, Board Chair

APPROVED BY AGENCY: January 14, 2020

FILED WITH LRC: January 15, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2020, at 10:00, at Kentucky Board of Cosmetology. 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 11:59 p.m. on March 31, 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: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the parameters to be maintained by a school.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the needed oversight for school compliance and to assist in upholding standards in education for the cosmetology industry in KY.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is being amended to clarify equipment needed for school administration.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation outlines the details on school equipment compliance to meet guidelines set by KRS 317A.

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

(a) How the amendment will change this existing administrative regulation: The amendment will add an item to the existing administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reinforce school administration and compliance standards as required in KRS 317A.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides guidelines for the school details as required in current statutory requirements in KRS 317A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will specify a new item required by the board for operation of a licensed school.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There will be no impact to licensees, other businesses, organizations, or state or local governments.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment does not impose any requirements on regulated entities.

(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 cost to licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The details of school equipment

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

(a) Initially: No additional funds are necessary initially to implement this administrative regulation.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current funding will not change.

(7) Provide an assessment of whether an 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 changes or increases in fees is required by this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created or increased directly or indirectly by this regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation does not impose any requirements on current or prospective 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? Kentucky Board of Cosmetology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative

regulation. KRS 317A.050, KRS 317A.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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? No funds will be raised.

(b) How 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 funds will be raised.

(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 (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation: Not applicable.

BOARDS AND COMMISSIONS
Kentucky Board of Cosmetology
(Amendment)

201 KAR 12:260. Fees.

RELATES TO: KRS 317A.050, 317A.062

STATUTORY AUTHORITY: KRS 317A.062

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.062 requires the board to promulgate administrative regulations establishing a reasonable schedule of fees and charges for examinations and the issuance, renewal, and restoration of licenses and permits. This administrative regulation establishes a fee schedule for applications, permits, and licenses issued by the board.

Section 1. The initial license fees shall be as follows:

(1) Cosmetologist - fifty (50) dollars;

(2) Nail technician - fifty (50) dollars;

(3) Esthetician - fifty (50) dollars;

(4) Blow drying services - fifty (50) dollars;

(5) Cosmetology instructor - fifty (50) dollars;

(6) Esthetic instructor - fifty (50) dollars;

(7) Nail Technology instructor - fifty (50) dollars;

(8) Beauty salon - $100;

(9) Nail salon - $100;

(10) Esthetic salon - $100;

(11) School - $1,500;

(12) School transfer of ownership - $1,500;

(13) Salon transfer of ownership - $100;

(14) Limited facility license[~~permit~~] for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - $100;

(15) Threading permit - fifty (50) dollars;

(16) Eyelash Artistry Permit - fifty (50) dollars; and

(17) Makeup Artistry Permit - fifty (50) dollars.

Section 2. The renewal license fees shall be as follows:

(1) Cosmetologist - fifty (50) dollars;

(2) Nail technician - fifty (50) dollars;

(3) Esthetician - fifty (50) dollars;

(4) Blow drying services - fifty (50) dollars;

(5) Cosmetology instructor - fifty (50) dollars;

(6) Esthetic instructor - fifty (50) dollars;

(7) Nail Technology instructor - fifty (50) dollars;

(8) Beauty salon - $100;

(9) Nail salon - $100;

(10) Esthetic salon - $100;

(11) School - $250;

(12) Limited facility permit for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - $100;

(13) Threading permit - fifty (50) dollars;

(14) Eyelash Artistry Permit - fifty (50) dollars; and

(15) Makeup Artistry Permit - fifty (50) dollars.

Section 3. Applications for examination including retake applications shall be accompanied by a fee as follows:

(1) Cosmetologist - seventy-five (75) dollars;

(2) Nail technician - seventy-five (75) dollars;

(3) Esthetician - seventy-five (75) dollars;

(4) Blow drying services - seventy-five (75) dollars; and

(5) Instructor - seventy-five (75) dollars.

Section 4. Miscellaneous fees shall be as follows:

(1) Demonstration permit - fifty (50) dollars;

(2) Certification for an out-of-state[~~of a~~] license or school hours transfer - twenty-five (25) dollars;

(3) Duplicate license - twenty-five (25) dollars;

(4) Salon manager change - fifty (50) dollars;

(5) School manager change - fifty (50) dollars[~~$125~~];

(6) Enrollment correction fee, as established in 201 KAR 12:082, Section 24(2) - fifteen (15) dollars;

(7) Out of state endorsement application fee - $100;

(8) Apprentice instructor - fifty (50) dollars;

(9) Student enrollment permit - twenty-five (25) dollars;

(10) Individual license restoration fee - fifty (50) dollars;

(11) Salon license restoration fee, or limited facility permit restoration fee for a limited beauty salon, threading facility, eyelash artistry facility, and makeup facility - $100; [~~and~~]

(12) School license restoration fee - $500; and

(13) School or Salon location change - $100.

JEANETTA THORNBURY, Board Chair

APPROVED BY AGENCY: January 14, 2020

FILED WITH LRC: January 15, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2020, at 11:00 a.m., at the Kentucky Board of Cosmetology. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 March 31, 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: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, fax (502) 564-0481, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a fee schedule for all applications, permits, and licenses issued by the Kentucky Board of Cosmetology (KBC).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set out a fee schedule for all persons and entities seeking a permit or license from the KBC.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This amendment adjusts some existing fees for those permits and licenses set forth in KRS Chapter 317A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment adjusts existing fees for the issuance, renewal, and restoration of licenses and permits, board exams, and other miscellaneous fees of the KBC.

(2) If 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 KBC is entirely self-funded through fees it collects for the various applications, permits, and licenses it offers to the public. There was no increase only a reduction in the amendment to some fees.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correct an implementation of a fee that was unnecessary in its amount.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment sets forth all KBC fees based on the current statutory requirements in KRS Chapters 317A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides a single administrative regulation setting out all applicable fees for applications, permits, and licenses issued by the KBC.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 38,000 licensees, permittees, and students affected 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: This amendment does not change any existing requirement, or create a new requirement. Rather, it amends the previous fee schedule contained in the existing administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An adjustment to fees is necessary in a few areas to reduce over reaching fee structures.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prospective and current licensees will benefit from a reduction in some fees and clarity in others.

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

(a) Initially: No additional funds are necessary initially to implement this amendment.

(b) On a continuing basis: No additional funds are necessary on an ongoing basis to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The KBC is entirely self-funded through fees it collects for permits and licenses. There are no funds necessary to implement this amendment as it updates a fee schedule for applications, permits, and licenses.

(7) Provide an assessment of whether an 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 funding needed, as this amendment and the existing administrative regulation do not implement any action or requirement.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment sets forth fees for licensing based on the current statutory requirements found in KRS Chapters 317A. This amendment reduces some fees for licenses and permits.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this amendment apply equally to all current and prospective licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Cosmetology (KBC).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317A.062.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 KBC is a self-funded agency, deriving its funding solely from the fees it collects for permits and licenses. This amendment modifies the fee schedule in the existing administrative regulation. It is expected to result in an increase in revenue during the first year. Increased revenue is necessary to fund national testing and to implement new permits and licenses brought about by the passage of House Bill 260. Finally, increased funding is necessary for new initiatives such as offering fully online applications and renewals.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is expected to result in increased revenue in subsequent years, which will be used to fund new initiatives.

(c) How much will it cost to administer this program for the first year? No additional cost is anticipated during the first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost is anticipated 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 (+/-): Increase.

Expenditures (+/-): No impact.

Other Explanation: This amendment updates fees and does not involve any expenditures. As explained above, the fee adjustments in this amendment are anticipated to result in increased revenue. The amount of increased revenue is dependent on the number of applicants for examinations, permits, and licenses. As some of the permits and licenses are newly established by House Bill 260, the expected amount of increased revenue for those new permits and licenses is currently unknown. Taking into account additional expenditures incurred from new licenses, permits, and national testing, it is anticipated that the increase in fees for existing examinations, permits, and licenses will result in an approximate 10-20% increase in revenue.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Board of Emergency Medical Services
(Amendment)

202 KAR 7:555. Ground agencies.

RELATES TO: KRS 311A.030, 311A.190, 29 C.F.R. 1910.1030

STATUTORY AUTHORITY: KRS 311A.020, 311A.025, 311A.030, 311A.190

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Emergency Medical Services or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate

administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes minimum licensing requirements.

Section 1. Utilization of Ground Vehicles by Class I, II, III, and IV Licensed Agencies. (1) At the time of initial inspection, each agency shall inform the Kentucky Board of Emergency Medical Services (KBEMS) office of the make, model, year, vehicle identification number or serial number, and license tag number for each vehicle the agency plans to use for medical care and transportation.

(2) A vehicle shall not be placed into operation until the board has conducted a physical inspection of the vehicle and determined it meets the requirements of 202 KAR Chapter 7.

(3) Each agency shall complete a Vehicle Delete application in the Kentucky Emergency Medical Services Information System (KEMSIS)[~~Vehicle Change Form~~], no later than the next business day after the permanent removal of any licensed vehicle from service by the license holder.

(4)(a) A licensed agency may use a replacement vehicle that meets all of the requirements of 202 KAR Chapter 7 on a temporary basis while a permitted vehicle is out of service. The agency shall complete an Add TEMPORARY Vehicle/Aircraft Part 1 application in KEMSIS [~~a Vehicle Change Form~~] within twenty-four (24) hours of the replacement.

(b) A temporary replacement vehicle shall not be used for more than thirty (30) days annually unless the KBEMS office has verified, through a physical inspection, that it meets the requirements of 202 KAR Chapter 7.

(5) The KBEMS office shall be notified by a completed Add TEMPORARY Vehicle/Aircraft Part 2 application in KEMSIS[~~Vehicle Change Form~~] within twenty-four (24) hours or on the next business day if a temporary vehicle is removed from service and the original licensed vehicle is returned to service.

(6)(a) An agency that fails to report using a temporary vehicle shall be required to immediately cease use of the replacement vehicle until the reporting requirements are met.

(b) An agency that fails to remove a temporary vehicle from service after thirty (30) days shall be fined $500 for each day or partial day the vehicle is in service and not reported.

(7) This administrative regulation shall not prevent a licensed agency from utilizing other means of transporting patients in:

(a) Disasters;

(b) Mass casualty incidents; or

(c) Extraordinary scene conditions that would impair access to the safety or care of the patient or personnel operating at the scene.

Section 2. Provider Management Requirements. (1) All licensed agencies shall maintain:

(a) An organizational chart that establishes lines of authority, including the designation of:

1. An administrator responsible for assuring compliance with KRS Chapter 311A and 202 KAR Chapter 7 during the daily operation of the service; and

2. A designee who shall serve in the absence of the administrator;

(b) Records and reports at the ambulance agency base station including:

1. An original, electronic equivalent, or copy of all patient care records consistent with the U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at www.nemsis.org/technical-resources/version-3;

2. An electronic copy of all completed patient care reports, which shall be maintained to ensure confidentiality and safekeeping for at least seven (7) years from the date on which the service was rendered, or in the case of a minor, at least three (3) years after the minor reaches the age of majority; and

3. Copies of Patient Care Reports for the preceding twelve (12) months, which shall be accessible and be immediately available to the board, KBEMS office, or representatives upon request;

(c) Personnel files for each employee or volunteer who staffs a vehicle of a licensed agency. Personnel files shall be maintained for at least one (1) year following separation from employment. As a minimum, all personnel files shall contain:

1. A pre-employment and annual criminal background check administered by the Kentucky Administrative Office of the Courts;

2. A copy of the employee's valid KBEMS certification or licensure card; and

3. A copy of each employee's completion of the National Incident Management System (NIMS) Incident Command System (ICS) 100, 200, 700, and 800 courses;

(d) A policy for the provision of a pre-employment and annual health assessment of employees of the agency, which shall include reporting mechanisms for work-related illness or injury;

(e) A written plan for providers to consult with online adult and pediatric medical direction. This plan shall address as a minimum:

1. The availability of medical direction twenty-four (24) hours a day, seven (7) days a week;

2. The availability of medical direction during an emergency event;

3. The provision of medical direction by a medical professional with a higher level of training or expertise; and

4. Recommended actions if:

a. There is an equipment failure, a communication barrier, or other unusual circumstance; and

b. It is not possible to contact online medical direction.

(f) A plan and records for the provision of continuing education for staff and volunteers, including:

1. A written plan for the method of assessment of staff continuing education needs; and

2. A coordinated plan to meet those needs, including a provision that all continuing education shall be provided either by a licensed TEI or in accordance with 202 KAR 7:601;

(g) An infection control plan in accordance with 29 C.F.R. 1910.1030;

(h) A written plan for training or educating personnel for responding to hazardous materials, criminal, and potential terrorist incidents, including plans for the protection and decontamination of patients, ambulances, equipment, and staff;

(i) A written policy regarding the appropriate destination of a patient who expires during transport if a valid Kentucky EMS Do Not Resuscitate (DNR), or Medical Orders for Scope of Treatment (MOST) form is present;

(j) A written plan for the quality assessment of patient care and provider quality improvement, including a monthly review of patient care reports and evaluation of staff performance related to patient care. This plan shall address as a minimum:

1. Employee health and safety;

2. Compliance with protocols and operating procedures;

3. Assessment of dispatch protocols;

4. Vehicle operations and vehicle safety;

5. Additional training necessary for the patient care provider or providers;

6. Equipment preventive maintenance programs; and

7. A process for the resolution of customer complaints;

(k) A written plan for training personnel and responding to mass casualty incidents and disasters;

(l) A written orientation program for all personnel, including at a minimum:

1. Validation of certification or license with KBEMS;

2. Validation of the National Incident Management System (NIMS) Incident Command System (ICS) 100, 200, 700, and 800 courses within sixty (60) days of employment for any employee who staffs a licensed vehicle;

3. Validation of Driver's License if applicable;

4. A review of all agency policies, procedures, and protocols;

5. Communication equipment at the base station and on each vehicle;

6. Operational aspects of the agency fleet and equipment;

7. Inspection and routine maintenance of agency fleet, facilities, and equipment;

8. Appropriate processes for disinfection of agency fleet, facilities, and equipment;

9. Local navigation and geographic orientation; and

10. Completion of Patient Care Reports and other documentation as established by the agency;

(m) Proof of professional liability malpractice insurance of a minimum of $1,000,000; and

(n) Proof of vehicular liability insurance.

(2) Each agency shall notify the board at least twenty-four (24) hours prior to the transfer of coverage, cancellation, lapse, or other cessation or change in professional liability malpractice insurance or vehicular liability insurance.

(3) Each agency shall verify valid staff certification or licensure as of the first day of the calendar year.

(4) If ceasing to operate, an agency shall provide the board with the physical storage location of all Patient Care Reports within five (5) business days of closure. These reports shall be maintained by the owner of the licensed agency, or a contracted third party to meet the timeline established in subsection (1)(b) of this section.

(5) Each agency that allows an employed emergency responder to provide medical services while off duty in accordance with 202 KAR 7:701, Section 6, shall maintain and implement a policy regarding which employees are approved to provide medical services off duty by the agency's medical director and the manner in which worker's compensation and general liability insurance covers employees off duty. The policy shall be signed by both the agency's administrator and medical director, shall be reviewed annually, and shall include:

(a) Direction on which employees may remove medical equipment from the agency's premises for the purpose of providing care off duty;

(b) Direction on which equipment may be removed from the agency's premises for the purpose of providing care off duty; and

(c) A provision that controlled substances shall not be removed from the agency's premises for the purposes of providing care off duty.

(6) Each agency shall in the county in which the agency's base station or a satellite is located:

(a) Document evidence of participation in a local, county, regional, or state disaster or preparedness exercise within the preceding twelve (12) months;

(b) Coordinate with the county emergency management director plans for the possible use of agency personnel for use in the emergency operations center in a disaster; and

(c) Maintain a hard copy or electronic equivalent of the most current adopted city, county, or urban county government emergency management agency's emergency operations plan at the ambulance base station.

Section 3. Operating Requirements. (1) Each licensed agency, except Class IV and VIII, shall provide service twenty-four (24) hours a day, seven (7) days a week. Class IV and VIII agencies shall operate during the hours of operation for their geographical service area or designated event.

(2) Each licensed agency shall retain staffing schedules for at least the previous twelve (12) months.

(3) Each agency administrator or designee shall be familiar with emergency management reporting and procurement processes and software platforms utilized to communicate the needs of the local government to state agencies.

(4) A licensed Class I, II, III, VI, or VII agency that ceases to provide continuous service on a twenty-four (24) hour basis shall surrender its license to the board's office within twenty-four

(24) hours of the agency ceasing to provide continuous service.

(5) A licensed agency shall have a written plan to assure all requests for service shall be promptly answered.

(6) A licensed agency shall have a written scope of care policy to include the types of services performed, limitations of response, and the types of medical teams provided.

(7) Any agency licensed and located within the geographical service area that determines it is unable to have a vehicle responding within ten (10) minutes from the initial time an emergency call is received from the dispatch center shall notify the next closest appropriate licensed agency to respond.

(8) An agency shall enter into a mutual aid agreement with another Kentucky licensed ambulance agency operating within the same or contiguous counties that provide response to medical emergencies. These agreements shall be in writing and address:

(a) The type of mutual aid assistance to be provided, including advanced life support (ALS) or basic life support (BLS) medical care and transport and ALS or BLS medical first response;

(b) Response personnel, including levels of training or education and provisions for joint in-service training or education if appropriate;

(c) Response vehicles, including unit identifiers and the station or location from which the vehicles shall be operated;

(d) A plan of action for the mutual aid agreement, including dispatch and notification procedures;

(e) Radio and other communications procedures between the ambulance agency and other response agencies with which the agency has mutual aid agreements;

(f) On-scene coordination and scene control including medical direction if several agencies respond to the same incident;

(g) Exchange of patient information, records, and reports as allowed by law; and

(h) The effective dates and process for amendment or termination.

(9) A ground agency shall send a written request for a mutual aid agreement to at least two (2) contiguous counties and retain a copy of each request and each county's response;

(10) Each agency shall maintain a policy or affiliation agreement with the primary call-taking center that provides dispatch services for all or part of the service area of the ground agency. The agreement shall state at a minimum that:

(a) Requests for emergency ambulance service shall be dispatched or notified within two (2) minutes from determining that the caller is requesting ambulance response;

(b) If the closest licensed agency for that geographic service area is unable to have a vehicle responding to an emergency call within ten (10) minutes from the time the call is dispatched, the agency shall notify the next closest appropriate licensed agency to respond; and

(c) The agreement shall specify which patient information shall be collected by the call-taking center during a call for service.

(11) If a ground agency is unable to secure a written affiliation agreement with the dispatch center, the ground agency shall retain all written correspondence to the dispatch center requesting an affiliation agreement and the dispatch center's denial of the agency's request.

(12) An agency shall not respond to requests for emergency service outside of its licensed geographic service area without first receiving authorization from the licensed agency in the geographic service area in which the request originates.

(13) A licensed Class I ground agency that is located in a geographical service area containing multiple destination hospitals, with regard to the furnishing of 911 response and transportation, shall not engage in:

(a) Exclusive or coercive practices regarding transportation decisions with regard to any affiliated hospital or hospital emergency department;

(b) Preferential transportation to any affiliated hospital emergency department if the transports are not justified by time, place, patient convenience, or other objective factors affecting a patient;

(c) Noncompetitive transportation to any affiliated hospital emergency department; or

(d) Transports to any affiliated hospital emergency department if that hospital is not the closest to the patient location or most appropriate based on the availability of particular services or patient preference.

(14) An agency that cannot meet the timelines established in subsection (10) of this section shall contact another licensed

agency and receive an estimated time of arrival to the request for service. If the mutual aid agency can arrive at the location where the request originated more quickly than the agency licensed for the geographic service area, the agency licensed for the geographic service area shall request mutual aid from its neighboring agency to respond to the call.

(15) An agency shall not refuse a request for emergency pre-hospital response if a unit is available in its geographic service area.

(16) An agency shall not exhaust its resources by answering a nonemergency call or for response to mutual aid requests.

(17) This administrative regulation shall not be construed to prevent a licensed agency from providing medical first response emergency or nonemergency pre-hospital care at or below the level for which the agency is licensed through the use of designated agency-owned response vehicles.

(18) A communications system shall be developed, coordinated, and maintained by each licensed agency. The communication system shall comply with paragraphs (a) through (f) [~~(e)~~] of this subsection.

(a) Radio equipment used in emergency medical services vehicles shall be appropriately licensed through the Federal Communications Commission (FCC). Copies of the current FCC licenses shall be on file in the agency office.

(b) Each ambulance [~~A licensed agency~~] shall have an operational push-to-talk two-way radio programmed with [~~the capability to communicate on~~] all very high frequency (VHF) Kentucky State Mutual Aid Frequencies in accordance with the Commonwealth of Kentucky Field Operations Guide (KY-FOG).

(c) Each ambulance shall be equipped with a minimum of one (1) mobile two-way [~~(2) way~~] radio [~~communication equipment with a control point~~] located in [~~both~~] the driver's compartment [~~and patient care compartment of the vehicle capable, under normal conditions, of operating on agency, dispatch center, mutual aid, and hospital frequencies~~].

(d) Each ambulance shall have a minimum of two (2) portable push-to-talk two-way radios [~~(2) way radio communication devices~~] capable, under normal conditions, of operating on the agency, dispatch center, mutual aid, and hospital frequencies.

(e) Each ambulance shall be equipped with two-way radio communication equipment with the ability to communicate from the driver's compartment and patient care compartment.

(f)[~~(e)~~] One (1) alternative method of two-way [~~(2) way~~] communication may be substituted for one (1) portable two-way [~~(2) way~~] radio.

Section 4. Medical Directors. (1) Each licensed agency shall have a medical director who meets the requirements established in 202 KAR 7:801.

(2) A licensed agency shall notify KBEMS within twenty-four (24) hours of a decision to discontinue a medical director agreement by either the agency or the medical director.

(3)(a) If an agency is found to be operating without a medical director, the agency shall be provided emergency medical direction by the KBEMS Medical Advisor for a fee of $100 per day for the first thirty (30) calendar days the agency is without a medical director.

(b) The fee shall increase to $500 per day after thirty (30) calendar days.

Section 5. Public Notice of Negative Action. The board office shall cause to be published, on the KBEMS web site or similar publication of the board, the name of any licensed agency that is fined, placed on probationary status, placed on restricted status, suspended, or had a license revoked.

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

(a) "Commonwealth of Kentucky Field Operations Guide (KY-FOG)", (6/2012) found at https://kwiec.ky.gov/SiteCollectionDocuments/KYFOG.pdf.;

(b) "NHTSA NEMSIS Data Dictionary", (v3.40) U.S. Department of Transportation National Highway Traffic Safety Administration (NHTSA) National Emergency Medical Services Information System (NEMSIS) data dictionary found at https://www.nemsis.org/media/nemsis_v3/3.4.0.150302/DataDictionary/PDFHTML/DEMEMS/NEMSISDataDictionary.pdf; [~~and~~]

(c) "Vehicle Delete application in KEMSIS", (12/2019); [~~"Vehicle Change Form", (12/2017).~~]

(d) "Add TEMPORARY Vehicle/Aircraft application Part 1 in KEMSIS", (12/2019); and

(e) "Add TEMPORARY Vehicle/Aircraft application Part 2 in KEMSIS", (12/2019).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Board of Emergency Medical Services, 118 James Court, Suite 50, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

PHILIP DIETZ, Chairman

APPROVED BY AGENCY: January 7, 2020

FILED WITH LRC: January 15, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2020, at 1:00 PM Eastern Standard Time at the Kentucky Board of Emergency Medical Services, 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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: Jeffrey S. Walther, Legal Counsel, Kentucky Board of Emergency Medical Services, Walther, Gay & Mack, PLC; 163 East Main Street, Suite 200, Lexington, Kentucky 40588, phone (859) 225-4714, fax (859) 225-1493, email: administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeffrey S. Walther

(1) Provide a brief summary of:

(a) What this administrative regulation does: 202 KAR 7:555 establishes the minimum licensing requirements for ground agencies.

(b) The necessity of this administrative regulation: KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 311A.030 by establishing the minimum licensing requirements for ground agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the minimum licensing requirements for ground agencies.

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

(a) How the amendment will change this existing administrative regulation: This amendment modifies the minimum licensing requirements regarding radio communication devices.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform with current emergency medical services standards and practices regarding ground agency radio communication devices.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 311A.030 by establishing the minimum licensing requirements for ground agencies regarding radio communication devices.

(d) How the amendment will assist in the effective administration of the statutes: KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes the minimum licensing requirements for ground agencies regarding radio communication devices.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All emergency medical services ground agencies will be affected by this administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All ground agencies will be required to satisfy the minimum licensing requirements regarding radio communication devices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation will not require entities to incur any additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Ground agencies will benefit from the standardized communication capabilities required by this amendment, which will assist in providing efficient and effective emergency medical services.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation.

(a) Initially: There will be no cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the administrative body to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: No funding source is necessary to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied to this administrative regulation because this amendment applies to all ground 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? The administrative regulation will affect emergency medical services ground agencies.

(2) Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 311A.020 requires the Board of Emergency Medical Services to exercise all administrative functions in the regulation of the EMS system and the licensing of ambulance services and medical first response agencies, except those regulated by the Board of Emergency Medical Services or the Cabinet for Health and Family Services. KRS 311A.030 requires the board to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers and medical first response agencies. This administrative regulation establishes minimum licensing requirements.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? Administration of this administrative regulation will not require any costs.

(d) How much will it cost to administer this program for subsequent years? Administration of this administrative regulation will not require any costs.

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

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not require any additional expenditures.

Other Explanation:

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(Amendment)

302 KAR 10:100. Refrigeration of eggs and temperature requirements.

RELATES TO: KRS 260.620

STATUTORY AUTHORITY: KRS 260.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.620 requires the department to establish standards governing eggs offered for sale as graded eggs. This administrative regulation establishes the requirements relating to the refrigeration of eggs, including temperature, transportation, and labeling requirements.

Section 1. The refrigeration and temperature requirements in the standards of quality for shell eggs shall be governed by the following specifications:

(1) To prevent undue deterioration, a shell egg packed in a container for the purpose of resale to a consumer shall be stored and transported under refrigeration at an ambient temperature of forty-five (45) degrees Fahrenheit or seven and two-tenths (7.2) degrees Centigrade or less.

(2) Eggs, which are shipped across the state line into Kentucky, shall be transported under refrigerated conditions at the temperature as required by subsection (1) of this section.

(3) A shell egg that is packed into a container for the purpose of resale to a consumer shall be labeled with the following statement: "Keep refrigerated at or below forty-five (45) degrees Fahrenheit".

(4)(a) A person who takes possession of an egg in this state shall be liable for compliance with subsections (1) and (2) of this section.

(b) Upon receiving an egg, a person shall ensure that his <u>or her</u> supplier complies with the labeling requirements established in

KRS 260.630.

(5) An egg that does not meet the refrigeration requirements either in transit, storage or display shall be seized or ordered destroyed by a Department of Agriculture inspector.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 13, 2020

FILED WITH LRC: January 14, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2020 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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) 330-6360, 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 establishes egg temperature requirements during storage.

(b) The necessity of this administrative regulation: This regulation establishes egg temperature requirements during storage, but establishing the necessary temperatures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260 commands the KDA to establish administrative regulations for an egg marketing program, this regulation establishes egg temperature requirements during storage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making temperature rules clear for egg marketing 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 helps this filing conform to modern drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment helps this filing conform to modern drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment helps this filing conform to modern drafting requirements.

(d) How the amendment will assist in the effective administration of the statutes: This amendment helps this filing conform to modern drafting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and egg sellers 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: Entities will be required to follow the instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed whatsoever, so little to no costs would be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: No costs are associated with this filing.

(b) On a continuing basis: No costs are associated with this filing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated by participants established in statute.

(7) Provide an assessment of whether an 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 costs are associated with this filing.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No costs are associated with this filing.

(9) TIERING: Is tiering applied? (Explain why or why not) 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 260.540-.650

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 income will be generated by this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No income will be generated by this amendment.

(c) How much will it cost to administer this program for the first year? 2019 program costs were $265,000 for staff for the egg program.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the egg program as a whole.

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:

DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing
(Amendment)

302 KAR 45:010. Ginseng.

RELATES TO: KRS 246.030, 246.650, 246.660, 246.990(9), 260.020, 260.030, 50 C.F.R. Part 23

STATUTORY AUTHORITY: KRS 246.660, 260.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 246.660 requires the Department of Agriculture to administer a program for

ginseng in Kentucky. This administrative regulation establishes the ginseng program including licensing and record keeping requirements for dealers, a limited harvesting season, certification procedures, administrative violations and civil penalties, and procedures for the suspension or revocation of a dealer's license.

Section 1. Definitions. (1) "Artificially Propagated" means ginseng grown from seeds or rootlets that:

(a)1. Are exempt from the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as implemented by 50 C.F.R. Part 23; or

2. Were derived from cultivated parental stock; and

(b) Were woodsgrown or cultivated.

(2) "Certified ginseng" means ginseng that has been issued an American Ginseng Export Certificate by the department or other governmental certifying organization.

(3) "Cultivated" means ginseng grown under artificial shade and in tilled soil.

(4) "Dealer" means any person or agent of an entity buying ginseng for resale or export.

(5) "Department" means the Kentucky Department of Agriculture.

(6) "Dry ginseng" means ginseng roots that have been dried to remove moisture.

(7) "Export" means to transport, ship, carry, haul, take, or otherwise move ginseng collected in Kentucky outside of Kentucky.

(8) "Ginseng" is defined by KRS 246.650(2).

(9) "Green ginseng" means ginseng roots retaining moisture, not dried.

(10) "Harvest" is defined by KRS 246.650(1).

(11) "Purchase" means to take possession of ginseng in exchange for cash, cash equivalents, or barter.

(12) "Sell" means to transfer possession of ginseng to another person or entity in exchange for cash, cash equivalents, or barter.

(13) "Uncertified ginseng" means ginseng that has been harvested, but has not been issued a certificate for export.

(14) "Wild" means:

(a) Ginseng grown with minimal interference by humans, and under natural canopy in forest or woodlands; or

(b) Mature ginseng plants if they are derived from seeds of wild ginseng that were planted as required by Section 4(3) of this administrative regulation.

(15) "Wild Simulated" means ginseng grown:

(a) From seed that was not planted as required by Section 4(3) of this administrative regulation;

(b) With minimal interference by humans; and

(c) Under natural canopy.

(16) "Woodsgrown" means ginseng which was:

(a) Grown under natural canopy; and

(b) Purposefully managed.

Section 2. Dealer License Requirements. A person shall not purchase uncertified ginseng for resale or export unless he possesses a Kentucky ginseng dealer's license.

(1) Annual application. All persons or agents of entities purchasing uncertified ginseng in any amount at any time shall file a complete Ginseng Dealer Application for a ginseng dealer's license.

(2) Fee. An annual fee of seventy-five (75) dollars for Kentucky residents or one hundred fifty (150) dollars for non-residents shall be submitted to the department prior to issuance of a ginseng dealer's license. Residency shall be determined by the state of issuance of a driver's license or other government issued photo identification.

(3) Licensing Period. A ginseng dealer's license shall be valid from September 1 until August 31 of the following calendar year. The department shall not issue a license if an applicant has outstanding penalties due under Section 9 of this administrative regulation.

(4) A dealer may only be an agent for an entity that is duly authorized to do business in the Commonwealth.

(5) All dealer purchases shall be made using a certified scale as required in KRS 363.610.

Section 3. Record Keeping. (1) Purchase of ginseng. Ginseng dealers shall document all purchases of ginseng on a Ginseng Purchase Form. The KDA shall issue twenty-five forms to each dealer. For additional forms, the dealer shall execute a "ginseng Purchase Form Log"" and submit to the KDA prior to additional form issuance. The form shall be legible, shall be completed in its entirety by the dealer, other than the seller's signature or mark, in the presence of the seller, and shall include:

(a) Printed name, signature, or mark and address of the seller;

(b) Month purchased;

(c) Month harvested;

(d) County where harvested;

(e) Weight of purchase or sale; and

(f) Designation of ginseng as cultivated, woodsgrown, wild, or wild simulated and whether dried or green at the time of the transaction.

(g) The sellers government issued photo identification number (drivers license number etc).

(2) Records of sales between dealers. (a) A ginseng dealer purchasing uncertified ginseng from another dealer shall:

1. Complete a Dealer to Dealer Transaction Form to document the purchase; and

2. Obtain from the other dealer Ginseng Purchase Forms completed by the dealer of origin.

(b) The Dealer to Dealer Transaction Form shall include:

1. The month of purchase from a dealer;

2. The weight of the ginseng purchased at the time of the transaction;

3. The signature and registration number of the dealer from whom the purchase is made;

4. The designation of ginseng as cultivated, woodsgrown, wild, or wild simulated and whether dried or green at the time of the transaction; and

5. The form identification numbers from the Ginseng Purchase Forms.

(3) Retention. A person required to maintain records under this section shall retain the forms for a period of five (5) [~~three (3)~~]] years from the end of that year's growing season.

(4) Availability. Records required to be maintained under this section shall be made available to the department upon request.

Section 4. Harvest. (1) Ginseng shall only be harvested between September 1 and December 1 of each year.

(2) Ginseng shall not be harvested which is less than five (5) years old or has less than three (3) five (5) leafed prongs.

(3) Seeds adhering to a plant taken during the season shall be planted within fifty (50) feet of the location of the plant with no tool used other than the finger.

Section 5. Sale of Ginseng. (1) Uncertified green ginseng may only be sold from September 1 of each year until March 31 of the following year.

(2) Uncertified dry ginseng may only be sold from September 15 of each year until March 31 of the following year.

(3) Ginseng dealers may obtain American Ginseng Export Certificates from the department during the ginseng selling season.

(4) A ginseng dealer may sell certified ginseng at any time.

Section 6. Unsold Ginseng. (1) Uncertified ginseng not sold by March 31 of the year after harvest shall be documented by the dealer. It shall be:

(a) Weighed, and issued a weight receipt by the department; or

(b) Certified in accordance with Section 7 of this administrative regulation.

(2) A ginseng dealer shall not possess:

(a) Undocumented green ginseng from April 1 through August 31; or

(b) Undocumented dry ginseng from April 1 through September 14.

(3) Uncertified weighed ginseng shall not be sold until the

following season's selling period.

Section 7. Certification of Ginseng. (1) Before ginseng harvested in Kentucky can be exported, it shall be certified by the department on an American Ginseng Export Certificate.

(2) Ginseng may only be certified by a dealer holding a Kentucky dealer's license.

(3) To obtain certification, a dealer shall:

(a) File with the department an American Ginseng Export Certificate form;

(b) File with the department associated purchase forms covering the amount of ginseng to be certified in accordance with subsection (5) of this section;

(c) Undergo a random sample inspection of ginseng roots by a department official; and

(d) Pay the certification fee in accordance with subsection (7) of this section.

(4) Export Certificate. The certificate shall include the following information:

(a) State of origin;

(b) Serial number of certificate;

(c) Dealer's state license number;

(d) Dealer's shipment number for the harvest season;

(e) Year of harvest;

(f) Designation as dried or green ginseng;

(g) Designation as cultivated, woodsgrown, wild, or wild simulated;

(h) Weight of ginseng;

(i) Statement of state or tribal certifying official that the ginseng was obtained in that state or on those tribal lands in accordance with all relevant laws for that harvest year; and

(j) Name and title of state or tribal certifying official.

(5) Associated Purchase Forms.

(a) For ginseng purchased from harvesters, the dealer shall file Ginseng Purchase Forms covering the amount of ginseng to be certified.

(b) For ginseng purchased from other dealers, the dealer shall file Dealer to Dealer Transaction Forms and Ginseng Purchase Forms obtained from the dealers of origin covering the amount of ginseng to be certified.

(c) Ginseng Purchase Forms shall be submitted to the department by April 15 of the year after harvest.

(6) The department may obtain samples of roots in order to obtain a root count.

(7) Certification fee. The fee for certification and processing by the department shall be two (2) dollars per pound. Payment shall be made prior to the release of the certification of the ginseng to the dealer, and shall be tendered by check or money orders only. Cash shall not be accepted.

(8) A copy of the certificate shall be:

(a) Enclosed with the shipment which is the subject of the certification;

(b) Retained for a minimum of five (5) [~~three (3)~~]] years by the licensed ginseng dealer; and

(c) Retained by the certifying agent of the department for seven (7) years.

Section 8. Prohibition on Uncertified Non-Kentucky Grown Ginseng. Ginseng that is harvested outside the border of Kentucky and not certified in its state of origin shall not enter Kentucky.

Section 9. Violations and Penalties. (1) The following acts shall be considered a violation of this administrative regulation, and each violation shall carry a civil penalty of $100 to $1,000 dollars:

(a) Harvesting ginseng out of season;

(b) Selling uncertified ginseng out of season;

(c) Possessing underage ginseng;

(d) Seed collection, not relocating within fifty (50) feet of parent;

(e) Purchasing uncertified ginseng out of season;

(f) Falsification of a Ginseng Dealer Application, a Ginseng Purchase Form, a Dealer to Dealer Transaction Form, or an American Ginseng Export Certificate;

(g) A dealer purchasing ginseng from a harvester without accurately documenting the purchase on a Ginseng Purchase Form in accordance with Section 3(1) of this administrative regulation;

(h) A dealer purchasing uncertified ginseng from another dealer without:

1. Accurately documenting the purchase on a Dealer to Dealer Transaction Form in accordance with Section 3(2) of this administrative regulation; or

2. Obtaining from the other dealer Ginseng Purchase Forms completed by the dealer of origin;

(i) Reselling or exporting ginseng without a dealer's license;

(j) A dealer failing to certify or obtain weight receipt of ginseng at the end of the uncertified ginseng selling season;

(k) Transporting or exporting of uncertified ginseng in or out of Kentucky; [~~and~~]]

(l) Possession of undocumented ginseng by a ginseng dealer out of season; [~~.~~]

(m) Acting as a dealer or agent of a dealer without a license; and

(n) Purchasing uncertified ginseng out of season.

(2) Persons who commit the same violation within thirty (30) days of being cited for the first violation shall be assessed up to double the civil penalty accessed in Section 9(1) of this administrative regulation, not to exceed $1,000.

(3) Persons who commit a third same violation within sixty (60) days of being cited for the first violation shall be assessed up to triple the civil penalty accessed in Section 9(1) of this administrative regulation, not to exceed $1,000.

(4) This section shall not prohibit the department from suspending or revoking a license or certificate at any time in accordance with Section 10 of this administrative regulation.

(5) A person cited with a violation may contest the violation by requesting a hearing in writing within ten (10) days of receiving the notice of violation. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 10. Ginseng Dealer License Suspension or Revocation. (1) A ginseng dealer may contest a proposed license suspension or revocation by requesting a hearing in writing within ten (10) days of receiving the notice of suspension or revocation. The hearing shall be conducted in accordance with KRS Chapter 13B.

(2) If a hearing is not requested as provided for in subsection (1) of this section, the department may suspend or revoke the license once the ten (10) day hearing request filing period has passed.

(3) The department may suspend a license for up to one calendar year, or revoke a license after the provisions of subsections (1) and (2) of this section have been satisfied.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Ginseng Dealer Application", 12/2019 [~~7/13/2011~~]];

(b) "American Ginseng Export Certificate", 8-2016 [~~7/13/2011~~];

(c) "Dealer to Dealer Transaction Form", 12/2019 [~~7/13/2011~~]; [~~and~~]

(d) "Ginseng Purchase Form", 12/2019 [~~7/13/2011~~];

(e) "Ginseng Purchase Form Log", 12/2019; and

(f) "Weight Receipt"", 08/2015.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Plant Marketing[~~Value Added Foods~~], 111 Corporate Drive[~~100 Fair Oaks, Suite 252~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 13, 2020

FILED WITH LRC: January 14, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

March 23, 2020 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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 establishes the guidelines for ginseng harvest and sales in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish and clarify the rules that govern ginseng.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 246.660 commands the KDA to establish administrative regulations for a ginseng 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 making rules clear for ginseng harvest and sale in Kentucky.

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

(a) How the amendment will change this existing administrative regulation: This filing streamlines the requirements and makes changes to comply with drafting requirements.

(b) The necessity of the amendment to this administrative regulation: This filing streamlines the requirements and makes changes to comply with drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This filing streamlines the requirements and makes changes to comply with drafting requirements.

(d) How the amendment will assist in the effective administration of the statutes: This filing streamlines the requirements and makes changes to comply with drafting requirements, making administration more effective.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and approximately 107 license 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: 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): Fees are listed for licensure to purchase ginseng, and a fee for certification.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: Program costs of $225,941

(b) On a continuing basis: Program costs should remain stable with adjustments for retirement costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees and fines generated by participants.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established directly.

(9) TIERING: Is tiering applied? Yes, in state and out of state dealers pay different fee rates.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 246.660

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 32,565.72 was generated in the last fiscal year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue is expected to remain stabile.

(c) How much will it cost to administer this program for the first year? 2018 program costs were $225,941

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue unless revised by future budgets.

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

Revenues (+/-): 32,565.72

Expenditures (+/-): $230,477

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640, 532.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures", January[~~November~~] 13,

2020[~~2018~~], are incorporated by reference. Department of Corrections Policies and Procedures include:

1.2	News Media (Amended 6/10/14)
1.4	The Monitoring and Operation of Private Prisons (Amended 5/15/08)
2.1	Inmate Canteen (Amended 2/26/16)
2.12	Abandoned Inmate Funds (Amended 4/12/18)
3.1	Code of Ethics (Amended 12/10/13)
3.9	Student Intern Placement Procedure (Amended 11/7/16)
3.10	Appearance and Dress for Nonuniformed Staff (Amended 1/13/20[~~1/12/18~~])
3.11	Drug Free Workplace Employee Drug Testing (Amended 12/10/13)
3.14	Employee Time and Attendance Requirements (Amended 6/14/16)
3.17	Uniformed Employee Dress Code (Amended 1/12/18)
3.22	Staff Sexual Offenses (Amended 12/10/13)
3.23	Internal Affairs Investigation (Amended 11/13/18)
5.1	Research, Surveys and Data Requests (Amended 1/13/20[~~3/14/18~~])
5.3	Program Approval, Evaluation and Measurement (Amended 1/13/20[~~6/9/15~~])
6.1	Open Records Law (Amended 5/14/07)
6.2	Inmate Record (Added 11/7/16)
8.2	Fire Safety (Amended 3/14/14)
8.7	Notification of Critical Incident[~~Extraordinary Occurrence~~] (Amended 1/13/20[~~3/14/14~~])
9.4	Transportation of Inmates to Funerals or Bedside Visits (Amended 6/9/15)
9.6	Contraband (Amended 2/26/16)
9.8	Search Policy (Amended 3/14/18)
9.13	Transport to Court - Civil Action (Amended 07/09/07)
9.18	Informants (Amended 9/13/10)
9.19	Found Lost or Abandoned Property (Amended 10/14/05)
10.2	Special Management Inmates (Amended 4/11/17)
10.3	Safekeepers and Contract Prisoners (Amended 1/12/18)
11.2	Dietary Procedures and Compliance (Amended 1/12/17)
11.4	Alternative Dietary Patterns (Amended 1/12/17)
13.1	Pharmacy Policy and Formulary (Amended 1/15/15)
13.2	Health Maintenance Services (Amended 2/26/16)
13.3	Medical Alert System (Amended 3/14/14)
13.5	Advance Healthcare Directives (Amended 6/14/16)
13.6	Sex Offender Treatment Program (Amended 11/7/16)
13.7	Involuntary Psychotropic Medication (Amended 10/14/05)
13.8	Division of Addiction Services Substance Abuse Program (Amended 1/13/20[~~10/12/12~~])
13.9	Dental Services (Amended 10/14/05)
13.10	Serious Infectious Disease (Amended 3/14/14)
13.11	Do Not Resuscitate Order (Amended 8/9/05)
13.12	Suicide Prevention and Intervention Program (Added 8/25/09)
13.13	Behavioral Health Services (Amended 1/13/20[~~11/7/16~~])
13.15	Inmate Observer Program (Added 8/12/16)
14.1	Investigation of Missing Inmate Property (Amended 10/14/05)
14.2	Personal Hygiene Items (Amended 8/20/13)
14.3	Marriage of Inmates (Amended 1/12/17)
14.4	Legal Services Program (Amended 3/14/14)
14.5	Claims Commission (Amended 4/12/18)
14.6	Inmate Grievance Procedure (Amended 1/13/20[~~3/14/18~~])
14.7	Sexual Abuse Prevention and Intervention Programs (Amended 4/12/18)
14.8	Lesbian, Gay, Bisexual, Transgender, and Intersex Offenders (Amended 1/12/18)
15.1	Hair, Grooming and ID Card Standards (Amended 1/12/18)
15.2	Rule Violations and Penalties (Amended 8/12/16)
15.3	Meritorious Good Time (Amended 1/13/20[~~11/13/18~~])
15.4	Program Credit (Amended 1/13/20[~~6/12/12~~])
15.5	Restoration of Forfeited Good Time (Amended 1/13/20[~~2/26/16~~])
15.6	Adjustment Procedures and Programs (Amended 3/14/18)
15.7	Inmate Accounts (Amended 1/13/20[~~1/12/18~~])
15.8	Possession or Use of Unauthorized Substance and Substance Abuse Testing (Amended 4/12/18)
16.1	Inmate Visits (Amended 4/11/17)
16.2	Inmate Correspondence (Amended 1/13/20[~~11/7/16~~])
16.3	Inmate Access to Telephones (Amended 10/12/12)
16.4	Inmate Packages (Amended 8/12/16)
16.5	Video Visitation (Added 8/12/16)
17.1	Inmate Personal Property (Amended 3/14/18)
17.2	Assessment Center Operations (Amended 1/13/20[~~6/9/15~~])
17.3	Controlled Intake of Inmates (Amended 3/14/14)
17.4	Administrative Remedies: Sentence Calculations (Amended 8/12/16)
18.1	Classification of the Inmate (Amended 3/14/18)
18.2	Central Office Classification Committee (Amended 1/12/18)
18.3	Confinement of Youthful Offenders (Added 6/9/15)
18.5	Custody Level and Security (Amended 11/13/18)
18.7	Transfers (Amended 5/13/16)
18.9	Out-of-state Transfers (Amended 2/26/16)
18.11	Placement for Mental Health Treatment in CPTU or PCU (Amended 6/14/16)
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
18.13	Population Categories (Amended 4/12/18)
18.15	Protective Custody (Amended 1/12/18)
18.16	Information to the Parole Board (Amended 1/13/20[~~1/12/18~~])
18.17	Interstate Agreement on Detainers (Amended 07/09/07)
18.18	International Transfer of Inmates (Amended 5/14/07)
19.1	Governmental Services Program (Amended 10/12/12)
19.2	Sentence Credit for Work (Amended 2/26/16)
19.3	Inmate Wage/Time Credit Program (Amended 10/12/18)
19.4	Work Release for State Inmates in Jails (Added 4/12/18)
20.1	Educational Courses[~~Programs~~] and Educational Good Time (Amended 1/13/20[~~8/25/09~~])
20.2	Apprenticeship Courses (Added 1/13/20)
21.1	Library Services (Added 3/14/14)
22.1	Privilege Trips (Amended 10/14/05)
22.2	Recreation and Inmate Activities (Added 3/14/14)
23.1	Religious Programs (Amended 3/14/18)
25.2	Public Official Notification of Release of an Inmate (Amended 10/14/05)
25.3	Prerelease Program (Effective 11/15/06)
25.4	Inmate Furloughs (Amended 1/13/20[~~Added 4/12/18~~])
25.6	Community Service Center Program and Jail Placement (Amended 11/13/18)
25.10	Administrative Release of Inmates (Amended 1/13/20[~~8/12/16~~])
25.11	Victim Services Notification (Amended 8/25/09)
25.12	Home Incarceration Program (Amended 1/13/20[~~Added 8/12/16~~])
25.13	Women's Medical Release: Pregnancy (Added 11/13/18)
25.14	Reentry Center Program (Added 11/13/18)
26.1	Citizen Involvement,[~~and~~] Volunteer, and Reentry Mentor Service Programs[~~Program~~] (Amended 1/13/20[~~1/12/18~~])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor,

Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections website in the policies and procedures area at https://corrections.ky.gov/About/cpp/Pages/default.aspx[~~https://corrections.ky.gov/Pages/default.aspx~~].

KATHLEEN M. KENNEY, Commissioner

APPROVED BY AGENCY: December 8, 2019

FILED WITH LRC: January 13, 2020 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on March 26, 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 March 31, 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 and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Department of Corrections (DOC) including the rights and responsibilities of employees and the inmate population.

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 17.500, 17.550, 72.020, 72.025, 196.030, 196.031, 196.032, 196.035, 196.070, 196.075, 196.111, 196.286, 196.288, 197.010, 197.020, 197.023, 197.045, 197.140, 197.170, 197.175, 210.005, 211.470, 241.010, 391.005, 439.250, 439.3101, 439.3103, 439.3401, 439.470, 439.510, 439.580, 439.590, 439.600, 439.990, 439.640, 440.010, 446.010, 500.080, 520.010, 532.007, 532.100, 532.120, 532.200, 532.210, 532.220, 532.230, 532.240, 532.250, 532.260, 532.262 and 532.260 and meets American Correctional Association (ACA) standards policy requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Department of Corrections. The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Corrections.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Department of Corrections and its institutions. It provides direction and information to Corrections employees and inmates concerning the operations of the department.

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

(a) How the amendment will change this existing administrative regulation: The amendment adds a new policy for apprenticeship courses and updates procedures in other policies for the Department of Corrections as outlined in the summary of material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of KRS 196.035 and 197.020 and updates practices for the department and its institutions in part to maintain accreditation with ACA standards.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Department of Corrections.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the state correctional institutions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Department of Corrections, approximately 3,900 employees, 23,995 inmates, visitors, volunteers and others who enter state correctional institutions, offenders on home incarceration, community offenders on probation and parole, jailers and jail employees.

(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: Staff and inmates will have to change their actions to comply with any operational changes made by this amendment. Jailers and jail employees will have to comply with the amendment for state inmates housed in a jail.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Part of the operational changes will allow compliance with statutory changes. The operational changes will assist in the effective and orderly management of the state correctional institutions.

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

(a) Initially: No increase in funding is anticipated.

(b) On a continuing basis: No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Corrections budgeted funds for the biennium.

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

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

(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 regulation impact the operation of the Department of Corrections, state correctional institutions, and reentry service centers, and 76 or less full-service jails.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 17.170, 196.030, 196.035, 196.070, 196.075, 196.173, 196.180, 197.020, Chap. 218A, 439.250, 439.310, 439.3110, 439.3401, 439.470, 439.590, 439.640, 441.560, 510, 529.100, 530.020, 530.064, 531.310, 531.320 532.100, 532.260,

34 U.S.C. §§ 30301 – 30309, 42 U.S.C. § 12102 et seq., 28 C.F.R. §115.5, 28 C.F.R. §115.6, 28 C.F.R. § 115.11, 28 C.F.R. § 115.15-16, 28 C.F.R. § 115.21-22, 28 C.F.R. § 115.31-35, 28 C.F.R. § 115.41-42, 28 C.F.R. § 51-52, 28 C.F.R. § 115.61-64, C.F.R. § 115.67, 28 C.F.R. § 115.71-73, 28 C.F.R. § 78, 28 C.F.R. § 115.81-83, 28 C.F.R. § 115.86, 28 C.F.R. § 115.89

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is anticipated to be generated for the Department of Corrections or county or regional jails from the policy changes.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is anticipated to be generated for the Department of Corrections or county or regional jails from the policy changes.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Kentucky Department of Corrections and state correctional institutions operate. There are no significant additional costs for the Department of Corrections or jails under this amendment.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the Kentucky Department of Corrections and state correctional institutions operate. The costs for the amendment are not expected to increase costs for the Kentucky Department of Corrections budgeted funds for the biennium.

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

Revenues (+/-):

Expenditures (+/-):

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 6:280. Risk and needs assessment.

RELATES TO: KRS 196.035, 197.020, 439.265, 439.3101, 439.3104, 439.3105, 439.331, 439.348, 439.480, 446.010[~~,~~ ~~533.030~~]

STATUTORY AUTHORITY: KRS 197.020, 439.3101, 439.3104, 439.331

NECESSITY, FUNCTION, AND CONFORMITY: KRS 197.020(1)(d), 439.3101(2)(a), 439.3104(1) and (2), and 439.331(1) require the Department of Corrections to promulgate an administrative regulation for the administration of a validated risk and needs assessment to assess the criminal risk factors and correctional needs of all inmates and offenders upon commitment to the department. This administrative regulation establishes the validated risk and needs assessment requirements for assessing the criminal risk factors and correctional needs of inmates and offenders.

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for risk and needs assessment," January 13, 2020[~~12, 2018~~], are incorporated by reference. These policies and procedures include:

29.1	Risk and Needs Assessment (Amended 1/13/20 [~~1/12/18~~])
29.2	Case Planning (Amended 1/13/20[~~1/12/18~~])
29.3	Risk and Needs Assessment and Reentry Programming [~~Administration,~~] Training[~~,~~] ~~and~~ Quality Assurance (Amended 1/13/20[~~7/10/12~~])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the policies and procedures area at https://corrections.ky.gov/About/cpp/Pages/default.aspx[~~https://corrections.ky.gov/Pages/default.aspx~~].

KATHLEEN M. KENNEY, Commissioner

APPROVED BY AGENCY: December 8, 2019

FILED WITH LRC: January 13, 2020 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on March 26, 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 March 31, 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 and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegsContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes policies and procedures relating to risk and needs assessment and case management of offenders.

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 196.030, 196.035, 197.020(1)(d), 439.250, 439.265, 439.3101(2)(a), 439.331(1), 439.3104(1) and (2), 439.3105, 439.348, 439.480(3), and 446.010 and meets American Correctional Association (ACA) standards requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation establishes policies and procedures that govern the risk and needs assessment and case planning of offenders to comply with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to Department of Corrections employees and to offenders for risk and needs assessments and case planning.

(2) If 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 procedures concerning risk and needs assessments and case planning in part to better address reentry issues and change in the assessment tool used.

(b) The necessity of the amendment to this administrative regulation: The amendment updates procedures for risk and needs assessment and case planning.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes require risk and needs assessments for offenders.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and offenders information concerning the updates to the procedures for risk and needs assessment with a change in the assessment tool used.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: This regulation may affect approximately 1000 employees of the Department of Corrections, 15,000 inmates committed to the Department of Corrections, and 12,000 parolees and 29,000 probationers under community supervision of the Department of Corrections.

(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: Department of Corrections staff will follow the provisions of the regulation for risk and needs assessment and case planning of offenders. Offenders will be able to understand the way that risk and needs assessments will be handled by staff, and will gain a better understanding of their criminogenic needs. Use of the case plan will assist offenders in complying with their supervision and programming while incarcerated. The risk and needs assessment and corresponding case plan will assist employees to better evaluate and address the offenders' areas of risk, resulting in more effective use of staff time and department resources to most effectively address offenders' risk of recidivism.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to administer the risk and needs assessment tool.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Department of Corrections will allocate referral resources, interventions, and programming space according to nationally set best practices. Department employees will benefit from a more streamlined assessment and case management process, allowing staff to identify higher risk offenders and appropriate resources, making more productive use of staff time and Department resources. Additionally, offenders will benefit from more effective assessment, case monitoring, and therefore reduced recidivism.

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

(a) Initially: No increase in funding is anticipated.

(b) On a continuing basis: No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is from the Department of Corrections budgeted funds for the biennium.

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

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

(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 regulation impacts the Kentucky Department of Corrections.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 197.020(1)(d), 439.3101(2)(a), 439.331(1), 439.3104(1) and (2)

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Kentucky Department of Corrections operates. The costs for the amendment are not expected to increase costs for the Kentucky Department of Corrections budgeted funds for the biennium.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the Kentucky Department of Corrections operates. The costs for the amendment are not expected to increase costs for the Kentucky Department of Corrections budgeted funds for the biennium.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
(Amendment)

806 KAR 5:025. Credit for reinsurance.

RELATES TO: KRS 304.5-140

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner [~~Executive Director~~] of Insurance may promulgate administrative regulations necessary to implement the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation implements KRS 304.5-140 by establishing credit for reinsurance.

Section 1. Definitions. [~~As used in this section:~~]

(1) "Beneficiary" means:

(a) The entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law; and

(b) If a court of law appoints a successor in interest to the named beneficiary, the named beneficiary shall be the court appointed domiciliary receiver, including the conservator, rehabilitator or liquidator.

(2) "Evergreen clause" mans a provision in a letter of credit or its confirmation that prevents the expiration of the letter of credit or its confirmation without written notice to the beneficiary from the issuing or confirming bank or trust company as provided by this administrative regulation.

(3) "Grantor" means:

(a) The entity that has established a trust for the sole benefit of the beneficiary; and

(b) If the trust is established in conjunction with a reinsurance agreement, the unlicensed, unaccredited assuming insurer.

(4) "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

(a) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of

amounts payable under, the notes, certificates or participation), that:

1. Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

2. Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. Sections 1709 and 1715b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C. Section 1703; or

(b) Is secured by one or more promissory notes or certificates of deposit or participants in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (a)(1) and (a)(2) of this subsection;

(5)[~~(3) "Evergreen clause" mans a provision in a letter of credit or its confirmation that prevents the expiration of the letter of credit or its confirmation without written notice to the beneficiary from the issuing or confirming bank or trust company as provided by this administrative regulation.~~

~~(4)~~] "Obligations", as used in Section 8[~~2~~](11)(c) of this administrative regulation, means:

(a) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) Reserves for reinsured losses reported and outstanding;

(c) Reserves for reinsured losses incurred but not reported; and

(d) Reserves for allocated reinsured loss expenses and unearned premiums.

(6) "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

Section 2. Reinsurer Licensed in Kentucky. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is authorized to transact insurance or reinsurance in Kentucky as of any date on which statutory financial statement credit for reinsurance is claimed.

Section 3. Accredited Reinsurers. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in Kentucky as of the date on which statutory financial statement credit is claimed.

(1) To gain accreditation, a reinsurer shall:

(a) File a properly executed Form AR-1 as evidence of its submission to Kentucky's jurisdiction and authority to examine its books and records;

(b) File a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(c) File annually a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

(d) Maintain a surplus as regards policyholders in an amount not less than $20,000,000, or obtain affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(2) If the commissioner determines that the assuming insurer has failed to meet or maintain any of the qualifications established by Section 3(1), the commissioner may suspend or revoke the accreditation.

(3) Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.

Section 4. Reinsurer Domiciled in Another State. The commissioner shall allow a credit for reinsurance ceded by a domestic insurer to an assuming insurer that satisfies all requirements of KRS 304.5-140(3)(c) and files a properly executed Form AR-1.

Section 5. Reinsurers Maintaining Trust Funds. (1) The commissioner shall allow a credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified U.S. financial institution as defined in KRS 304.5-140(1)(b), for the payment of valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners (NAIC) annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

(2) Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall satisfy all requirements of KRS 304.5-140(1)(d)(5), (6), and include that contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States.

(3) (a) Notwithstanding any other provision in the trust agreement, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(d) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

(4) For purposes of this section, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

(a) For business ceded by domestic insurers authorized to

write accident and health, and property and casualty insurance:

1. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

2. Reserves for losses reported and outstanding;

3. Reserves for losses incurred but not reported;

4. Reserves for allocated loss expenses; and

5. Unearned premiums.

(b) For business ceded by domestic insurers authorized to write life, health and annuity insurance:

1. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

2. Aggregate reserves for accident and health policies;

3. Deposit funds and other liabilities without life or disability contingencies; and

4. Liabilities for policy and contract claims.

(5) Assets deposited in trusts established pursuant to KRS 304.5-140(3)(d) and this section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in KRS 304.5-140(1)(a), clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in KRS 304.5-140(1)(a), and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under Paragraphs (a)5., (c), (e)(2) or (f) of this subsection, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of KRS 304.5-140 shall be invested only as follows:

(a) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

1. The United States or by any agency or instrumentality of the United States;

2. A state of the United States;

3. A territory, possession or other governmental unit of the United States;

4. An agency or instrumentality of a governmental unit referred to in Subparagraphs (2) and (3) of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

5. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(b) Obligations that are issued in the United States, or that are dollar denominated and issued in a non U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

1. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

2. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

3. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(c) Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(d) An investment made pursuant to the provisions of paragraph (a), (b), or (c) of this subsection shall be subject to the following additional limitations:

1. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five (5) percent of the assets of the trust;

2. An investment in any one mortgage-related security shall not exceed five (5) percent of the assets of the trust;

3. The aggregate total investment in mortgage-related securities shall not exceed twenty-five (25) percent of the assets of the trust; and

4. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under Paragraphs (b)(1.) and (b)(3.) of this subsection, but shall not exceed two (2) percent of the assets of the trust.

(e) Equity Interests.

1. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

a. Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

b. The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one (1) percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

2. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

a. All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

b. The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

3. An investment in or loan upon any one institution's outstanding equity interests shall not exceed one (1) percent of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten (10) percent of the assets in the trust;

(f) Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(g) Investment Companies.

1. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:

a. Invests at least ninety (90) percent (90) of its assets in the types of securities that qualify as an investment under paragraph

(a), (b) or (c) of this subsection or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in paragraph (a), (b) or (c) of this subsection; or

b. Invests at least ninety (90) percent of its assets in the types of equity interests that qualify as an investment under paragraph (e)(1) of this subsection;

2. Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

a. An investment in an investment company qualifying under subparagraph (1)(a) of this paragraph shall not exceed ten (10) percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five (25) percent of the assets in the trust; and

b. Investments in an investment company qualifying under subparagraph (1)(b) of this paragraph shall not exceed five (5) percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph (e)(1) of this subsection.

(h) Letters of Credit.

1. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

2. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence, willful misconduct, or both.

(6) A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 8 of this administrative regulation shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

Section 6. Certified Reinsurers. (1) The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of KRS 304.5-140(3)(e) and Sections 10, 11, and 12 of this administrative regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

(a)

Ratings	Security Required:
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%

(b) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(c) The commissioner shall require the certified reinsurer to post 100 percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(d) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one (1) year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

1. Line 1: Fire;
2. Line 2: Allied Lines;
3. Line 3: Farmowners multiple peril;
4. Line 4: Homeowners multiple peril;
5. Line 5: Commercial multiple peril;
6. Line 9: Inland Marine;
7. Line 12: Earthquake; and
8. Line 21: Auto physical damage.

(e) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(f) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(2) Certification process.

(a) Upon receipt of an application for certification, the commissioner shall promptly post notice at insurance.ky.gov, including instructions on how members of the public may respond to the application.

(b) No fewer than thirty (30) days after posting the notice required by this paragraph, the commissioner shall issue written notice of approval to the applying certified reinsurer, which shall include the rating assigned the certified reinsurer in accordance with subsection (1) of this section.

(c) To be eligible for certification, the assuming insurer shall:

1. Be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the commissioner pursuant to subsection (3) of this section.

2. Maintain capital and surplus, or its equivalent, of no less than $250,000,000 calculated in accordance with subparagraph (d)(8) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250,000,000 and a central fund containing a balance of at least $250,000,000.

3. Maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one (1) factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

a. Standard & Poor's;
b. Moody's Investors Service;
c. Fitch Ratings;
d. A.M. Best Company; or
e. Any other Nationally Recognized Statistical Rating Organization.

4. Comply with any other requirements reasonably imposed by the commissioner.

(d) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the

basis of its group rating. Factors considered as part of the evaluation process may include:

1. The certified reinsurer's financial strength rating from an acceptable rating agency. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two (2) financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

2. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

3. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F or Schedule S;

4. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F or Form CR-S;

5. The reputation of the certified reinsurer for prompt payment of claims under reinsurance[

~~Section 2. Requirements for Trust~~] agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

6. Regulatory actions against the certified reinsurer;

7. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in Subparagraph (8) below;

8. For certified reinsurers not domiciled in the U.S., audited financial statements, regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the commissioner will consider audited financial statements for the last two (2) years filed with its non-U.S. jurisdiction supervisor;

9. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

10. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

11. Any other information deemed relevant by the commissioner.

(e) Based on the analysis conducted under subparagraph (d)(5) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subparagraph (d)(1) if the commissioner finds that:

1. More than fifteen (15) percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed $100,000 for each cedent; or

2. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds $50,000,000.

(f) The assuming insurer shall submit a properly executed Form CR-1 as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(g) The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under the Kentucky Open Records Act, KRS 61.872 to 61.884, and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

1. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

2. Annually, Form CR-F or CR-S, as applicable;

3. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (4) below;

4. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon the initial certification, audited financial statements for the last two (2) years filed with the certified reinsurer's supervisor;

5. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

6. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

7. Any other information that the commissioner may reasonably require.

(h) Change in Rating or Revocation of Certification.

1. In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subparagraph (d)(1).

2. The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

3. If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

4. Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 11 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 5, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

(i) The commissioner shall publish a list of all certified reinsurers and their ratings.

(3) Qualified Jurisdictions.

(a) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(b) To determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include:

1. The framework under which the assuming insurer is regulated.

2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

3. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

4. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

5. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.

6. The history of performance by assuming insurers in the domiciliary jurisdiction.

7. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

8. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

9. Any other matters deemed relevant by the commissioner.

(c) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under Subsection 6(3)(c)(1) to (9).

(d) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(4) Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

(a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR1 and such additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(b) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within ten (10) days after receiving notice of the change.

(c) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (2)(h) of this section.

(d) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with subsection (2)(h) of this section, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(5) Mandatory Funding Clause. In addition to the clauses required under Section 13, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(6) The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

Section 7. (1) Pursuant to KRS 304.5-140(4), the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of KRS 304.5-140(3) in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in KRS 304.5-140(1)(b). This security may be in the form of any of the following:

(a) Cash;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in KRS 304.5-140(10(a), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the commissioner.

(2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of Section 13 and the applicable portions of Section 10, 11, or 12 of this administrative regulation have been satisfied.

Section 8. Requirements for Trust Agreements Qualified under KRS 304.5-140(3). (1) The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States financial institution as defined in KRS 304.5-140(1)(b)[~~(a)~~].

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3)(a) Except as provided by paragraph (b) of this subsection, assets in the trust account shall be held by the trustee at the

trustee's office in the United States.

(b) A bank may apply for the executive director's permission to use a foreign branch office of the bank as trustee for trust agreements. If the executive director approves the use of a foreign branch office as trustee, its use shall be approved by the beneficiary in writing. The trust agreement shall provide that the written notice described in subsection (4)(a) of this section shall be presentable, as a matter of legal right, at the trustee's principal office in the United States.

(4) The trust agreement shall provide that:

(a) The beneficiary shall:

1. Have the right to withdraw assets from the trust account at any time after giving written notice to the trustee; and

2. Not be required to give notice to the grantor;

(b) The beneficiary:

1. May be required to acknowledge receipt of withdrawn assets; and

2. Shall not be required to present other statements or documents in order to withdraw assets. (c) The agreement shall not be subject to conditions or qualifications outside of the trust agreement; and

(d) The agreement shall not contain references to other agreements or documents except as provided by subsection (11) of this section.

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) Receive and hold all assets in a safe place;

(b) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may negotiate any assets whenever necessary, without consent or signature from the grantor or any other person or entity;

(c) Furnish to the grantor and the beneficiary a statement of all assets in the trust account both at the inception and at intervals no less frequent than the end of each calendar quarter;

(d) Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

(e) Upon written demand of the beneficiary, immediately take all steps necessary to:

1. Transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary; and

2. Deliver physical custody of the assets to the beneficiary; and

(f) Allow no substitutions or withdrawals of assets from the trust account, except upon:

1. Written instructions from the beneficiary; or

2. The call or maturity of a trust asset, the trustee may withdraw the asset so long as the proceeds are paid into the trust account without the consent of the beneficiary and after notice to the beneficiary.

(7) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to or reimbursing the expenses of the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(10) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith.

(11)(a) The trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer for the purposes permitted by paragraphs (b) through (d) of this subsection, if:

1. A trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health; and

2. It is customary practice to provide a trust agreement for a specific purpose.

(b) To pay or reimburse the ceding insurer for the:

1. Assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer; or

2. Unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(c) To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(d)1. To withdraw amounts equal to the obligations and deposit them in a separate account as provided by subparagraph 2. of this paragraph, if the:

a. Ceding insurer has received notification of termination of the trust account; and b. Assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date.

2. Amounts withdrawn pursuant to subparagraph 1. of this paragraph shall be deposited:

a. In the name of the ceding insurer; and

b. In a qualified United States financial institution as defined in KRS 304.5-140(1) apart from its general assets; and

c. In trust for the uses and purposes specified in paragraphs (a) and (b) of this subsection that may remain executory after the withdrawal for any period after the termination date,

(12) The reinsurance agreement entered into in conjunction with the trust agreement may contain the provisions required by Section 10[4](1)(b) of this administrative regulation, so long as the conditions required by this section are included in the trust agreement.

(13) Either the reinsurance agreement or trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five (5) percent of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in the reinsurance agreement.

Section 9[3]. Permitted Conditions for Trust Agreements Qualified under KRS 304.5-140(3). (1) The trust agreement may provide that the:

(a) Trustee may resign only if written notice of resignation is:

1. Given to the beneficiary and grantor; and

2. Effective not less than ninety (90) days after receipt of the notice.

(b) Grantor may remove the trustee if written notice is:

1. Given to the trustee and beneficiary;

2. Effective not less than ninety (90) days after receipt of the notice;

(c) Resignation or removal of the trustee shall not be effective until:

1. A successor trustee has been duly appointed and approved by the beneficiary and the grantor; and

2. All assets in the trust have been duly transferred to the new trustee.

(2)(a) The grantor may have the full and unqualified right to:

1. Vote any shares of stock in the trust account; and

2. Receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account.

(b) Interest or dividends shall be:

1. Forwarded promptly upon receipt to the grantor; or

2. Deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest and accept substitutions of funds in the account with prior approval of the beneficiary, unless the trust agreement:

(a) Specifies categories of investments acceptable to the beneficiary; and

(b) Authorizes the trustee to invest funds, and accept substitutions that the trustee determines are:

1. At least equal in market value to the assets withdrawn; and

2. Consistent with the restrictions in Section 10[4](1)(b) of this administrative regulation.

(4) The trust agreement may:

(a) Provide that the beneficiary may designate a party to which all or part of the trust assets are to be transferred; and

(b) Condition the transfer upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide upon termination of the trust account that all assets not previously withdrawn by the beneficiary shall be delivered over to the grantor with written approval by the beneficiary.

Section 10[4]. Additional Conditions for Reinsurance Agreements Qualified under KRS 304.5-140(3). (1) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

(a) Require the assuming insurer to:

1. Enter into a trust agreement;

2. Establish a trust account for the benefit of the ceding insurer; and

3. Specify what the agreement is to cover.

(b) Except as provided by paragraph (e) of this subsection, stipulate that assets deposited in the trust account shall:

1. Be valued according to the current fair market value of the assets; and

2. Consist of:

a. Cash that is United States legal tender;

b. Certificates of deposit, issued by a United States bank and payable in United States legal tender;

c. Investments permitted by the insurance code; or

d. A combination of the items specified in subparagraphs a through c of this paragraph;

(c) As provided by paragraph (b) of this subsection, specify the types of investments to be deposited.

(d) Investments permitted by paragraph (b) of this subsection shall be issued by an institution that is not the parent, subsidiary, or affiliate of the grantor or beneficiary.

(e) If a trust agreement is entered into in conjunction with a reinsurance agreement that covers risks other than life, annuities and accident and health, the trust agreement, rather than the reinsurance agreement, may contain the provisions required by paragraphs (c) and (d) of this subsection.

(f) Require the assuming insurer, prior to depositing assets with the trustee, to:

1. Execute assignments or endorsements in blank; or

2. Transfer legal title to the trustee of shares, obligations, or other assets requiring assignments, so that the ceding insurer, or the trustee on the direction of the ceding insurer, may negotiate the assets without the consent or signature of the assuming insurer or any other entity whenever necessary.

(g) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(h)1. As provided by subparagraph 2. of this paragraph, stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement.

2. The assets shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

b. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

c. To fund an account with the ceding insurer in an amount at least equal to the deduction for reinsurance ceded from the ceding insurer liabilities for policies ceded under the agreement. The account shall include but not be limited to amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves; and

d. To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(2) The reinsurance agreement may also contain provisions that:

(a) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw all or a part of the trust assets from the trust account and transfer the withdrawn assets to the assuming insurer provided that:

1. The assuming insurer shall at the time of withdrawal replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain the deposit in the required amount at all times; or

2. After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

3. The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

(b) Provide for:

1. The return of any amount withdrawn in excess of the actual amounts required for subsection (1)(h)1., 2. and 3. of this section or for payments under subsection (1)(h)4. of this section, amounts that are subsequently determined not to be due; and

2. Interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (1)(e)3.

(c) Permit the award by an arbitration panel or court of competent jurisdiction of:

1. Interest at a rate different from that provided in paragraph (b)2 of this subsection;

2. Court of arbitration costs;

3. Attorney's fees; and

4. Other reasonable expenses.

(3)(a) If established on or before the date of filling the financial statement of the ceding insurer, a trust agreement may be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in financial statements that are required to be filed with the office pursuant to this administrative regulation.

(b) The amount of a reduction for the existence of an acceptable trust account:

1. May be lesser than or equal to the current fair market value of acceptable assets that are available to be withdrawn from the trust account at the time of withdrawal; and

2. Shall not be greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) A trust agreement or underlying reinsurance agreement in existence prior to January 1, 1996, shall:

(a) Be acceptable until January 1, 1997; and

(b) Beginning January 1, 1997, not be acceptable if it does not comply with the provisions of this administrative regulation.

(5) The failure of a trust agreement to specifically identify the beneficiary shall not be construed to affect actions or rights which the commissioner[executive director] may take or possess pursuant to the provisions of the laws of this state.

Section 11[5]. Letters of Credit Qualified under KRS 304.5-140(3). (1) A letter of credit shall:

(a) Be clean, irrevocable and unconditional;

(b) Issued or confirmed by a qualified United States financial institution;

(c) Contain an issue date, and date of expiration;

(d) State that it is not subject to a condition or qualification not contained in the letter of credit;

(e) Stipulate that in order to obtain funds, the beneficiary need only draw and present a sight draft under the letter of credit;[.] and

(f) Except as provided by subsection (9)(a) of this section, not contain a reference to other agreements, documents, or entities.

(2) The heading of a letter of credit may include a boxed section that:

(a) Contains the name of the applicant, and other appropriate notations that provide a reference for the letter of credit; and

(b) Is clearly marked to indicate that the information is only for internal identification purposes.

(3) The letter of credit shall contain a statement that the obligation of the qualified United States financial institution under the letter of credit is not contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit shall be for at least one (1) year and shall contain an evergreen clause. The evergreen clause shall provide for a period of not less than thirty (30) days' notice prior to the date of expiration or nonrenewal.

(5) The letter of credit shall state:

(a) Whether it is governed by the:

1. Laws of Kentucky; [or]

2. ["Publication 500", of] The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600;

3. International Standby Practices of the International Chamber of Commerce Publication 590; or

4. Any successor publication; and

(b) That a draft drawn under the letter of credit shall be presentable at an office in the United States of a qualified United States financial institution.

(6) A letter of credit shall provide for an extension of time to draw against it if it:

(a) Is made subject to paragraph (5)(a) above["Publication 500" of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce]; and

(b) An occurrence specified in Article 36[19] of "Publication 600[500]" of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce occurs.

(7) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to KRS 304.5-140(1)(a).

(8) If a letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution described in subsection (7) of this section, the following additional requirements shall be met:

(a) The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(b) The evergreen clause shall provide for thirty (30) days' notice prior to expiration date for nonrenewal.

(9) Reinsurance agreement provisions.

(a) The reinsurance agreement for which the letter of credit is obtained may contain provisions that:

1. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

2. Stipulate that the assuming insurer and ceding insurer shall agree that, the letter of credit provided by the assuming insure pursuant to the provisions of the reinsurance:

a. May be drawn upon at any time, notwithstanding other provisions in the agreement; and

b. Shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the reasons specified in subparagraph 3 of this paragraph.

3.a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

b. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

c. To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement; and

d. To pay other amounts the ceding insurer claims are due under the reinsurance agreement. 4. The provisions of paragraph (a) of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(b) Nothing contained in paragraph (a) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph (a)3c of this subsection; or

2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of paragraph (a)3d of this subsection, any amounts that are subsequently determined not to be due.

(c) In lieu of the stipulation permitted by paragraph (a)2 of this subsection, a reinsurance agreement may require that the parties enter into a "Trust Agreement", that may be incorporated into the reinsurance agreement or be a separate document, if:

1. A letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health; and

2. It is customary practice to provide a letter of credit for a specific purpose.

(10)(a) A letter of credit shall not be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement.

(b) The reduction for the letter of credit may be up to the amount available under the letter of credit but not greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

Section 12[6]. Other Security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Section 13[7]. Reinsurance Contract. Upon the effective date of this administrative regulation, credit shall not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of KRS 304.5-140 unless the reinsurance agreement includes a:

(1) Proper insolvency clause pursuant to KRS 304.5-140(5) and 304.33-350 of the Insurance Code; and

(2) Provision pursuant to KRS 304.5-140(2)(f), if the assuming insurer, is an unauthorized assuming insurer, and has:

(a) Submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States;

(b) Agreed to comply with all requirements necessary to give the court or panel jurisdiction;

(c) Designated an agent upon whom service of process may

be effected; and

(d) Agreed to abide by the final decision of the court or panel.

Section 14[~~8~~]. Contracts Affected. All new and renewal reinsurance transactions entered into after the effective date of the administrative regulation shall conform to the requirements[~~An assuming reinsurer shall file a "Certificate of Assuming Insurer", Form AR-1:~~

~~(1) To become accredited pursuant to KRS 304.5-140; and~~

~~(2) As evidence~~] of KRS 304.5-140 and this administrative regulation if credit is[~~its submission to the jurisdiction of Kentucky and~~] to be given to the ceding insurer for such reinsurance[~~its authority to examine its books and records pursuant to KRS 304.5-140(2)(b)1~~].

Section 15[~~9~~]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Certificate of Assuming Insurer," Form AR-1 December 95; and

(b) "Certificate of Certified Reinsurer," Form CR-1 (09/19);

(c) "Form CR-F" (09/19); and

(d) "Form CR-S" (09/19)[~~" is incorporated by reference~~].

(2) It may be inspected, copied, or obtained from the Department[~~Office~~] of Insurance, 500 Mero St.[~~P.O. Box 517, 215 West Main Street~~], Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.[

~~Section 10. Contracts Affected. All new and renewal reinsurance transactions entered into after the effective date of the administrative regulation shall conform to the requirements of the Act and this administrative regulation if credit is to be given to the ceding insurer for such reinsurance.~~]

NANCY G. ATKINS, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 16, 2019

FILED WITH LRC: December 17, 2019 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 09:00 AM on March 23, 2020 at 500 Mero 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 PM on March 31, 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 below.

Contact Person: Nancy G. Atkins, Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email nancy.atkins@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nancy G. Atkins

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for reinsurers to become accredited, certified, or use trust agreements in Kentucky. The administrative regulation ensures the ceding insurer may credit amounts reinsured to these assuming insurers on their financial statements. The administrative regulation also stipulates the process for becoming a qualified jurisdiction where a reinsurer may be domiciled and become certified. The qualified jurisdiction is critical as it means the country has passed a specific regulatory test to provide certainty that insurers within its jurisdiction adhere to similar and strict regulatory rules. The changes included within the administrative commence the process of conforming Kentucky law to the United States covered agreements with the European Union and United Kingdom regarding reinsurance collateral requirements. It moves away from recognizing only 100% collateral as the way to judge financial stability, and moves to a more rounded approach and review of both the company and regulatory jurisdiction where the company is domiciled.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to conform Kentucky law to the United States Covered Agreement with the European Union or else face federal preemption from the Federal Insurance Office (FIO). Historically, U.S. regulators did not impose direct control over non-U.S. reinsurers. Instead, they regulated non-U.S. reinsurance markets by only allowing a statutory credit on the ceding insurer's balance sheet when the non-U.S. reinsurer maintained 100% collateral for its reinsurance obligations. U.S. regulators then began requesting more information from non-U.S. based reinsurers to ensure they were compliant with the requirement and the statutory credit was permissible. This created a tightening of the market for reinsurance, restricted the free flow of capital, and reduced the potential investments an insurer and reinsurer could make. It also created a global fragmented regulatory system, especially within the United States, creating a barrier for many reinsurance companies to operate. The United States Department of Treasury and the European Union entered into intense negotiations to develop a regulatory framework reforming the collateral requirements for reinsurers in and outside the United States, and on September 22, 2017, the parties entered into a Covered Agreement. The agreement requires states to eliminate reinsurance collateral requirements within five (5) years, or risk preemption under the Covered Agreement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides further clarity on the manner to become an accredited or certified reinsurer pursuant to KRS 304.5-140.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details and a process for the commissioner to accredit or certify reinsurers, as well as, determine qualified jurisdictions.

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

(a) How the amendment will change this existing administrative regulation: This amendment incorporates a process to determine how reinsurers can be accredited or certified to permit ceding insurers to take a statutory credit for reinsurance. The processes were not available under the 2018 statutory amendment to KRS 304.5-140 expanded the potential options for ceding insurers to take a credit for reinsurance provided by assuming insurers that qualify under the new standards.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include a specific process for accreditation and certification of reinsurers following the 2018 statutory amendments to KRS 304.5-140, and the United States covered agreement with the European Union and United Kingdom.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment uses the authority provided to the commissioner by KRS 304.5-140 to establish a system for accreditation and certification of reinsurers within the statutory guidelines.

(d) How the amendment will assist in the effective administration of the statutes: The amendment includes a specific process and standards governing the accreditation and certification process for reinsurers. It is necessary to ensure reinsurers meet the new standards negotiated by the United States federal government and incorporated within KRS 304.5-140. Reinsurers satisfying the process will be able to meet different collateral requirements, which will free up capital for domestic insurers as they take advantage of the credit for reinsurance on their financial statements. This amendment is based on the most recent version

of the NAIC's Model Regulation 786.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will impact those domestic insurers that reinsure risks in the United States and through entities outside of the United States.

(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: Reinsurers interested in taking advantage of the new process will need to comply with the new filing requirements in order to become an accredited or certified reinsurer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The requirements included within the administrative regulation are part of an NAIC Model Law and Regulation, and are required to be enacted in every jurisdiction across the United States. In the event states do not uniformly enact the changes, the Federal Insurance Office will assert federal preemption based on the covered agreement. Therefore, it will not cost regulated entities any amount to comply with these requirements as they have been enacted in other jurisdictions previously.

(c) As a result of compliance, what benefits will accrue to the entities: The new requirements will expand the pool of reinsurance available to insurers, and allow them to utilize capital in more productive manners other than unnecessarily holding it in reserve. Additionally, more reinsurers will qualify to allow ceding insurers to take advantage of the credit, so reinsurance will be more widely available and potentially cheaper. Reinsurers will also greatly benefit from the uniform standards making it easier, cheaper, and more efficient for them to do business in the United States.

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

(a) Initially: The Commissioner will need to review documentation provided by the reinsurers seeking to become accredited or certified.

(b) On a continuing basis: The Commissioner will need to continue reviewing annual submissions from reinsurers, as well as, information submitted from jurisdictions seeking qualification. However, many of the submissions will be provided to lead states and the qualification process will ultimately be performed collaboratively through the NAIC.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary. At this point, the Department does not believe additional staff will be necessary.

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

(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.

(9) TIERING: Is tiering applied? Explain why or why not. No, tiering is not applied as it applies to all ceding and assuming insurers equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.5-140 and the September 22, 2017 United States Covered agreement with the European Union and the United Kingdom.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer the program is indeterminable.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is indeterminable.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: The program including receipt and review of new filings will be handled by internal personnel. At this point, the Department anticipates all duties will be handled by current personnel due to the minimal nature of Kentucky specific filings. If filings exceed expectations additional staff may become necessary; however, the overseas reinsurance is not large for the small number of Kentucky domestic insurers. Thus, we anticipate a low volume of overall filings.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amendment)

900 KAR 6:075. Certificate of need nonsubstantive review.

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.062, 216B.090, 216B.095, 216B.115, 216B.455, 216B.990[~~, 311A.030(1)(b)~~]

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1., 216B.095[~~, EO 2018-325~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1. requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.095 authorizes the review of certificate of need applications that are granted nonsubstantive status. [~~EO 2018-325 abolished the Office of Health Policy and created the Division of Certificate of Need within the Office of Inspector General.~~] This administrative regulation establishes the requirements necessary for consideration for nonsubstantive review of applications for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) [~~"Base station" means the primary physical location of an ambulance service.~~

~~(3)~~] "Cabinet" is defined by KRS 216B.015(6).

(3)[~~(4)~~] "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx.

(4)[~~(5)~~] "Days" means calendar days, unless otherwise specified.

(5)[~~(6)~~] "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(6)[~~(7)~~] "Nonsubstantive review" is defined by KRS 216B.015(18).

(7)[~~(8)~~] "Public notice" means notice given through the cabinet's Certificate of Need Newsletter.[

~~(9) "Satellite location" means a physical location with a street address from where an ambulance is based on a twenty-four (24) hour basis.~~]

Section 2. Nonsubstantive Review. (1) The cabinet shall grant nonsubstantive review status to an application to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a) There is no substantial change in health services or bed capacity; and

(b)1. The change of location or relocation is within the same county; or

2. The change of location or relocation is for a psychiatric residential treatment facility.

(2) The cabinet shall grant nonsubstantive review status to an application that proposes to establish an ambulatory surgical center pursuant to the conditions specified in KRS 216B.095(7).

(3) In addition to the projects specified in KRS 216B.095(3)(a) through (e), pursuant to KRS 216B.095(3)(f), the Office of Inspector General shall grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application to re-establish a licensed healthcare facility or service that was provided at a hospital and was voluntarily discontinued by the applicant under the following circumstances:

1. The termination or voluntary closure of the hospital:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for re-licensure; and

d. Was not an express condition of any subsequent certificate of need approval;

2. The application to re-establish the healthcare facility or service that was voluntarily discontinued is filed no more than one (1) year from the date the hospital last provided the service that the applicant is seeking to re-establish;

3. A proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to re-establish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours; or

(c)1. The proposal involves an application to establish an ambulatory surgical center that does not charge its patients and does not seek or accept commercial insurance, Medicare, Medicaid, or other financial support from the federal government; and

2. The proposed ambulatory surgical center shall utilize the surgical facilities of an existing licensed ambulatory surgical center during times the host ambulatory surgical center is not in operation[~~; or~~

~~(d)1. The proposal involves an application to establish a Class I ground ambulance service;~~

~~2. The applicant's proposed service area is limited to a county with a population of 50,000 or more;~~

~~3. There is no more than one (1) licensed Class I ground ambulance service that has both a license to serve the entire county that the applicant is proposing to serve and that has a base station or a satellite location, or both, located in the county that the applicant is proposing to serve; and~~

~~4. The current Class I ground ambulance service provider serving the county as specified in subparagraph 3. of this paragraph is not owned or operated by a public organization~~].

(4) A certificate of need approved for an application submitted under subsection (3)(c) of this section shall state the limitations specified under subsection (3)(c)1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by the Office of Inspector General, the application shall automatically be placed in the formal review process.

(6) If an application is granted nonsubstantive review status by the Office of Inspector General, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(7)(a) If an application is granted nonsubstantive review status by the Office of Inspector General, any affected person who believes that the application is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review.

(b) The provisions of 900 KAR 6:090 shall govern the conduct of all nonsubstantive review hearings.

(c)1. Except as provided in subparagraph 2. of this paragraph, nonsubstantive review applications shall not be comparatively reviewed.

2. If the capital expenditure proposed involves the establishment or expansion of a health facility or health service for which there is a component in the State Health Plan, the nonsubstantive review applications shall be comparatively reviewed.

(d) Nonsubstantive review applications may be consolidated for hearing purposes.

(8) If an application for certificate of need is granted nonsubstantive review status by the Office of Inspector General, there shall be a presumption that the facility or service is needed and a presumption that the facility or service is consistent with the State Health Plan.

(9) If each applicable review criterion in the State Health Plan has been met, there shall be a presumption that the facility or service is needed unless the presumption of need has been rebutted by clear and convincing evidence by an affected party.

(10) Unless a hearing is requested pursuant to 900 KAR 6:090, the Office of Inspector General shall approve each application for a certificate of need that has been granted nonsubstantive review status if the exception established in subsection (11)(a) of this section does not apply.

(11) The cabinet shall disapprove an application for a certificate of need that has been granted nonsubstantive review if the cabinet finds that the:

(a) Application is not entitled to nonsubstantive review status; or

(b) Presumption of need or presumption that the facility or service is consistent with the State Health Plan provided for in subsection (8) of this section has been rebutted by clear and convincing evidence by an affected party.

(12) In determining whether an application is consistent with the State Health Plan, the cabinet, in making a final decision on an application, shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the public notice of the application.

(13) In determining whether an application is consistent with the State Health Plan following a reconsideration hearing pursuant to KRS 216B.090 or a reconsideration hearing that is held by virtue of a court ruling, the cabinet shall apply the latest criteria, inventories, and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the

reconsideration decision or decision following a court ruling.

(14) A decision to approve or disapprove an application that has been granted nonsubstantive review status shall be rendered within thirty-five (35) days of the date that nonsubstantive review status has been granted.

(15) If a certificate of need is disapproved following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and 900 KAR 6:065;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

ADAM D. MATHER, Inspector General
ERIC FRIEDLANDER, Acting Secretary

APPROVED BY AGENCY: December 30, 2019

FILED WITH LRC: January 2, 2020 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 23, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until March 31, 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: Donna Little, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Stephanie Brammer-Barnes and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation addresses the nonsubstantive review of certificate of need applications. Nonsubstantive review is an expedited review process granted to certain applications pursuant to KRS 216B.095. 900 KAR 6:075 expands upon the types of applications qualified for nonsubstantive review per the statute.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes, specifically KRS 216B.010, 216B.015(18), and 216B.095.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by adding types of certificate of need applications that qualify for nonsubstantive review status and setting forth the procedure for granting nonsubstantive review status and performing the expedited review as well as the procedure for affected parties to request a hearing to dispute the review status or application.

(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 adding types of certificate of need applications qualified for nonsubstantive review status and setting forth the procedure for granting nonsubstantive review status and performing the expedited review as well as the procedure for affected parties to request a hearing to dispute the review status or application.

(2) If 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 statutory citations to the RELATES TO paragraph to comply with KRS 13A.220(4)(e); removes references to EO 2018-325, which was codified by 2019 Ky. Acts ch. 90 (Senate Bill 167); deletes the definitions of "base station" and satellite location"; and removes the authorization for nonsubstantive review for proposals involving an application to establish a Class I ground ambulance service.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reverse action taken by the prior administration, which claimed there was a public health emergency created by lack of access to Class I ambulances in Kentucky's larger counties and patient choice. There is not a lack of access or issue with patient choice, and the formal review process is more appropriate than the nonsubstantive review process for applications to establish a Class I ground ambulance service.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statute by revising the list of nonsubstantive review categories established by the cabinet in accordance with KRS 216B.095(3)(f).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by reversing a prior determination that there was a public health emergency created by a lack of access and issues with patient choice.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects certificate of need applicants proposing Class I ambulance services and affected parties. It is not known how many applicants will propose a Class I ambulance service.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A certificate of need application proposing to establish a Class I ambulance service in certain counties will no longer be permitted to use the nonsubstantive review process. Instead, those applications will be reviewed by the formal review process governed by 900 KAR 6:060, Certificate of need considerations for formal review.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment other than the certificate of need application filing fee, which is determined using a methodology calculated using the capital expenditure of the proposed service. The certificate of need application filing fee is the same for nonsubstantive review and formal review and is established in a separate administrative regulation, 900 KAR 6:020.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Returning the proposals to establish a Class I ground ambulance service to the formal review process will ensure that the nonsubstantive review process is reserved for a very limited number of exceptions authorized by KRS 216B.095. There is not a public health emergency or a lack of access to, or issue of patient choice with, Class I ambulances in Kentucky's larger counties. The formal review process is more appropriate than the nonsubstantive review process for applications to establish a Class I ground ambulance service.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source of funding needed to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is used as certificate of need applications are reviewed using either a formal review process (under 900 KAR 6:070) or nonsubstantive review process (this administrative regulation). The applications that qualify for nonsubstantive review are being amended to remove one category of applications previously authorized to proceed under the nonsubstantive category.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General, and any government owned or operated ambulance providers.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(18), and 216B.095.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 is not expected to generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? This administrative regulation is not expected to have any costs for its administration.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to have any costs for its administration.

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

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: ____

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology and Health Planning
(Amendment)

902 KAR 2:065. Immunization requirements for long-term care facilities.

RELATES TO: KRS 209.550, 209.552, [~~209.554,~~] 211.090, 211.180, 214.010, 216.510, 216.515, 216.530, 42 C.F.R. 483.80

STATUTORY AUTHORITY: KRS 209.554(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 209.554(1) requires the Cabinet for Health and Family Services, Department for Public Health to promulgate administrative regulations to implement provisions of KRS 209.550 to KRS 209.554 relating to immunization of residents and employees[~~staff~~] of long-term care facilities against influenza and pneumococcal disease. This administrative regulation establishes requirements for long-term care facilities to request that residents and employees agree to be vaccinated against influenza and pneumococcal disease, to provide vaccine for the residents and employees or to make a referral for vaccination, [~~to request that residents and employees agree to be vaccinated against influenza and pneumococcal disease,~~] to maintain annual documentation of immunizations, and to report outbreaks of influenza-like illnesses[~~illness~~].

Section 1. Definitions. (1) "Advisory Committee on Immunization Practices" or "ACIP" means the United States Department of Health and Human Services (HHS) [~~Public Health Service~~] Committee that makes national immunization recommendations to the Secretary of HHS, the Assistant Secretary for Health, and the Director of the Centers for Disease Control and Prevention (CDC).

(2) "Department" is defined by KRS 209.550(2).

(3) "Employee" is defined by KRS 209.550(4).

(4)[~~"Annual schedule" means the schedule for administering a once-a-year vaccination against influenza, established by ACIP to ensure that in the event of a shortage or delay in production of vaccine, persons at greatest risk are served first.~~

~~(3)~~] "If vaccine is available" means that a sufficient supply of vaccine has been produced by vaccine manufacturers and is available for purchase and shipment.

(5)[~~(4)~~] "Influenza" means an acute viral infection of the respiratory tract:

(a) Caused by an influenza virus;[~~:~~]

(b) Confirmed by:

1. Viral[~~laboratory~~] culture;

2. Polymerase chain reaction (PCR);

3. Nucleic acid detection testing; or

4. Rapid influenza diagnostic testing (RIDT); and

(c) Characterized by the sudden onset of a group of signs and symptoms such as fever, headache, myalgia, coryza, sore throat, and a dry cough.

(6)[~~(5)~~] "Influenza-like illness" or "ILI" means, in the absence of a known cause, other than influenza, an illness in which a person experiences:

(a) Fever greater than or equal to 100 degrees Fahrenheit or thirty seven and eight-tenths (37.8) degrees Celsius, as confirmed through oral or equivalent methods; and[~~:~~]

(b) Cough; [~~or~~]

(c) Sore throat; or

(d) Cough and sore throat.

(7)[~~(6)~~] "Influenza vaccine" means a vaccine licensed by the Food and Drug Administration for the prevention of [~~which produces immunity to~~] influenza.

(8)[~~(7)~~] "Immunize" means to vaccinate.

(9) "Long-term care facility" is defined by KRS 209.550(6).

(10)[~~(8)~~] "Medically indicated" means a vaccine is recommended by the ACIP for a person:

(a) Who has not been immunized against a disease; and

(b) For whom vaccination is recommended based on:

1. The age of the person;

2. A preexisting medical condition that may cause the person to be at risk; or

3. An occupation of the person that may put others at risk of contracting the disease.

(11)[~~(9)~~] "Outbreak" means two (2) or more cases of influenza, or ILI, occurring in a single long-term care facility during a seventy-two (72) hour period[~~one (1) week period~~].

(12)[~~(10)~~] "Pneumococcal disease" means a bacterial infection usually involving the lungs producing inflammation caused by Streptococcus pneumoniae, the bacteria commonly referred to as "pneumococcus".

(13)[~~(11)~~] "Pneumococcal vaccine" means a vaccine licensed by the Food and Drug Administration for the prevention of pneumococcus[~~, also known as "PPV" means the FDA licensed twenty-three (23) valent pneumococcal polysaccharide vaccine~~].

Section 2. Vaccine Availability. (1) If vaccine is available, a long-term care facility shall:

(a) Obtain a sufficient quantity of influenza and pneumococcal vaccine to immunize each employee and[~~or~~] resident of a facility for whom the vaccine is medically indicated; or

(b) Enter into an agreement with a local health department or other health care provider to obtain or[~~and~~] administer influenza and pneumococcal vaccine to each employee and[~~or~~] resident of a facility for whom the vaccine is medically indicated and age-appropriate.

(2) A long-term care facility may charge a third party, a resident, or an employee for the cost of the:

(a) Vaccine; and

(b) Administration of the vaccine.

Section 3. Immunization Schedule for Residents. (1) A long-term care facility shall have an infection prevention and control plan in compliance with 42 C.F.R. 483.80.

(2) Influenza immunization shall be offered to each resident in compliance with 42. C.F.R. 483.80(d)(1).

(3) Pneumococcal immunization shall be offered to each resident in compliance with 42 C.F.R. 483.80(d)(2).

Section 4. Immunization for Employees. (1) A long-term care facility shall request that each [~~current~~] employee [~~or resident~~] agree to be vaccinated on an annual schedule against influenza when the vaccine is:

(a) Available;[~~ and~~]

(b) Medically indicated; and

(c) Age-appropriate.

(2) A long-term care facility shall request that each [~~current~~] employee [~~or resident~~] agree to be vaccinated against pneumococcal disease if the vaccine is:

(a) Available;[~~ and~~]

(b) Medically indicated; and

(c) Age-appropriate.

(3) [~~Upon admission or employment, a long-term care facility shall request that each new employee or resident agree to be vaccinated on an annual schedule against influenza when the vaccine is:~~

~~(a) Available; and~~

~~(b) Medically indicated.~~

~~(4) Upon admission or employment, a long-term care facility shall request that each new employee or resident agree to be vaccinated against pneumococcal disease if the vaccine is:~~

~~(a) Available; and~~

~~(b) Medically indicated.~~

~~(5)~~] If a long-term care facility is located within a larger facility, such as a hospital, the provisions of this administrative regulation shall apply to every employee of the larger facility who may also work in the long-term care facility on a full-time, part-time, or contractual basis.

Section 5.[~~4.~~] Health Records. (1) A long-term care facility shall maintain an immunization health record for each employee and[~~or~~] resident that shall document:

(a) The immunization status of the employee or resident for influenza virus and pneumococcal disease;

(b) The date that the employee or resident received counseling on the risks and benefits of the vaccines;

(c) The date the employee or resident was requested to be immunized against influenza virus and pneumococcal disease; and

(d) The date the employee or resident was vaccinated against each disease.

(2) If after being advised of the risks and benefits of the vaccine, an employee, resident, or legal guardian of a resident refuses to be vaccinated, as provided in KRS 209.552(5), a long-term care facility shall document in the health record:

(a) The date each vaccine was offered;

(b) Each vaccine that was not administered; and

(c) The reason each vaccine was refused.

Section 6.[~~5.~~] Reporting. (1) Upon recognition of an outbreak of ILI, a long-term care facility shall report the outbreak within twenty four (24) hours, by telephone, facsimile, or e-mail to [~~the~~]:

(a) The local health department having[~~serving the~~] jurisdiction [~~in which the long-term care facility is located~~]; or

(b) The department [~~for public health~~].

(2) Upon receipt of a report of an outbreak from a long-term care facility, a local health department shall:

(a) Immediately notify the department [~~for Public Health, Division of Epidemiology~~]; and

(b) Assist the department in carrying out a public health response as instructed.

(3) Within one (1) week of reporting an outbreak of ILI, a long-term care facility shall submit a completed EPID 200, Kentucky Reportable Disease Form, incorporated by reference in 902 KAR 2:020, for each affected employee or resident to:

(a) The local [~~county~~] health department having[~~serving the~~] jurisdiction [~~in which the long-term care facility is located~~]; or

(b) The department [~~for Public Health, Division of Epidemiology~~].

(4) Upon notification of an outbreak of ILI, the local health department having jurisdiction or the department [~~for Public Health~~] shall contact the long-term care facility to make recommendations for appropriate confirmation of the etiology of illness and intervention.

(5) The department [~~for Public Health~~] shall maintain a database[~~data-base~~] of confirmed occurrences of influenza [~~and of pneumococcal disease~~] occurring in long-term care facilities.

(6) All long-term care facilities shall report the seasonal immunization survey utilizing an electronic reporting system provided by the department[~~The Department for Public Health shall maintain a data system to report the number of long-term care residents diagnosed with influenza or pneumococcal disease, and associated complications, and the number of hospitalizations of long-term care facility residents each year due to influenza virus, pneumococcal disease, and associated complications, pursuant to the requirements of KRS 209.554(4)~~].

Section 7.[~~6.~~] Educational Literature. [~~Within ninety (90) days of publication by the CDC,~~] The department [~~for Public Health~~] shall provide each licensed long-term care facility with access to [~~a camera-ready copy of~~] the most current vaccine information statements for influenza and pneumococcal disease as published by the CDC.[

~~Section 7. Incorporation by Reference. (1) "Kentucky Reportable Disease Form, EPID 200 (Rev. Jan/01)" is incorporated by reference.~~

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

ANGELA T. DEARINGER, M.D., MPH, Commissioner
ERIC C. FRIEDLANDER, Acting Secretary

APPROVED: BY AGENCY: January 10, 2020

FILED WITH LRC: January 15, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 23, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment

on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until March 31, 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for long-term care facilities to request that residents and employees agree to be vaccinated against influenza and pneumococcal disease, to provide vaccine for the residents and employees or to make a referral for vaccination, to maintain annual documentation of immunizations, and to report outbreaks of influenza-like illnesses to the local health department having jurisdiction or the department for public health.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in ensure all residents and employees of long-term care facilities are properly protected from influenza and pneumococcal disease.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 209.552 requires every long-term care facility to require residents and employees to be immunized against pneumococcal disease and influenza. KRS 209.554 authorizes the department for public health to implement the provisions outlined in the statute through the promulgation of administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides details implementing vaccinations against influenza and pneumococcal disease of employees and residents in long-term care facilities.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation defines department and employee, and revises other defined terms for clarity, adds that a long-term care facility shall have an infection prevention and control plan in compliance with 42 C.F.R. 483.80, adds that all residents shall be offered immunization against influenza and pneumococcal disease in compliance with 42 C.F.R. 483.80, adds that all employees, regardless of employment status, should be offered immunization against influenza and pneumococcal disease, and clarifies the outbreak data reporting requirements for long-term care facilities.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure residents and employees of long-term care facilities are properly immunized against influenza and pneumococcal disease. Proper immunization of residents and employees will reduce the potential for a disease outbreak in the facility.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 290.554 authorizes the department to implement the provisions outlined in the statute through the promulgation of administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the clarity and the implementation of the regulatory requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are 316 long-term care facilities registered with the Office of Inspector General. The amendment to this administrative regulation will affect all employees and residents of these registered facilities.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: The long-term care facilities will have to offer and administer influenza and pneumococcal vaccines to all employees and residents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The cost to the long-term care facilities will be the cost of the vaccines and any additional costs required to administer the vaccines. Long-term care facilities can charge a fee to employees and residents for the vaccines.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The long-term care facilities will benefit by having healthier employees and residents, allowing for less hospitalizations due to influenza or pneumococcal disease for residents and less sick days incurred by employees.

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

(a) Initially: There will be no additional cost to the Department for Public Health to implement this change.

(b) On a continuing basis: There will be no additional cost on an ongoing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds are used for the implementation and enforcement of this administrative regulation.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There is no increase in fees associated with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation impacts all affected entities equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts local health departments and the Division of Epidemiology and Health Planning within the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 209.550, 209.552 and 209.554.

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

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

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

(c) How much will it cost to administer this program for the first year? There are no additional cost to administer this program.

(d) How much will it cost to administer this program for

subsequent years? There are no additional cost to administer this program.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 2:015. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS Chapter 194A, 202A.011(12), 205.245, 209.020(4), 216.530, 216.557(1), 216.750(2), 216.765(2), Chapter 216B, Chapter 514, 20 C.F.R. 416.120, 416.212, 416.2030, 416.2095, 416.2096, 416.2099, 8 U.S.C. 1621, 1641, 42 U.S.C. 1381-1383

STATUTORY AUTHORITY: KRS 194A.050(1), 205.245, 42 U.S.C. 1382e-g

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the welfare, personal dignity, integrity, and sufficiency of the citizens of the Commonwealth and to operate the programs and fulfill the responsibilities of the cabinet. 42 U.S.C. 1382 authorizes the cabinet to administer a state funded program of supplementation to all former recipients of the Aid to the Aged, Blind, and Disabled Program as of December 13, 1973, and who were disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 establishes the mandatory supplementation program and the supplementation to other needy persons who are aged, blind, or have a disability. In addition, any state that makes supplementary payments on or after June 30, 1977, and does not have a pass-along agreement in effect with the Commissioner of the Social Security Administration, formerly a part of the U.S. Department of Health, Education, and Welfare, shall be determined by the commissioner to be ineligible for payments under Title XIX of the Social Security Act in accordance with 20 C.F.R. 416.2099. This administrative regulation establishes the provisions of the supplementation program.

Section 1. Definitions. (1) "Activities of daily living" is defined by KRS 194A.700(1).

(2) "Adult" is defined by KRS 209.020(4).

(3) "Aid to the Aged, Blind and Disabled Program" means the former state-funded program for an individual who was aged, blind, or had a disability.

(4) "Care coordinator" means an individual designated by a community integration supplementation applicant or recipient to fulfill responsibilities specified in Section 6(2) of this administrative regulation.

(5) "Department" means the Department for Community Based Services or its designee.

(6) "Full-time living arrangement" means a residential living status that is seven (7) days a week, not part time.

(7) "Instrumental activities of daily living" is defined by KRS 194A.700(9).

(8) "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(9) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, meets the U.S. citizenship requirements of 907 KAR 20:001.

(10) "Qualified mental health professional" is defined by KRS 202A.011(12).

(11) "Serious mental illness" or "SMI" means a mental illness or disorder in accordance with Section 6(1) of this administrative regulation.

(12) "Supplemental security income" or "SSI" means a monthly cash payment made pursuant to 42 U.S.C. 1381 to 1383f to the aged, blind, or disabled.

Section 2. Mandatory State Supplementation. (1) A recipient for mandatory state supplementation shall include a former Aid to the Aged, Blind and Disabled Program recipient who became ineligible for SSI due to income but whose special needs entitled the recipient to an Aid to the Aged, Blind and Disabled Program payment as of December 1973.

(2) A mandatory state supplementation recipient shall be subject to the same payment requirements as specified in Section 4 of this administrative regulation.

(3) A mandatory state supplementation payment shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December 1973; and

(b)1. The total of the SSI payment; or

2. The total of the SSI payment and other income for the current month.

(4) A mandatory payment shall discontinue if:

(a) The needs of the recipient as recognized in December 1973 have decreased; or

(b) Income has increased to the December 1973 level.

(5) The mandatory payment shall not be increased unless:

(a) Income as recognized in December 1973 decreases;

(b) The SSI payment is reduced, but the recipient's circumstances are unchanged; or

(c) The standard of need as specified in Section 9 of this administrative regulation for a class of recipients is increased.

(6) If a husband and wife are living together, an income change after September 1974 shall not result in an increased mandatory payment unless total income of the couple is less than December 1973 total income.

Section 3. Optional State Supplementation Program. (1) Except as established in Sections 7, 8, and 9 of this administrative regulation, optional state supplementation shall be available to a person who meets technical requirements and resource limitations of the medically needy program for a person who is aged, blind, or has a disability in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:005, Sections 5(2), (3), (4), (7), 10, and 12;

(c) 907 KAR 20:020, Section 2(4)(a);

(d) 907 KAR 20:025; or

(e) 907 KAR 20:040, Section 1.

(2) A person shall apply or reapply for the state supplementation program in accordance with 921 KAR 2:035 and shall be required to:

(a) Furnish a Social Security number; or

(b) Apply for a Social Security number, if a Social Security number has not been issued.

(3) If potential eligibility exists for SSI, an application for SSI shall be mandatory.

(4) The effective date for state supplementation program approval shall be in accordance with 921 KAR 2:050.

Section 4. Optional State Supplementation Payment. (1) An optional supplementation payment shall be issued in accordance with 921 KAR 2:050 for an eligible individual who:

(a) Requires a full-time living arrangement;

(b) Has insufficient income to meet the payment standards specified in Section 9 of this administrative regulation; and

(c)1. Resides in a personal care home and is eighteen (18) years of age or older in accordance with KRS 216.765(2);

2. Resides in a family care home and is at least eighteen (18) years of age in accordance with 902 KAR 20:041, Section 3(14);

3. Receives caretaker services and is at least eighteen (18) years of age; or

4.a. Resides in a private residence;

b. Is at least eighteen (18) years of age; and

c. Has SMI.

(2) A full-time living arrangement shall include:

(a) Residence in a personal care home that:

1. Meets the requirements and provides services established in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131;

(b) Residence in a family care home that:

1. Meets the requirements and provides services established in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131;

(c) A situation in which a caretaker is required to be hired to provide care other than room and board; or

(d) A private residence, which shall:

1. Be permanent housing with:

a. Tenancy rights; and

b. Preference given to single occupancy; and

2. Afford an individual with SMI choice in activities of daily living, social interaction, and access to the community.

(3) A guardian or other payee who receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation; or

b. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department [~~office~~] within five (5) working days of the death or discharge of the state supplementation recipient.

(4) Failure to comply with subsection (3)(a) of this section may result in prosecution in accordance with KRS Chapter 514.

(5) If there is no guardian or other payee, a personal care or family care home that receives a state supplementation check for a state supplementation recipient shall:

(a) Return the check to the Kentucky State Treasurer, the month after the month of:

1. Discharge to a:

a. Nursing facility, unless the admission is for temporary medical care as specified in Section 10 of this administrative regulation;

b. Another personal care or family care home; or

c. Residence other than a private residence pursuant to subsection (2)(d) of this section; or

2. Death of the state supplementation recipient; and

(b) Notify a local county department within five (5) working days of the:

1. Death or discharge of the state supplementation recipient; or

2. Voluntary relinquishment of a license to the Office of the Inspector General.

(6) If a personal care or family care home receives a state supplementation check after voluntary relinquishment of a license, as specified in subsection (5)(b)2. of this section, the personal care or family care home shall return the check to the Kentucky State Treasurer.

(7) Failure to comply with subsections (5)(a) or (6) of this section may result in prosecution in accordance with KRS Chapter 514.

Section 5. Eligibility for Caretaker Services. (1) Service by a caretaker shall be provided to enable an adult to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Service by a caretaker shall be provided at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) Eligibility for caretaker supplementation shall be verified annually by the cabinet with the caretaker to establish how:

(a) Often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

(4) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if the:

(a) Client is taken daily or periodically to the home of the caretaker; or

(b) Caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult or minor child who has a disability; or

3. Adult child of a parent who is aged, blind, or has a disability.

Section 6. Eligibility for Community Integration Supplementation. (1) Eligibility for the community integration supplementation shall be based upon a diagnosis of SMI by a qualified mental health professional. SMI shall:

(a) Not include a primary diagnosis of Alzheimer's disease or dementia;

(b) Be described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), fourth (4th) edition or edition currently in use;

(c) Impair or impede the individual's functioning in at least one (1) major area of living such as inability to care for or support self, communicate, or make and maintain interpersonal relationships; and

(d) Be unlikely to improve without treatment, services, or supports.

(2) Eligibility for the community integration supplementation shall be verified annually by the cabinet with the applicant, recipient, or care coordinator to establish how:

(a) Often services, including those that address subsection (1)(c) of this section, are provided;

(b) The services prevent institutionalization and support private residence in accordance with Section 4(2)(d) of this administrative regulation; and

(c) Payment is made for the services.

(3) Unless criteria in Section 10 of this administrative regulation are met by the applicant or recipient, SMI supplementation shall not be available to a resident of a home, facility, institution, lodging, or other establishment:

(a) Licensed or registered in accordance with KRS Chapter 216B; or

(b) Certified in accordance with KRS Chapter 194A.

Section 7. Resource Consideration. (1) Except as provided [~~stated~~] in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:020, Section 2(4)(a);

(c) 907 KAR 20:025; and

(d) 907 KAR 20:040, Section 1.

(2) An individual or couple shall not be eligible if countable resources exceed the limit of:

(a) $2,000 for an individual; or

(b) $3,000 for a couple.

Section 8. Income Considerations. (1) Except as provided [~~noted~~] in subsections (2) through (8) of this section, income and earned income deductions shall be considered according to the policy for the medically needy in accordance with:

(a) 907 KAR 20:001;

(b) 907 KAR 20:020, Section 2(4)(a);

(c) 907 KAR 20:025; and

(d) 907 KAR 20:040, Section 1.

(2) The optional supplementation payment shall be determined by:

(a) Adding:

1. Total countable income of the applicant or recipient, or

applicant or recipient and spouse; and

2. A payment made to a third party on behalf of an applicant or recipient; and

(b) Subtracting the total of paragraph (a)1. and 2. of this subsection from the standard of need in Section 9 of this administrative regulation.

(3) Income of an ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the SSI standard for an individual for:

1. The applicant or recipient; and

2. Each minor dependent child.

(4) Income of an eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent child.

(5) Income of a child shall be considered if conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and ineligible spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If treating a husband and wife who reside in the same personal care or family care home as living apart prevents them from receiving state supplementation, the husband and wife may be considered to be living with each other.

(8) The SSI twenty (20) dollar general exclusion shall not be an allowable deduction from income.

Section 9. Standard of Need. (1) To the extent funds are available, the standard of need shall be the amount listed in this subsection in addition to all cost of living adjustments determined by the Social Security Administration that have taken place since 2019 pursuant to 42 U.S.C. 415(i) and published at https://www.ssa.gov/cola/[~~is as follows~~]:

(a) For a resident of a personal care home [~~on or after January 1, 2019~~], $1,291;

(b) For a resident of a family care home [~~on or after January 1, 2019~~], $943;

(c) For an individual [~~individuals~~] who receives [~~receive~~] caretaker services:

1. A single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability [~~on or after January 1, 2019~~], $833;

2. An eligible couple, both aged, blind, or having a disability and one (1) requiring care [~~on or after January 1, 2019~~], $1,218; or

3. An eligible couple, both aged, blind, or having a disability and both requiring care [~~on or after January 1, 2019~~], $1,272; or

(d) For an individual who resides in a private residence and has SMI [~~on or after January 1, 2019~~], $1,291.

(2)(a) In a couple case, if both are eligible, the couple's income shall be combined prior to comparison with the standard of need.

(b) One-half (1/2) of the deficit shall be payable to each.

(3) A personal care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a sixty (60) dollar personal needs allowance that shall be retained by the client.

(4) A family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollar personal needs allowance that shall be retained by the client.

Section 10. Temporary Stay in a Medical Facility. (1) An SSI recipient who receives optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if the:

(a) SSI recipient meets eligibility for medical confinement established by 20 C.F.R. 416.212;

(b) Social Security Administration notifies the department that the admission shall be temporary; and

(c) Purpose shall be to maintain the recipient's home or other living arrangement during a temporary admission to a health care facility.

(2) A non-SSI recipient who receives mandatory or optional state supplementation shall have continuation of state supplementation benefits without interruption for the first three (3) full months of medical care in a health care facility if:

(a) The non-SSI recipient meets the requirements of subsection (1)(c) of this section;

(b) A physician certifies, in writing, that the non-SSI recipient is not likely to be confined for longer than ninety (90) full consecutive days; and

(c) A guardian or other payee, personal care home, or family care home, receiving a state supplementation check for the state supplementation recipient, provides a local county department office with:

1. Notification of the temporary admission; and

2. The physician statement specified in paragraph (b) of this subsection.

(3) A temporary admission shall be limited to the following health care facilities:

(a) Hospital;

(b) Psychiatric hospital; or

(c) Nursing facility.

(4) If a state supplementation recipient is discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 11. Citizenship requirements. An applicant or recipient shall be a:

(1) Citizen of the United States; or

(2) Qualified alien.

Section 12. Requirement for Residency. An applicant or recipient shall reside in Kentucky.

Section 13. Mental Illness or Intellectual Disability (MI/ID) Supplement Program. (1) A personal care home:

(a) May qualify, to the extent funds are available, for a quarterly supplement payment of fifty (50) cents per diem for a state supplementation recipient in the personal care home's care as of the first calendar day of a qualifying month;

(b) Shall not be eligible for a payment for a Type A Citation that is not abated; and

(c) Shall meet the following certification criteria for eligibility to participate in the MI/ID Supplement Program:

1. Be licensed in accordance with KRS 216B.010 to 216B.131;

2. Care for a population that is at least thirty-five (35) percent mental illness or intellectual disability clients in all of its occupied licensed personal care home beds and who have a:

a. Primary or secondary diagnosis of intellectual disability including mild or moderate, or other ranges of intellectual disability whose needs can be met in a personal care home;

b. Primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

c. Medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis;

3. Have a licensed nurse or an individual who has received and successfully completed certified medication technician or Kentucky medication aide training on duty for at least four (4) hours during the first or second shift each day;

4. Not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement;

5. Be verified by the Office of the Inspector General in accordance with Section 15(2) through (4) of this administrative regulation; and

6. File an STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits, with the department by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

a. Quarters shall begin in January, April, July, and October.

b. Unless mental illness or intellectual disability supplement eligibility is discontinued, a new application for the purpose of program certification shall not be required.

(2) A personal care home shall provide the department with its tax identification number and address as part of the application process.

(3) The department shall provide an STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home, to a personal care home following:

(a) Receipt of verification from the Office of the Inspector General as specified in Section 15(6) of this administrative regulation; and

(b) Approval or denial of an application.

(4) A personal care home shall:

(a) Provide the department with an STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form, that:

1. Lists every resident of the personal care home who was a resident on the first day of the month;

2. Lists the last four (4) digits only of the resident's Social Security Number;

3. Lists the resident's date of birth; and

4. Is marked appropriately for each resident to indicate the resident:

a. Has a mental illness diagnosis;

b. Has an intellectual disability diagnosis; or

c. Receives state supplementation; and

(b) Submit the STS-3 to the department on or postmarked by the fifth working day of the month by:

1. Mail;

2. Fax; or

3. Electronically.

(5) The monthly report shall be used by the department for:

(a) Verification as specified in subsection (4)(a) of this section;

(b) Payment; and

(c) Audit purposes.

(6)(a) A personal care home shall notify the department within ten (10) working days if its mental illness or intellectual disability percentage goes below thirty-five (35) percent for all personal care residents.

(b) A personal care home may be randomly audited by the department to verify percentages and payment accuracy.

Section 14. Mental Illness or Intellectual Disability (MI/ID) Training. (1)(a) A personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall complete the personal care home mental illness or intellectual disability training workshop provided through the Department for Behavioral Health, Developmental and Intellectual Disabilities, once every two (2) years.

(b) Other staff may complete the training workshop in order to assure the personal care home always has at least one (1) certified staff employed for certification purposes.

(2) The personal care home mental illness or intellectual disability training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration;

(b) Side effects and adverse medication reactions with special attention to psychotropics;

(c) Signs and symptoms of an acute onset of a psychiatric episode;

(d) SMI;

(e) SMI recovery;

(f) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or intellectual disability;

(g) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability;

(h) Instruction in providing a necessary activity to meet the needs of a resident who has a diagnosis of mental illness or intellectual disability;

(i) Activities of daily living and instrumental activities of daily living;

(j) Adult learning principles; and

(k) Information about 908 KAR 2:065 and the process for community transition for individuals with SMI.

(3) Initial training shall:

(a) Include the licensed nurse or the individual who has successfully completed certified medication technician or Kentucky medication aide training and may include the owner or operator; and

(b) Be in the quarter during which the STS-1 is filed with the department.

(4)(a) A personal care home shall have at least one (1) direct care staff member who has received training.

(b) A personal care home shall have on staff a licensed nurse or individual who:

1. Has successfully completed certified medication technician or Kentucky medication aide training; and

2.a. Has received mental illness or intellectual disability training; or

b. Is enrolled in the next scheduled mental illness or intellectual disability training workshop.

(5) The Department for Behavioral Health, Developmental and Intellectual Disabilities shall provide within five (5) working days a:

(a) Certificate to direct care staff who complete the training workshop; and

(b) Listing to the department of staff who completed the training workshop.

(6) The department shall pay twenty-five (25) dollars, to the extent funds are available, to a personal care home:

(a) That has applied for the MI/ID Supplement Program; and

(b) For each staff member receiving training up to a maximum of five (5) staff per year.

Section 15. MI/ID Supplement Program Certification. (1) The Office of the Inspector General shall visit a personal care home to certify eligibility to participate in the MI/ID Supplement Program.

(a) The personal care home's initial MI/ID Supplement Program Certification Survey:

1. May be separate from an inspection conducted in accordance with KRS 216.530; and

2. Shall be in effect until the next licensure survey.

(b) After a personal care home's initial MI/ID Supplement Program Certification Survey is completed, the personal care home may complete any subsequent certification survey during the licensure survey as specified in paragraph (a)2. of this subsection.

(c) The department shall notify the Office of the Inspector General that the personal care home is ready for an inspection for eligibility.

(2) During the eligibility inspection, the Office of the Inspector General shall:

(a) Observe and interview residents and staff; and

(b) Review records to assure the following criteria are met:

1. Certification is on file at the personal care home to verify staff's completion of training, as specified in Section 14(1) through (4) of this administrative regulation;

2. The personal care home:

a. Has certified staff training all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or intellectual disability training workshop; and

b. Maintains documentation of completion at the in-service training for all direct care staff;

3. Medication administration meets licensure requirements and a licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training:

a. Demonstrates a knowledge of psychotropic drug side effects; and

b. Is on duty as specified in Section 13(1)(c)3. of this administrative regulation; and

4. An activity is being regularly provided that meets the needs of a resident.

a. If a resident does not attend a group activity, an activity shall be designed to meet the needs of the individual resident, for example, reading or other activity that may be provided on an individual basis.

b. An individualized care plan shall not be required for the criteria in clause a. of this subparagraph.

(3) The Office of the Inspector General shall review the personal care home copy of the training certification prior to performing a record review during the MI/ID Supplement Program Certification Survey process.

(4) If at least thirty-five (35) percent of the population is mental illness or intellectual disability clients, as specified in Section 13(1)(c)2. of this administrative regulation, on the day of the visit, a personal care home shall be deemed to have an ongoing qualifying percentage effective with the month of request for certification as specified in subsection (1)(c) of this section.

(5) If the mental illness or intellectual disability population goes below thirty-five (35) percent of all occupied personal care beds in the facility, the personal care home shall notify the department as specified in Section 13(6)(a) of this administrative regulation.

(6) The Office of the Inspector General shall provide the department with a completed STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey, within fifteen (15) working days of an:

(a) Initial survey; or

(b) Inspection in accordance with KRS 216.530.

(7) The Office of the Inspector General shall provide a copy of a Type A Citation issued to a personal care home to the department by the fifth working day of each month for the prior month.

(8) The personal care home shall receive a reduced payment for the number of days the Type A Citation occurred on the first administratively feasible quarter following notification by the Office of the Inspector General, in accordance with 921 KAR 2:050.

(9) If a criterion for certification is not met, the department shall issue an STS-2 to a personal care home following receipt of the survey by the Office of the Inspector General as specified in subsection (6) of this section.

(10) The personal care home shall provide the department with the information requested on the STS-2:

(a) Relevant to unmet certification criteria specified on the STS-4; and

(b) Within ten (10) working days after the STS-2 is issued.

(11) If a personal care home fails to provide the department with the requested information specified in subsection (10) of this section, assistance shall be discontinued or decreased, pursuant to 921 KAR 2:046.

(12) If a personal care home is discontinued from the MI/ID Supplement Program, the personal care home may reapply for certification, by filing an STS-1 in accordance with Section 13(1)(c)6. of this administrative regulation, for the next following quarter.

Section 16. Hearings and Appeals. An applicant or recipient of benefits under a program described in this administrative regulation who is dissatisfied with an action or inaction on the part of the cabinet shall have the right to a hearing under 921 KAR 2:055.

Section 17. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "STS-1, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Application for Benefits", 01/15;

(b) "STS-2, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Notice of Decision to Personal Care Home", 01/15;

(c) "STS-3, Mental Illness or Intellectual Disability (MI/ID) Supplement Program Monthly Report Form", 01/19; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/19.

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

ERIC C. FRIEDLANDER, Acting Secretary

APPROVED BY AGENCY: December 18, 2019

FILED WITH LRC: December 27, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 23, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until March 31, 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: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a program for supplemental payments to persons who are aged, blind, or have a disability in accordance with KRS 205.245 and the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

(b) The necessity of this administrative regulation: The administrative regulation is needed to establish conditions and requirements regarding the State Supplementation Program and the MI/ID Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program of persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration, formerly a part of the U. S. Department of Health, Education, and Welfare, to maintain the state's eligibility for federal Medicaid funding.

(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 eligibility requirements and standards of need for the State Supplemental Program for persons who are aged, blind, or have a disability.

(2) If 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 lists the standards of need for individuals receiving Supplemental Security Income (SSI) as of 2019 and the amendment to this administrative regulation cites the federal language pertaining to Social Security Administration SSI cost of living adjustments and the website where the cost of living adjustment (COLA) is issued so that affected entities may be able to find the COLA for each subsequent year. In addition to this information being contained in the administrative regulation, the cabinet notifies affected entities whenever a COLA is issued and the amount that will be provided. Subsequent COLA increases will be consistent with federal adjustments, if any. This amendment

eliminates the need for future regulatory amendments only to pass on the federal COLA each year as ongoing annual increases will follow annual federal adjustments as they occur.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation incorporates the federal citation and website where future COLAs will be published by the Social Security Administration. In this manner, the cabinet will continue to provide standard of need COLAs consistent with federal adjustments without ongoing amendment to the administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes through its establishment of a supplemental program for persons who are aged, blind, or have a disability and its compliance with the agreement with the Social Security Administration. The amendment continues to pass on federal standard of need COLAs, as determined by the Social Security Administration, without the need for emergency regulatory action to incorporate updated amounts.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by passing along the future cost of living adjustments for the Supplemental Security Income benefit by modifying the standard of need for all levels of care for the State Supplementation Program and reduce future regulatory amendments as ongoing annual increases will follow annual federal adjustments, if any.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In SFY 19, there were 37,785 individuals who received State Supplementation Program benefits. As of November 2019, there were 22 personal care homes participating in the Mental Illness or Intellectual Disability (MI/ID) Supplement Program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There is no new action required 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): There are no new costs associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A cost of living increase for Supplemental Security Income recipients.

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

(a) Initially: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through adjustment, which would jeopardize the state's federal Medicaid funding if not accomplished.

(b) On a continuing basis: There will be negligible fiscal impact to the Cabinet for Health and Family Services to implement the mandated pass-through of the annual SSI cost of living adjustments. Not complying with the federal pass-through mandate would jeopardize the state's federal Medicaid funding.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds and agency funds are used to implement and enforce the State Supplementation Program.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish 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. 20 C.F.R. Part 416, 42 U.S.C. 1382e-g

2. State compliance standards. KRS 194.050(1), 205.245

3. Minimum or uniform standards contained in the federal mandate. 20 C.F.R. Part 416, 42 U.S.C. 1382 e-g

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 a stricter requirement, or additional or different responsibilities or requirements, than those required by federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose a stricter requirement, or additional or different responsibilities or requirements, than those required by federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, 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 194.050(1), 205.245, 42 U.S.C.1328e-g, 20 C.F.R. Part 416.

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

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

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

(c) How much will it cost to administer this program for the first year? No additional costs are projected to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional costs are projected to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

NEW ADMINISTRATIVE REGULATIONS

COMPILER'S NOTE: 30 KAR 8:005 & E were filed on December 30, 2019, subsequently withdrawn, and were refiled on January 3, 2020. This version of 30 KAR 8:005 was withdrawn by the agency on January 3, 2020 and is being published for informational purposes.

SECRETARY OF STATE
(New Administrative Regulation)

30 KAR 8:005. Notary Public applications and electronic and online registrations.

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.355, 423.390, 423.395, 423.415, 423.455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415, KRS 423.390, KRS 423.415 and KRS 423.455 authorize the Secretary of State to promulgate administrative regulations to implement KRS 423.415 to 423.455. This emergency administrative regulation establishes definitions, prescribes the process of granting, renewing, conditioning or denying a notary commission, establishes standards for the performance of notarial acts with respect to electronic records, establishes standards for the performance of online notarial acts, establishes standards for the retention of records and by notaries public authorized to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, and prescribes the manner of performing notarial acts for tangible records.

Section 1. Definitions. Words and terms defined in KRS 423.300 shall have the same meaning in this chapter. For the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

(a) "Digital Certificate" means an electronic record, issued by a third party certificate authority, which certifies the ownership of a public key, rendering an electronic document as tamper-evident.

(b) "Member of the notary public's immediate family" means a spouse, former spouse, a grandparent, a grandchild, a parent, a child, a stepchild or any other person living in the same household.

(c) "Online notarial act" means an electronic notarization performed for a remotely located individual facilitated by communication technology.

(d) "Notary technology" means an electronic device or process that allows a notary public to perform notarial acts with regard to electronic documents with or without the use of communication technology.

Section 2. Notary Public Application, Approval or Denial of Application, Voluntary Termination and Required Notice of Change of Information.

(a) Application. An application for a commission as a notary public shall be submitted on a form provided for that purpose by the Office of the Secretary of State or submitted on an electronic portal established by the Office of the Secretary of State for that purpose. A person who executes an application for filing with the Secretary of State shall be deemed to have declared under penalty of perjury that to the person's knowledge, the contents of the application are true. Every application for a notarial commission must include:

(1) The full legal name of the applicant;

(2) The email address of the applicant;

(3) A telephone number for the applicant;

(4) The signature of the applicant;

(5) The county for which the application is being made;

(6) The physical and mailing address within the county of application where the applicant resides or is employed;

(7) A statement of whether the applicant has previously held a notary commission, the name under which the applicant was previously commissioned and the date at which the most recent commission expired;

(8) A statement that the applicant is at least eighteen years of age;

(9) A statement that the applicant is a citizen or permanent legal resident of the United States;

(10) A statement that the applicant is able to read and write English;

(11) A statement identifying the surety provider from which the applicant intends to obtain surety;

(12) A statement that the applicant is not disqualified from becoming a notary public under the provision of KRS Chapter 423 or this chapter;

(13) A statement that the applicant is not disqualified for any reason under Section 2 (2) (a) - (c); and

(14) Payment of the required fee.

(b) Approval or Denial of Application.

(1) Approval of Application. If the applicant has complied with the provisions of KRS Chapter 423 and this chapter, the application shall be approved. A notary commission is effective as of the date of entry of that commission in the database of notary publics on the Web site of the Secretary of State.

(2) Disapproval of Application. The Secretary of State may disapprove the application for the following reasons:

(i) The notary public's failure to comply with KRS Chapter 423 or the provisions of this chapter or the existence of a pending inquiry regarding the notary public's failure to comply with KRS Chapter 423 and this chapter;

(ii) Any information required under this administrative regulation is missing, inaccurate, incomplete or cannot be independently verified;

(iii) A fraudulent, dishonest or deceitful misstatement or omission of fact in the submitted application;

(iv) A finding against, or admission of liability by the applicant in any legal proceeding or disciplinary action based on the applicant's fraud, dishonesty, or deceit;

(v) The denial, refusal to renew, revocation, or suspension of an applicant's notary commission or registration in another state; or

(vi) Failure of the applicant to maintain an assurance.

(3) If the application or registration is disapproved, the Secretary of State will state the reasons for the disapproval.

(c) Voluntary Termination of Notary Commission. A notary public may terminate a notary commission by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose. Submission of a notification of termination of a notary commission automatically terminates any notary registration.

(d) Change of Information. A notary public must notify the Office of the Secretary of State, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602, of any change of the following information during the period of the notary's commission, within ten days of the change, on a form promulgated by the Office of the Secretary of State for that purpose or on any electronic portal created by the Office of the Secretary of State for that purpose:

(i) A change in the mailing, physical or electronic mail address of the notary public;

(ii) A change in the county of residence of the notary public;

(iii) A change in the legal name of the notary public;

(iv) A change in the notary public's signature;

(v) A change in the notary public's electronic signature, if any; and

(vi) A change in the notary technology used by the notary public.

Section 3. Registration; Electronic and Online notarization.

(a) Authority to perform electronic and online notarial acts.

(1) Electronic notarial acts. An individual is authorized to perform notarial acts with respect to electronic records by:

(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010 and KAR 8:020;

(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform electronic notarial acts; and

(iii) Receiving written authorization to perform electronic notarial acts from the Secretary of State under Section 3 of this administrative regulation.

(2) Online notarial acts. An individual is authorized to perform online notarial acts by:

(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010;

(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform online notarial acts; and

(iii) Receiving written authorization to perform online notarial acts from the Secretary of State under Section 3 of this administrative regulation.

(3) An individual who is authorized to perform online notarial acts under this section is also authorized to perform electronic notarial acts.

(b) Registration procedures.

(1) Registration format. Registration under this section shall be by electronic registration to the Secretary of State pursuant to KRS 423.390 and shall include the following information:

(i) The individual's full legal name;

(ii) The county in which the individual resides or has his or her place of employment or practice in this Commonwealth;

(iii) The registrant's date of birth;

(iv) The registrant's notary identification number and the expiration date of the registrant's notary commission;

(v) The electronic mail address, physical and mailing address where the registrant resides or is employed;

(vi) An indication of whether the individual is registering to perform electronic notarial acts or online notarial acts, or both;

(vii) A description of the notary technology that the individual intends to use to perform electronic notarial acts and/or online notarial acts, including the technologies or devices to maintain the journal required under KRS 423.380 and to render electronic records tamper-evident after a notarial act is completed;

(viii) A copy of the applicant's electronic signature, the digital certificate required under 30 KAR 8:040, the official stamp, if any, along with any necessary instructions or techniques supplied by a vendor or notary that allows the signature and stamp to be read and authenticated, in a file format acceptable to the Secretary of State;

(ix) The name, address, and Web site URL of any vendors or other persons that will directly supply the notary public with technology that the notary public intends to use;

(x) A statement of whether the notary technology provider has registered with the Secretary of State;

(xi) A copy of any necessary instructions or techniques supplied by a vendor that allow the notary to conduct identity proofing and credential analysis;

(xii) An explanation of the methods or technology by which the notary will maintain and store the journal required by KRS 423.380;

(xiii) A statement that the technologies or devices named in the registration are compliant with KRS Chapter 423 and with this chapter;

(xiv) The county, book and page where the notary's surety bond is recorded;

(xv) A disclosure of any convictions, professional license or commission revocations, professional disciplinary actions or other disqualifying actions or proceedings taken under the laws of any state against the notary public.

(2) Submission of registration form. The registration must be submitted electronically to Secretary of State as provided by information posted on the Secretary of State's Web site at https://sos.ky.gov/.

(3) Use of additional vendors. If, during the term of a notary public's commission, the notary public intends to use the technologies of another vendor or person than those identified in Section (1)(i) of this section, then an additional notification identifying such other vendors or other persons must be submitted to the Secretary of State as provided in this section and in accordance with the manner established by the Secretary of State as posted on the Secretary of State's Web site at https://sos.ky.gov/.

(c) Approval or disapproval by the Secretary of State.

(1) Approval of registration. If the provider of the technology identified by the notary public in the registration required under Section 2 of this administrative regulation has registered with the Secretary of State, and the registrant has complied with the provisions of KRS Chapter 423 and this chapter, the registration to perform notarial acts with respect to electronic records shall be approved. A registration is effective as of the date of entry of that registration in the database of the Secretary of State.

(2) Disapproval of registration. The Secretary of State may disapprove the registration and reject the notary public's registration for the following reasons:

(i) The notary public's failure to comply with KRS Chapter 423 or the provisions of this chapter or a pending inquiry regarding the notary public's failure to comply with KRS Chapter 423 and this chapter;

(ii) Any information required under Section 2 of this administrative regulation is missing, inaccurate, or incomplete;

(iii) A fraudulent, dishonest, or deceitful misstatement or omission in the submitted registration;

(iv) A finding against, or admission of liability by, the registrant in any legal proceeding or disciplinary action based on the registrant's fraud, dishonesty, or deceit;

(v) Denial, refusal to renew, revocation, or suspension of a notary commission or registration in another state;

(vi) Failure of the notary to maintain an assurance; or

(vii) The provider of the technology identified by the notary public has not registered with the Secretary of State.

(3) If the notary public's registration is disapproved, the Secretary of State will state the reasons for the disapproval.

(d) Termination of electronic registration. A notary public may terminate an electronic registration by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose. Termination of a notary public's electronic registration does not terminate a notary public's commission.

(e) Renewal of commission. The renewal of the commission of a notary public who has previously registered to perform notarial acts with regard to electronic records or online notarizations under Section 1 of this administrative regulation constitutes renewal of the notary public's registration without the necessity of submitting another registration under this administrative regulation.

(f) Updated technology. Nothing herein shall be construed to prohibit a notary public from receiving, installing, or using a hardware or software update to the technologies that the notary public identified under Section 2 of this administrative regulation if the hardware or software update does not result in technologies that are materially different from the technologies that the notary public identified.

Section 4. Standards for Notarization of Electronic Documents.

(a) Tamper-evident technology requirements. A notary public must select one or more tamper-evident technologies to perform notarizations with regard to electronic records. No person may require a notary public to use a technology that the notary public has not selected. The tamper-evident technology must consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology. A notary public must attach or logically associate the notary public's electronic signature and official stamp, if any, to an electronic record that is the subject of a notarial act by use of the digital certificate. A notary public may not perform an electronic notarization if the digital certificate:

(1) Has expired;

(2) Has been revoked or terminated by the issuing or registering authority;

(3) Is invalid; or

(4) Is incapable of authentication.

(b) Requirements of official stamp.

(1) A notary public is not required to use an official stamp when performing notarial acts with respect to electronic records.

(2) A notary public who uses an official stamp must use the same unique official stamp for all notarial acts with respect to electronic records that are performed for an individual that is not remotely located. An official stamp under this section is an official seal of office of the notary public for all purposes. An official stamp must conform to the following requirements:

(i) Required information. An official stamp shall substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the words “Commonwealth of Kentucky” and “Notary Public”, the notary public’s commission number, and the commission expiration date.

(ii) Format and size. When affixed to an electronic record, an official stamp must be clear, legible, and photographically reproducible. An official stamp is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing notarial acts with respect to electronic records, the certificate of the notarial act on the electronic record must:

(i) Contain the name of the notary public as it appears on the notary public's commission;

(ii) Indicate the title “Notary Public” for any notarial act with respect to electronic records; and

(iii) Indicate the notary public’s commission number and the commission expiration date.

(c) Use of electronic signature and stamping device. A notary public is responsible for the security of the notary public’s stamping device and may not allow another individual to use the device to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the notary signature and stamping device and shall not disclose any access information used to affix the notary public’s electronic signature or official stamp to electronic records, except:

(1) When requested by the Secretary of State or a law enforcement officer;

(2) When required by court order or subpoena; or

(3) Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in 30 KAR 8:050, Section 7.

(d) Protection against theft, alteration or misuse.

(1) A notary public may not allow any other individual to alter or use his or her electronic signature, notary technology, official stamp or stamping device to perform a notarial act.

(2) Upon resignation, revocation, or expiration of the notary's commission, the notary public's notary technology and electronic stamping device (including any coding, disk, digital certificate, card, software, or password that enables the notary public to attach or logically associate the notary’s electronic signature or official stamp to an electronic record) must be destroyed or disabled to prohibit its use by any other person. A former notary public whose commission terminated for a reason other than revocation or denial of renewal is not required to destroy the notary public’s notary technology or electronic stamping device if the former notary public is recommissioned as a notary public within thirty days after the termination of the notary public's former commission.

(3) A notary public shall promptly notify the Secretary of State on actual knowledge of the theft or vandalism of the notary public’s notary technology or electronic stamping device. A notary public shall promptly notify the Secretary of State on actual knowledge of the unauthorized use by another person of the notary public’s electronic signature, notary technology or electronic stamping device.

(e) Tangible copies of an electronic record. A notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record if the notary has taken reasonable steps to confirm the accuracy of that certification.

Section 5. Standards for Online Notarial Acts.

(a) Notarial acts with respect to electronic records. In performing online notarial acts with respect to electronic records, an online notary public must comply with the requirements for electronic notarization as provided in 30 KAR 8:030.

(b) Requirements of official stamp.

(1) A notary public is not required to use an official stamp when performing online notarizations.

(2) A notary public who uses an official stamp must use the same unique official stamp for all notarizations involving online notarial acts. An official stamp under this section is an official seal of office of the notary public for all purposes. An official stamp must conform to the following requirements:

(i) Required information. An official stamp shall substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public’s commission number, and the commission expiration date.

(ii) Online notarial acts. If an online notary public uses an official stamp to perform online notarial acts, the official stamp must contains the words “Online Notary Public” in lieu of the words “Notary Public.” A stamp that contains the words “Online Notary Public” may only be used to perform notarizations with regard to remotely located individuals.

(iii) Format and size. When affixed to an electronic record, an official stamp must be clear, legible, and photographically reproducible. An official stamp is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing online notarial acts the certificate must:

(i) Contain the name of the notary public as it appears on the notary public's commission;

(ii) Indicate the title “Online Notary Public” for any notarial act with respect to a remotely located individual; and

(iii) Indicate the notary public’s commission number and the commission expiration date.

(c) Physical location. An online notary public shall be physically located in this Commonwealth at the time of the performance of the online notarization.

(d) Identity proofing. If an online notary public does not have personal knowledge or satisfactory evidence of the identity of a remotely located individual as defined in Section 5, the online notary public must reasonably verify the individual’s identity through at least two different types of identity proofing processes or services. Those processes shall include remote presentation of an appropriate identification by the remotely located individual, credential analysis of that credential by a service or process that analyzes the person’s identity credential, binds the individual’s identity to the individual following a successful dynamic knowledge-based authentication assessment, and permits the notary to visually compare the identity credential and the individual. The analysis of the identity credential and the dynamic knowledge-based authentication assessment shall conform to the following requirements:

(1) Credential analysis. The analysis of an identity credential must use public or private data sources to confirm the validity of the identity credential that is the subject of remote presentation by a remotely located individual and shall, at a minimum:

(i) Use automated software processes to aid the online notary public in verifying the identity of each remotely located individual;

(ii) Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;

(iii) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and

(iv) Enable the online notary public to visually compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the online notary public in real time through communication technology.

(2) Dynamic knowledge-based authentication. A dynamic knowledge-based authentication assessment is successful if it meets the following requirements:

(i) The remotely located individual must answer a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;

(ii) Each question must have a minimum of five possible answer choices;

(iii) At least 80% of the questions must be answered correctly;

(iv) All questions must be answered within two minutes;

(v) If the remotely located individual fails the first attempt, the individual may attempt the authentication assessment one additional time within 24 hours;

(vi) During the second authentication assessment, a minimum of 40% of the prior questions must be replaced;

(vii) If the remotely located individual fails the second authentication assessment, the individual is not allowed to attempt identity authentication with the same online notary public within 24 hours of the second failed authentication assessment; and

(viii) The online notary public must not be able to see or record the questions or answers.

(e) Other methods of identity verification. An online notary public has satisfactory evidence of the identity of a remotely located individual if the online notary public has personal knowledge of the identity of the individual, or if the individual is identified by oath or affirmation of a credible witness, or if the online notary has reasonably verified the identity of the individual by use of a valid public key certificate, with the following requirements:

(1) Personal knowledge. An online notary public has personal knowledge of the identity of the individual appearing before the online notary public if the individual is personally known to the online notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) Credible witness. To be a credible witness, an individual must have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the online notarization. If the credible witness is a remotely located individual, then the online notary public must reasonably verify the credible witness's identity under Section 3 of this administrative regulation or have personal knowledge of the credible witness under subsection 1 of this section. A credible witness may be a remotely located individual if the online notary public, credible witness, and individual whose statement or signature is the subject of the online notarization can communicate by using communication technology.

(3) Public key certificate.

(i) The identity of the individual appearing before the online notary public may be verified by use of a valid public key certificate that meets the requirements of a digital certificate, as that term is defined in 30 KAR 8:010; complies with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology; and is issued by a technology provider or digital certificate service registered with the Secretary of State pursuant to Section 7 of this regulation.

(ii) A public key certificate is not valid for identity verification if the public key certificate has expired, has been revoked or terminated by the issuing or registering authority, is invalid, or is incapable of authentication.

(f) Requirements for communication technology. The communication technology used by an online notary public in the performance of online notarizations must conform to the following requirements:

(1) Audio-video feeds. Communication technology must provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the online notary public and remotely located individual to see and speak with each other. The process must provide a means for the online notary public reasonably to confirm that a record before the online notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(2) Security measures. Communication technology must provide reasonable security measures to prevent unauthorized access to:

(i) The live transmission of the audio-visual feeds;

(ii) The methods used to perform the identify verification process under Sections 3 or 4 of this administrative regulation, as applicable; and

(iii) The record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(3) Work flow. If a remotely located individual must exit the workflow, the individual must restart the identify verification process under Sections 3 or 4 of this administrative regulation, as applicable, from the beginning.

(4) Recording. All notarial acts performed using communication technology must be electronically recorded. The recording shall contain a recitation that the notary has informed the individuals participating in the notarial act that it will be electronically recorded.

(g) Notary technology provider registration.

(1) A provider of technology used in the process of electronic or online notarization must register with Secretary of State in the manner directed by the Secretary of State and provide the following information:

(a) The legal name of the technology provider;

(b) The mailing address of the technology provider;

(c) The physical address of the technology provider;

(d) A designated contact person for that provider;

(e) The phone number, physical address, and email address of the contact person;

(f) The name of the technology provided;

(g) The name of the provider or providers of the knowledge-based authentication, credential analysis, or digital certificate services, if different from the technology provider;

(h) A description of the technology used and the manner in which it complies with KRS Chapter 423 and this chapter;

(i) The process by which the technology provider verifies the identity of the notary public or digital certificate holder using the technology;

(j) A plan for the retention and disposition of records created, generated or retained in conjunction with the use of the technology, including, but not limited to, any electronic journal, recordings or records created or retained during an electronic or online notarization, in the event the technology provider no longer engages in the business of providing electronic or online notary technology; and

(k) An authorized certification that the technology provided complies with KRS Chapter 423 and this chapter.

(2) A registration in compliance with this section is non-transferable and may not be conveyed to any other notary technology provider.

(h) Complaint Against a Notary Technology Provider.

(1) A written complaint may be made against a notary technology provider registered with the Office of the Secretary of State. A complaint that does not comply with the requirements of this section will not be filed, responded to, or acted upon by the Secretary of State.

(2) The Office of the Secretary of State may commence an investigation of a registered notary technology provider as a result of a complaint or upon its own initiative.

(3) An investigation under this section may include:

(a) An initial request for information from the accused provider;

(b) A copy of the complaint forwarded to the registration provider; and

(c) A request for supporting documentation and other sources of information.

(4) A provider shall provide true, accurate, and complete copies of all information requested by the Office of the Secretary of State.

(5) Failure of a provider to comply with an investigation directive may result in revocation of the provider's registration.

(6) A finding that the provider has failed to comply with the provisions of KRS Chapter 423 or this chapter may result in revocation of the provider's registration.

(i) Duties of Notary Technology Provider. A notary technology provider must:

(1) Respond to a request for information from the Office of the Secretary of State within the time directed. Any request for information will be sent to the addresses provided upon registration;

(2) Take reasonable steps to ensure that a notary public or digital certificate holder is able to use the technology provided in accordance with this chapter; and

(3) Suspend the use of any technology for any notary or digital certificate holder whose commission, registration, or digital certificate has expired, been revoked or been suspended.

Section 6. Electronic and Online Record Retention Requirements

(a) Record retention.

(1) A notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals using communication technology must maintain one or more journals in a permanent, tamper-evident electronic format to chronicle those notarizations.

(2) A journal entry shall be made contemporaneously with the performance of the notarial act and contain:

(a) The date and time of the notarial act;

(b) A brief description of the record, if any and the type of notarial act;

(c) The full name and address of each individual for whom a notarial act is performed;

(d) A statement of how identification was established and a description of any identification credential presented including the type of credential and dates of issuance and expiration of the credential;

(e) The fee charged, if any; and

(f) For a notarial act involving remotely located individuals using communication technology, an audio-visual recording (or a link thereto) of the performance of the notarial act that complies with KRS Chapter 423 and this chapter.

(3) A journal must be created and stored in a computer or other electronic storage device or process that protects the electronic journal and any audio-visual recording against unauthorized access by password or cryptographic process. A recording must be created in an industry-standard audio-visual file format and must not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature.

(4) An electronic journal must be retained for at least ten (10) years after the last notarial act chronicled in the journal. An audio-visual recording must be retained for at least ten (10) years after the recording is made.

(5) A journal entry shall not record an identification numbers assigned to an individual by a governmental agency or any biometric identifier.

(6) A notary public must take reasonable steps to ensure that a backup of the journal and audio-visual recording exists and is secure from unauthorized use.

(7) On the death or adjudication of incompetency of a current or former notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals, the online notary public's personal representative or guardian or any other person knowingly in possession of a journal or audio-visual recording must:

(i) Comply with the retention requirements of this subsection;

(ii) Transmit the journal and recording to one or more repositories under Section 2 of this administrative regulation; or

(iii) Transmit the journal and recording in an industry-standard readable data storage device to his/her notary technology provider.

(b) Repositories. A notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals, a guardian, conservator, or agent of such a notary public, or a personal representative of such a deceased online notary public may, by written contract, engage a third person to act as a repository to provide the storage required by Section 1 of this administrative regulation. A third person under contract under this section shall be deemed a repository or custodian under KRS 423.380 (8) or KRS 423.455(5), as applicable. The contract shall:

(1) Enable the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public to comply with the retention requirements of Section 1 of this administrative regulation even if the contract is terminated; or

(2) Provide that the information will be transferred to the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public if the contract is terminated.

(c) Lost, Stolen or Improperly Accessed Journal.

(1) A notary public is responsible for the security of the notary public's journal and may not allow another individual to use the journal to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the journal and shall not allow access to the notary public's journal, except:

(i) When requested by the Secretary of State or a law enforcement officer;

(ii) When required by court order or subpoena; or

(iii) Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in 30 KAR 8:050, Section 6.

(2) A notary public shall promptly notify the Secretary of State of a lost or stolen journal upon discovering the journal is lost or stolen.

(d) Disposition of Notarial Records upon Termination of Commission or Registration. Upon the revocation, resignation, termination or suspension of the commission of the notary public or the revocation, resignation, termination or suspension of the registration of the notary public to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, the notary public shall retain the journal in accordance with the provisions of Section 1 of this regulation.

Section 7. Notary Discipline

(a) Prohibited Conduct. Failure to comply with a provision of KRS 423.395 may result in the denial, refusal to renew, revocation, suspension or conditioning of a notary commission and may result in disciplinary action.

(b) Conviction, Finding or Admission. Denial, refusal to renew, revocation, suspension or conditioning of a notary commission shall result upon notification to the Secretary of State of:

(1) A conviction of felony or crime involving fraud, dishonesty or deceit;

(2) A finding against, or admission of liability by, the notary public in any legal proceeding or disciplinary action alleging fraud, dishonesty or deceit by the notary; or

(3) A judicial determination of liability in a suit for fraud, misrepresentation or for failure to discharge the duties of a notary public.

(c) A notary public shall promptly notify the Secretary of State, in writing, of a conviction, finding, admission of liability, or judicial determination of liability as defined in this section.

(d) Complaint Against a Notary Public. A person that knows of a violation of Section 1 or 2 may file a complaint against a notary public with the Secretary of State. A complaint shall be in writing, dated, and signed by the person making the complaint. A complaint that does not comply with the requirements of this

section will not be filed, responded to or acted upon by the Secretary of State.

(e) Any condition, restriction, suspension or revocation of a notary commission will automatically have the same effect on the electronic or online registration the notary public holds.

ALISON LUNDERGAN GRIMES, Secretary of State

APPROVED BY AGENCY: December 30, 2019

FILED WITH LRC: December 30, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2020, at 9:00 a.m. EST, at Office of the Secretary of State. 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. This 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 March 31, 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: Michael Wilson, Director of Business and Deputy general Counsel, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687; email sos.secretary@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions under which notary public officers may be approved by the Office of the Secretary of State. Additionally, it establishes procedures for electronic and online notary applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for approving notary public officers and electronic and online notary publics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Office of the Secretary of State to fulfill its duties under KRS 423, this administrative regulation is necessary to establish the procedures for approving notary public applications and registrations for electronic and online notaries public.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for approving notary public applications and registrations for electronic and online notaries public.

(2) N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects individual notaries public and those who voluntarily apply to be electronic and online notaries public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals identified in question (3) will have to familiarize themselves with this administrative regulation.

(b) In complying with this administrative regulation, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur minimal costs in order to submit an application and/or registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals identified in question (3) will obtain the rights of a notary public and/or electronic and online notary public.

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

(a) Initially: The application for notary public costs $10; registration for electronic or online costs $10.

(b) On a continuing basis: There is no cost to implement this administrative regulation at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source funding at this time since there is no cost to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: A fee for registration as an electronic and/or remote (online) notary is established at $10; additional funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees for notary public applications is unchanged; fees for registration for electronic or online notary public is $10.

(9) TIERING: Is tiering applied? 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 administrative regulation will impact the Office of the Secretary of State and county clerks offices.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS Chapter 423.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate additional fees for the Office of Secretary of State of $10 per electronic notary registration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate additional fees for the Office of Secretary of State of $10 per electronic notary registration.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

COMPILER'S NOTE: 30 KAR 8:005 & E were originally filed on December 30, 2019, subsequently withdrawn, and were refiled on January 3, 2020. This version of 30 KAR 8:005 was filed by the agency on January 3, 2020.

SECRETARY OF STATE
(New Administrative Regulation)

30 KAR 8:005. Notary Public applications and electronic and online registrations.

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.355, 423.390, 423.395, 423.415, 423.455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415, KRS 423.390, 423.415, and 423.455 authorize the Secretary of State to promulgate administrative regulations to implement KRS 423.415 to 423.455. This emergency administrative regulation establishes definitions, prescribes the process of granting, renewing, conditioning or denying a notary commission, establishes standards for the performance of notarial acts with respect to electronic records, establishes standards for the performance of online notarial acts, establishes standards for the retention of records and by notaries public authorized to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, and prescribes the manner of performing notarial acts for tangible records.

Section 1. Definitions. Words and terms defined in KRS 423.300 shall have the same meaning in this chapter. For the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

(a) "Digital Certificate" means an electronic record, issued by a third party certificate authority, which certifies the ownership of a public key, rendering an electronic document as tamper-evident.

(b) "Member of the notary public's immediate family" means a spouse, former spouse, a grandparent, a grandchild, a parent, a child, a stepchild or any other person living in the same household.

(c) "Online notarial act" means an electronic notarization performed for a remotely located individual facilitated by communication technology.

(d) "Notary technology" means an electronic device or process that allows a notary public to perform notarial acts with regard to electronic documents with or without the use of communication technology.

Section 2. Notary Public Application, Approval or Denial of Application, Voluntary Termination and Required Notice of Change of Information.

(a) Application. An application for a commission as a notary public shall be submitted on a form provided for that purpose by the Office of the Secretary of State or submitted on an electronic portal established by the Office of the Secretary of State for that purpose. A person who executes an application for filing with the Secretary of State shall be deemed to have declared under penalty of perjury that to the person's knowledge, the contents of the application are true. Every application for a notarial commission must include:

(1) The full legal name of the applicant;

(2) The email address of the applicant;

(3) A telephone number for the applicant;

(4) The signature of the applicant;

(5) The county for which the application is being made;

(6) The physical and mailing address within the county of application where the applicant resides or is employed;

(7) A statement of whether the applicant has previously held a notary commission, the name under which the applicant was previously commissioned and the date at which the most recent commission expired;

(8) A statement that the applicant is at least eighteen years of age;

(9) A statement that the applicant is a citizen or permanent legal resident of the United States;

(10) A statement that the applicant is able to read and write English;

(11) A statement identifying the surety provider from which the applicant intends to obtain surety;

(12) A statement that the applicant is not disqualified from becoming a notary public under the provision of KRS Chapter 423 or this chapter;

(13) A statement that the applicant is not disqualified for any reason under Section 2(2)(a) - (c); and

(14) Payment of the required fee.

(b) Approval or Denial of Application.

(1) Approval of Application. If the applicant has complied with the provisions of KRS Chapter 423 and this chapter, the application shall be approved. A notary commission is effective as of the date of entry of that commission in the database of notary publics on the website of the Secretary of State.

(2) Disapproval of Application. The Secretary of State may disapprove the application for the following reasons:

(i) The notary public's failure to comply with KRS Chapter 423 or the provisions of this chapter or the existence of a pending inquiry regarding the notary public's failure to comply with KRS Chapter 423 and this chapter;

(ii) Any information required under this administrative regulation is missing, inaccurate, incomplete or cannot be independently verified;

(iii) A fraudulent, dishonest or deceitful misstatement or omission of fact in the submitted application;

(iv) A finding against, or admission of liability by the applicant in any legal proceeding or disciplinary action based on the applicant's fraud, dishonesty, or deceit;

(v) The denial, refusal to renew, revocation, or suspension of an applicant's notary commission or registration in another state; or

(vi) Failure of the applicant to maintain an assurance.

(3) If the application or registration is disapproved, the Secretary of State will
state the reasons for the disapproval.

(c) Voluntary Termination of Notary Commission. A notary public may terminate a notary commission by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose. Submission of a notification of termination of a notary commission automatically terminates any notary registration.

(d) Change of Information. A notary public must notify the Office of the Secretary of State, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602, of any change of the following information during the period of the notary's commission, within ten days of the change, on a form promulgated by the Office of the Secretary of State for that purpose or on any electronic portal created by the Office of the Secretary of State for that purpose:

(i) A change in the mailing, physical or electronic mail address of the notary public;

(ii) A change in the county of residence of the notary public;

(iii) A change in the legal name of the notary public;

(iv) A change in the notary public's signature;

(v) A change in the notary public's electronic signature, if any; and

(vi) A change in the notary technology used by the notary public.

Section 3. Registration; Electronic and Online notarization.

(a) Authority to perform electronic and online notarial acts.

(1) Electronic notarial acts. An individual is authorized to perform notarial acts with respect to electronic records by:

(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010 and KAR 8:005 Section 2;

(ii) Registering with the Secretary of State under Section 2 of

this administrative regulation to perform electronic notarial acts; and

(iii) Receiving written authorization to perform electronic notarial acts from the Secretary of State under Section 3 of this administrative regulation.

(2) Online notarial acts. An individual is authorized to perform online notarial acts by:

(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010;

(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform online notarial acts; and

(iii) Receiving written authorization to perform online notarial acts from the Secretary of State under Section 3 of this administrative regulation.

(3) An individual who is authorized to perform online notarial acts under this section is also authorized to perform electronic notarial acts.

(b) Registration procedures.

(1) Registration format. Registration under this section shall be by electronic registration to the Secretary of State pursuant to KRS 423.390 and shall include the following information:

(i) The individual's full legal name;

(ii) The county in which the individual resides or has his or her place of employment or practice in this Commonwealth;

(iii) The registrant's date of birth;

(iv) The registrant's notary identification number and the expiration date of the registrant's notary commission;

(v) The electronic mail address, physical and mailing address where the registrant resides or is employed;

(vi) An indication of whether the individual is registering to perform electronic notarial acts or online notarial acts, or both;

(vii) A description of the notary technology that the individual intends to use to perform electronic notarial acts and/or online notarial acts, including the technologies or devices to maintain the journal required under KRS 423.380 and to render electronic records tamper-evident after a notarial act is completed;

(viii) A copy of the applicant's electronic signature, the digital certificate required under 30 KAR 8:005 Section 4 the official stamp, if any, along with any necessary instructions or techniques supplied by a vendor or notary that allows the signature and stamp to be read and authenticated, in a file format acceptable to the Secretary of State;

(ix) The name, address, and Web site URL of any vendors or other persons that will directly supply the notary public with technology that the notary public intends to use;

(x) A statement of whether the notary technology provider has registered with the Secretary of State;

(xi) A copy of any necessary instructions or techniques supplied by a vendor that allow the notary to conduct identity proofing and credential analysis;

(xii) An explanation of the methods or technology by which the notary will maintain and store the journal required by KRS 423.380;

(xiii) A statement that the technologies or devices named in the registration are compliant with KRS Chapter 423 and with this chapter;

(xiv) The county, book and page where the notary's surety bond is recorded;

(xv) A disclosure of any convictions, professional license or commission revocations, professional disciplinary actions or other disqualifying actions or proceedings taken under the laws of any state against the notary public.

(2) Submission of registration form. The registration must be submitted electronically to Secretary of State as provided by information posted on the Secretary of State's Web site at https://sos.ky.gov/.

(3) Use of additional vendors. If, during the term of a notary public's commission, the notary public intends to use the technologies of another vendor or person than those identified in Section (1)(i) of this section, then an additional notification identifying such other vendors or other persons must be submitted to the Secretary of State as provided in this section and in accordance with the manner established by the Secretary of State as posted on the Secretary of State's Web site at https://sos.ky.gov/.

(c) Approval or disapproval by the Secretary of State.

(1) Approval of registration. If the provider of the technology identified by the notary public in the registration required under Section 2 of this administrative regulation has registered with the Secretary of State, and the registrant has complied with the provisions of KRS Chapter 423 and this chapter, the registration to perform notarial acts with respect to electronic records shall be approved. A registration is effective as of the date of entry of that registration in the database of the Secretary of State.

(2) Disapproval of registration. The Secretary of State may disapprove the registration and reject the notary public's registration for the following reasons:

(i) The notary public's failure to comply with KRS Chapter 423 or the provisions of this chapter or a pending inquiry regarding the notary public's failure to comply with KRS Chapter 423 and this chapter;

(ii) Any information required under Section 2 of this administrative regulation is missing, inaccurate, or incomplete;

(iii) A fraudulent, dishonest, or deceitful misstatement or omission in the submitted registration;

(iv) A finding against, or admission of liability by, the registrant in any legal proceeding or disciplinary action based on the registrant's fraud, dishonesty, or deceit;

(v) Denial, refusal to renew, revocation, or suspension of a notary commission or registration in another state;

(vi) Failure of the notary to maintain an assurance; or

(vii) The provider of the technology identified by the notary public has not registered with the Secretary of State.

(3) If the notary public's registration is disapproved, the Secretary of State will state the reasons for the disapproval.

(d) Termination of electronic registration. A notary public may terminate an electronic registration by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose. Termination of a notary public's electronic registration does not terminate a notary public's commission.

(e) Renewal of commission. The renewal of the commission of a notary public who has previously registered to perform notarial acts with regard to electronic records or online notarizations under Section 1 of this administrative regulation constitutes renewal of the notary public's registration without the necessity of submitting another registration under this administrative regulation.

(f) Updated technology. Nothing herein shall be construed to prohibit a notary public from receiving, installing, or using a hardware or software update to the technologies that the notary public identified under Section 2 of this administrative regulation if the hardware or software update does not result in technologies that are materially different from the technologies that the notary public identified.

Section 4. Standards for notarization of electronic documents.

(a) Tamper-evident technology requirements. A notary public must select one or more tamper-evident technologies to perform notarizations with regard to electronic records. No person may require a notary public to use a technology that the notary public has not selected. The tamper-evident technology must consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology. A notary public must attach or logically associate the notary public's electronic signature and official stamp, if any, to an electronic record that is the subject of a notarial act by use of the digital certificate. A notary public may not perform an electronic notarization if the digital certificate:

(1) Has expired;

(2) Has been revoked or terminated by the issuing or registering authority;

(3) Is invalid; or

(4) Is incapable of authentication.

(b) Requirements of official stamp.

(1) A notary public is not required to use an official stamp when performing notarial acts with respect to electronic records.

(2) A notary public who uses an official stamp must use the same unique official stamp for all notarial acts with respect to electronic records that are performed for an individual that is not remotely located. An official stamp under this section is an official seal of office of the notary public for all purposes. An official stamp must conform to the following requirements:

(i) Required information. An official stamp shall substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public's commission number, and the commission expiration date.

(ii) Format and size. When affixed to an electronic record, an official stamp must be clear, legible, and photographically reproducible. An official stamp is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing notarial acts with respect to electronic records, the certificate of the notarial act on the electronic record must:

(i) Contain the name of the notary public as it appears on the notary public's commission;

(ii) Indicate the title "Notary Public" for any notarial act with respect to electronic records; and

(iii) Indicate the notary public's commission number and the commission expiration date.

(c) Use of electronic signature and stamping device. A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the notary signature and stamping device and shall not disclose any access information used to affix the notary public's electronic signature or official stamp to electronic records, except:

(1) When requested by the Secretary of State or a law enforcement officer;

(2) When required by court order or subpoena; or

(3) Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in 30 KAR 8:005, Section 5(g).

(d) Protection against theft, alteration or misuse.

(1) A notary public may not allow any other individual to alter or use his or her electronic signature, notary technology, official stamp or stamping device to perform a notarial act.

(2) Upon resignation, revocation, or expiration of the notary's commission, the notary public's notary technology and electronic stamping device (including any coding, disk, digital certificate, card, software, or password that enables the notary public to attach or logically associate the notary's electronic signature or official stamp to an electronic record) must be destroyed or disabled to prohibit its use by any other person. A former notary public whose commission terminated for a reason other than revocation or denial of renewal is not required to destroy the notary public's notary technology or electronic stamping device if the former notary public is recommissioned as a notary public within thirty days after the termination of the notary public's former commission.

(3) A notary public shall promptly notify the Secretary of State on actual knowledge of the theft or vandalism of the notary public's notary technology or electronic stamping device. A notary public shall promptly notify the Secretary of State on actual knowledge of the unauthorized use by another person of the notary public's electronic signature, notary technology or electronic stamping device.

(e) Tangible copies of an electronic record. A notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record if the notary has taken reasonable steps to confirm the accuracy of that certification.

Section 5. Standards for online notarial acts.

(a) Notarial acts with respect to electronic records. In performing online notarial acts with respect to electronic records, an online notary public must comply with the requirements for electronic notarization as provided in 30 KAR 8:005 Section 3.

(b) Requirements of official stamp.

(1) A notary public is not required to use an official stamp when performing online notarizations.

(2) A notary public who uses an official stamp must use the same unique official stamp for all notarizations involving online notarial acts. An official stamp under this section is an official seal of office of the notary public for all purposes. An official stamp must conform to the following requirements:

(i) Required information. An official stamp shall substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public's commission number, and the commission expiration date.

(ii) Online notarial acts. If an online notary public uses an official stamp to perform online notarial acts, the official stamp must contains the words "Online Notary Public" in lieu of the words "Notary Public." A stamp that contains the words "Online Notary Public" may only be used to perform notarizations with regard to remotely located individuals.

(iii) Format and size. When affixed to an electronic record, an official stamp must be clear, legible, and photographically reproducible. An official stamp is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing online notarial acts the certificate must:

(i) Contain the name of the notary public as it appears on the notary public's commission;

(ii) Indicate the title "Online Notary Public" for any notarial act with respect to a remotely located individual; and

(iii) Indicate the notary public's commission number and the commission expiration date.

(c) Physical location. An online notary public shall be physically located in this Commonwealth at the time of the performance of the online notarization.

(d) Identity proofing. If an online notary public does not have personal knowledge or satisfactory evidence of the identity of a remotely located individual as defined in Section 5, the online notary public must reasonably verify the individual's identity through at least two different types of identity proofing processes or services. Those processes shall include remote presentation of an appropriate identification by the remotely located individual, credential analysis of that credential by a service or process that analyzes the person's identity credential, binds the individual's identity to the individual following a successful dynamic knowledge-based authentication assessment, and permits the notary to visually compare the identity credential and the individual. The analysis of the identity credential and the dynamic knowledge-based authentication assessment shall conform to the following requirements:

(1) Credential analysis. The analysis of an identity credential must use public or private data sources to confirm the validity of the identity credential that is the subject of remote presentation by a remotely located individual and shall, at a minimum:

(i) Use automated software processes to aid the online notary public in verifying the identity of each remotely located individual;

(ii) Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;

(iii) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and

(iv) Enable the online notary public to visually compare for consistency the information and photograph on the identity

credential and the remotely located individual as viewed by the online notary public in real time through communication technology.

(2) Dynamic knowledge-based authentication. A dynamic knowledge-based authentication assessment is successful if it meets the following requirements:

(i) The remotely located individual must answer a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;

(ii) Each question must have a minimum of five possible answer choices;

(iii) At least 80% of the questions must be answered correctly;

(iv) All questions must be answered within two minutes;

(v) If the remotely located individual fails the first attempt, the individual may attempt the authentication assessment one additional time within twenty-four (24) hours;

(vi) During the second authentication assessment, a minimum of forty (40) percent of the prior questions must be replaced;

(vii) If the remotely located individual fails the second authentication assessment, the individual is not allowed to attempt identity authentication with the same online notary public within twenty-four (24) hours of the second failed authentication assessment; and

(viii) The online notary public must not be able to see or record the questions or answers.

(e) Other methods of identity verification. An online notary public has satisfactory evidence of the identity of a remotely located individual if the online notary public has personal knowledge of the identity of the individual, or if the individual is identified by oath or affirmation of a credible witness, or if the online notary has reasonably verified the identity of the individual by use of a valid public key certificate, with the following requirements:

(1) Personal knowledge. An online notary public has personal knowledge of the identity of the individual appearing before the online notary public if the individual is personally known to the online notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) Credible witness. To be a credible witness, an individual must have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the online notarization. If the credible witness is a remotely located individual, then the online notary public must reasonably verify the credible witness's identity under Section 3 of this administrative regulation or have personal knowledge of the credible witness under subsection 1 of this section. A credible witness may be a remotely located individual if the online notary public, credible witness, and individual whose statement or signature is the subject of the online notarization can communicate by using communication technology.

(3) Public key certificate.

(i) The identity of the individual appearing before the online notary public may be verified by use of a valid public key certificate that meets the requirements of a digital certificate, as that term is defined in 30 KAR 8:005 Section 1; complies with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology; and is issued by a technology provider or digital certificate service registered with the Secretary of State pursuant to Section 7 of this regulation.

(ii) A public key certificate is not valid for identity verification if the public key certificate has expired, has been revoked or terminated by the issuing or registering authority, is invalid, or is incapable of authentication.

(f) Requirements for communication technology. The communication technology used by an online notary public in the performance of online notarizations must conform to the following requirements:

(1) Audio-video feeds. Communication technology must provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the online notary public and remotely located individual to see and speak with each other. The process must provide a means for the online notary public reasonably to confirm that a record before the online notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(2) Security measures. Communication technology must provide reasonable security measures to prevent unauthorized access to:

(i) The live transmission of the audio-visual feeds;

(ii) The methods used to perform the identify verification process under Sections 3 or 4 of this administrative regulation, as applicable; and

(iii) The record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(3) Work flow. If a remotely located individual must exit the workflow, the individual must restart the identify verification process under Sections 3 or 4 of this administrative regulation, as applicable, from the beginning.

(4) Recording. All notarial acts performed using communication technology must be electronically recorded. The recording shall contain a recitation that the notary has informed the individuals participating in the notarial act that it will be electronically recorded.

(g) Notary technology provider registration.

(1) A provider of technology used in the process of electronic or online notarization must register with Secretary of State in the manner directed by the Secretary of State and provide the following information:

(i) The legal name of the technology provider;

(ii) The mailing address of the technology provider;

(iii) The physical address of the technology provider;

(iv) A designated contact person for that provider;

(v) The phone number, physical address, and email address of the contact person;

(vi) The name of the technology provided;

(vii) The name of the provider or providers of the knowledge-based authentication, credential analysis, or digital certificate services, if different from the technology provider;

(viii) A description of the technology used and the manner in which it complies with KRS Chapter 423 and this chapter;

(ix) The process by which the technology provider verifies the identity of the notary public or digital certificate holder using the technology;

(x) A plan for the retention and disposition of records created, generated or retained in conjunction with the use of the technology, including, but not limited to, any electronic journal, recordings or records created or retained during an electronic or online notarization, in the event the technology provider no longer engages in the business of providing electronic or online notary technology; and

(xi) An authorized certification that the technology provided complies with KRS Chapter 423 and this chapter.

(2) A registration in compliance with this section is non-transferable and may not be conveyed to any other notary technology provider.

(h) Complaint Against a Notary Technology Provider.

(1) A written complaint may be made against a notary technology provider registered with the Office of the Secretary of State. A complaint that does not comply with the requirements of this section will not be filed, responded to, or acted upon by the Secretary of State.

(2) The Office of the Secretary of State may commence an investigation of a registered notary technology provider as a result of a complaint or upon its own initiative.

(3) An investigation under this section may include:

(i) An initial request for information from the accused provider;

(ii) A copy of the complaint forwarded to the registration provider; and

(iii) A request for supporting documentation and other sources of information.

(4) A provider shall provide true, accurate, and complete copies of all information requested by the Office of the Secretary of State.

(5) Failure of a provider to comply with an investigation directive may result in revocation of the provider's registration.

(6) A finding that the provider has failed to comply with the provisions of KRS Chapter 423 or this chapter may result in revocation of the provider's registration.

(i) Duties of Notary Technology Provider. A notary technology provider must:

(1) Respond to a request for information from the Office of the Secretary of State within the time directed. Any request for information will be sent to the addresses provided upon registration;

(2) Take reasonable steps to ensure that a notary public or digital certificate holder is able to use the technology provided in accordance with this chapter; and

(3) Suspend the use of any technology for any notary or digital certificate holder whose commission, registration, or digital certificate has expired, been revoked or been suspended.

Section 6. Electronic and Online Record Retention Requirements

(a) Record retention.

(1) A notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals using communication technology must maintain one or more journals in a permanent, tamper-evident electronic format to chronicle those notarizations.

(2) A journal entry shall be made contemporaneously with the performance of the notarial act and contain:

(i) The date and time of the notarial act;

(ii) A brief description of the record, if any and the type of notarial act;

(iii) The full name and address of each individual for whom a notarial act is performed;

(iv) A statement of how identification was established and a description of any identification credential presented including the type of credential and dates of issuance and expiration of the credential;

(v) The fee charged, if any; and

(vi) For a notarial act involving remotely located individuals using communication technology, an audio-visual recording (or a link thereto) of the performance of the notarial act that complies with KRS Chapter 423 and this chapter.

(3) A journal must be created and stored in a computer or other electronic storage device or process that protects the electronic journal and any audio-visual recording against unauthorized access by password or cryptographic process. A recording must be created in an industry-standard audio-visual file format and must not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature.

(4) An electronic journal must be retained for at least ten (10) years after the last notarial act chronicled in the journal. An audio-visual recording must be retained for at least ten (10) years after the recording is made.

(5) A journal entry shall not record an identification numbers assigned to an individual by a governmental agency or any biometric identifier.

(6) A notary public must take reasonable steps to ensure that a backup of the journal and audio-visual recording exists and is secure from unauthorized use.

(7) On the death or adjudication of incompetency of a current or former notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals, the online notary public's personal representative or guardian or any other person knowingly in possession of a journal or audio-visual recording must:

(i) Comply with the retention requirements of this subsection;

(ii) Transmit the journal and recording to one or more repositories under Section 2 of this administrative regulation; or

(iii) Transmit the journal and recording in an industry-standard readable data storage device to his/her notary technology provider.

(b) Repositories. A notary public that is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals, a guardian, conservator, or agent of such a notary public, or a personal representative of such a deceased online notary public may, by written contract, engage a third person to act as a repository to provide the storage required by Section 1 of this administrative regulation. A third person under contract under this section shall be deemed a repository or custodian under KRS 423.380(8) or KRS 423.455(5), as applicable. The contract shall:

(1) Enable the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public to comply with the retention requirements of Section 1 of this administrative regulation even if the contract is terminated; or

(2) Provide that the information will be transferred to the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public if the contract is terminated.

(c) Lost, Stolen or Improperly Accessed Journal.

(1) A notary public is responsible for the security of the notary public's journal and may not allow another individual to use the journal to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the journal and shall not allow access to the notary public's journal, except:

(i) When requested by the Secretary of State or a law enforcement officer;

(ii) When required by court order or subpoena; or

(iii) Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in 30 KAR 8:005, Section 5.

(2) A notary public shall promptly notify the Secretary of State of a lost or stolen journal upon discovering the journal is lost or stolen.

(d) Disposition of Notarial Records upon Termination of Commission or Registration. Upon the revocation, resignation, termination or suspension of the commission of the notary public or the revocation, resignation, termination or suspension of the registration of the notary public to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, the notary public shall retain the journal in accordance with the provisions of Section 1 of this regulation.

Section 7. Notary Discipline.

(a) Prohibited Conduct. Failure to comply with a provision of KRS 423.395 may result in the denial, refusal to renew, revocation, suspension or conditioning of a notary commission and may result in disciplinary action.

(b) Conviction, Finding or Admission. Denial, refusal to renew, revocation, suspension or conditioning of a notary commission shall result upon notification to the Secretary of State of:

(1) A conviction of felony or crime involving fraud, dishonesty or deceit;

(2) A finding against, or admission of liability by, the notary public in any legal proceeding or disciplinary action alleging fraud, dishonesty or deceit by the notary; or

(3) A judicial determination of liability in a suit for fraud, misrepresentation or for failure to discharge the duties of a notary public.

(c) A notary public shall promptly notify the Secretary of State, in writing, of a conviction, finding, admission of liability, or judicial determination of liability as defined in this section.

(d) Complaint Against a Notary Public. A person that knows of a violation of Section 1 or 2 may file a complaint against a notary public with the Secretary of State. A complaint shall be in writing, dated, and signed by the person making the complaint. A complaint that does not comply with the requirements of this section will not be filed, responded to or acted upon by the Secretary of State.

(e) Any condition, restriction, suspension or revocation of a notary commission will automatically have the same effect on the electronic or online registration the notary public holds.

ALISON LUNDERGAN GRIMES, Secretary of State
APPROVED BY AGENCY: December 30, 2019
FILED WITH LRC: January 3, 2020 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 30, 2020, at 9:00 a.m. EST, at Office of the Secretary of State. 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. This 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 March 31, 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: Michael Wilson, Director of Business and Deputy general Counsel, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687; email sos.secretary@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions under which notary public officers may be approved by the Office of the Secretary of State. Additionally, it establishes procedures for electronic and online notary applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for approving notary public officers and electronic and online notary publics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Office of the Secretary of State to fulfill its duties under KRS 423, this administrative regulation is necessary to establish the procedures for approving notary public applications and registrations for electronic and online notaries public.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for approving notary public applications and registrations for electronic and online notaries public.

(2) N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects individual notaries public and those who voluntarily apply to be electronic and online notaries public.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals identified in question (3) will have to familiarize themselves with this administrative regulation.

(b) In complying with this administrative regulation, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur minimal costs in order to submit an application and/or registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals identified in question (3) will obtain the rights of a notary public and/or electronic and online notary public.

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

(a) Initially: The application for notary public costs $10; registration for electronic or online costs $10.

(b) On a continuing basis: There is no cost to implement this administrative regulation at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source funding at this time since there is no cost to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: A fee for registration as an electronic and/or remote (online) notary is established at $10; additional funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees for notary public applications is unchanged; fees for registration for electronic or online notary public is $10.

(9) TIERING: Is tiering applied? 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 administrative regulation will impact the Office of the Secretary of State and county clerks offices.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS Chapter 423.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate additional fees for the Office of Secretary of State of $10 per electronic notary registration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate additional fees for the Office of Secretary of State of $10 per electronic notary registration.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to implement this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Board of Dentistry
(New Administrative Regulation)

201 KAR 8:590. Teledentistry.

RELATES TO: KRS 313.021(1)(c)

STATUTORY AUTHORITY: KRS 313.021(1)(c), KRS 313.060(8)(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.021(1)(c) authorizes the board to exercise all administrative

functions of the Commonwealth in the regulation of the profession of dentistry, and to promulgate administrative regulations to carry out the provisions of the chapter. KRS 313.060(8) and (9) require the board to promulgate administrative regulations to provide for the practice of teledentistry in the Commonwealth of Kentucky. This administrative regulation establishes requirements and procedures for the practice of teledentistry.

Section 1. Definition. "Teledentistry" means the use of electronic and digital communications to provide and deliver dentistry and dental hygiene-related information and services.

Section 2. Practice of Teledentistry.

(1) To deliver teledentistry services in Kentucky, one must hold a current, valid dental or dental hygiene license issued by the Board of Dentistry. The practice of dentistry occurs where the patient is located at the time teledentistry services are initiated.

(2) This administrative regulation shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not authorized by law. Licensees delivering teledentistry services shall comply with all rules of professional conduct and state and federal statutes relevant to dentistry and dental hygiene. Teledentistry encounters shall be held to the same standard of care as a traditional in-person patient encounter.

(3) A patient may be treated via teledentistry by:

(a) A Kentucky licensed dentist; or

(b) A Kentucky licensed dental hygienist who is supervised by, and has delegated authority from, a Kentucky licensed dentist.

(c) Any individual may provide any photography and/or digital imaging to a Kentucky licensed dentist or Kentucky licensed dental hygienist for the sole and limited purpose of screening, assessment and/or examination. Anyone providing such photography and/or digital imaging to a Kentucky licensed dentist or Kentucky licensed dental hygienist must follow the same standards required for the recording of such photography and/or digital imaging and are limited by KRS 313.010 (11).

(4) A licensee using teledentistry services in the provision of dental services to a patient shall take appropriate steps to establish the licensee-patient relationship and conduct all appropriate evaluations and history of the patient.

Section 3. Informed Consent. A licensee shall, to the extent possible:

(1) Confirm the identity of the requesting patient,

(2) Verify and authenticate the patient's health history;

(3) Disclose the licensee's identity, applicable credentials, and contact information, including a current phone number.

(4) Obtain an appropriate informed consent from the requesting patient after disclosures have been made regarding the delivery models and treatment methods and limitations, to include any special informed consents regarding the use of teledentistry services. At a minimum, the informed consent shall inform the patient or legal guardian and document acknowledgment of the risk and limitations of:

(a) The use of electronic and communications in the provision of care;

(b) The potential for breach of confidentiality, or inadvertent access, of protected health information using electronic and digital communication in the provision of care;

(c) The potential disruption of electronic and digital communication in the use of teledentistry;

(d) The types of activities permitted using teledentistry services;

(6) The patient or legal guardian's understanding that it is the role of the licensee to determine whether the condition being diagnosed or treated is appropriate for a teledentistry encounter;

(7) A requirement for explicit patient or legal guardian consent to forward patient-identifiable information to a third party; and

(8) The contact information for the Kentucky Board of Dentistry and a description of, or link to, the patient complaint process.

Section 4. Confidentiality. The licensee shall ensure that any electronic and digital communication used in the practice of teledentistry is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all other applicable laws, administrative regulations, and guidance. Confidentiality shall be maintained through appropriate processes, practices and technology, including the disposal of electronic and digital equipment and data.

Section 5. Dental Records.

(1) Any dental record made through teledentistry shall be held to the same record retention standards as a record made through a traditional in-person dental encounter.

(2) An informed consent obtained in connection with teledentistry services shall be filed in the patient's dental record.

(3) The patient record established during the use of teledentistry services shall be accessible to both the licensee and the patient or legal guardian, consistent with all established laws and administrative regulations governing patient healthcare records.

(4) The licensee shall document or record in the file:

(a) The patient's presenting problem;

(b) The licensee's chief concern;

(c) The patient's diagnosis;

(d) The patient's treatment plan; and

(e) A description of all services provided by teledentistry.

Section 6. Prescribing.

(1) The indication, appropriateness, and safety considerations for each prescription for medication, laboratory services, or dental laboratory services provided through the use of teledentistry services shall be evaluated by the licensee in accordance with applicable law and current standards of care, including those for appropriate documentation. A licensee's use of teledentistry carries the same professional accountability as a prescription issued in connection with an in-person encounter.

(2) A licensee who prescribes any kind of analgesic or pain medication as part of the provision of teledentistry services shall comply with all applicable KASPER requirements.

Section 7. Representation of Services. A licensee using teledentistry to deliver dental services or who practices teledentistry shall not:

(1) Directly or indirectly engage in false, misleading, or deceptive advertising of teledentistry services; or

(2) Allow fee-splitting for the use of teledentistry services.

JEFFREY O. ALLEN, Executive Director

APPROVED BY AGENCY: January 13, 2020

FILED WITH LRC: January 15, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this Amendment shall be held on Friday, March 27, 2020 at 10:00 a.m. Eastern Time at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed Amendment. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed Amendment. Written comments shall be accepted through March 31, 2020. Send written notification of intent to be heard at the public hearing, or written comments on the proposed Amendment to the contact person below.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the use of teledentistry.

(b) The necessity of this administrative regulation: KRS 313.021(1)(c) authorizes the board to exercise all administrative functions of the Commonwealth in the regulation of the profession of dentistry, and to promulgate administrative regulations to carry out the provisions of the chapter. KRS 313.060(8) and (9) require the board to promulgate administrative regulations to provide for the practice of teledentistry in the Commonwealth of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for the practice of teledentistry in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for teledentistry in compliance with KRS 313.060.

(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: 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: This regulation will primarily affect the approximately three thousand prescribing dentists licensed in Kentucky, as well as those licensed dental hygienists under the authority of a licensed dentist. Patients who receive teledentistry services may also be affected.

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

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each licensee, if providing teledentistry services, will be required to provide such services in accordance with applicable law and administrative regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs will be accrued as a result of the new administrative regulation, other than set-up costs for teledentistry itself, which may include security measures as a result of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The administrative regulation will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Not applicable.

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

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

(9) TIERING: Is tiering applied? No; this administrative regulation impacts all similarly situated practitioners equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.021(1)(c), KRS 313.060(8) and (9)

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

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

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

(c) How much will it cost to administer this program for the first year? No cost.

(d) How much will it cost to administer this program for subsequent years? No cost.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(Repealer)

302 KAR 10:011. Repeal of 302 KAR 10:010, 302 KAR 10:020, 302 KAR 10:030, 302 KAR 10:040, 302 KAR 10:050, 302 KAR 10:060, 302 KAR 10:070, 302 KAR 10:080, and 302 KAR 10:090.

RELATES TO: KRS Chapter 260

STATUTORY AUTHORITY: KRS 260.540, 260.550, 260.560, 260.570, 260.580, 260.600, 260.610, 260.620, 260.630, 260.640, 260.650

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.540, 260.550, 260.560, 260.570, 260.580, 260.600, 260.610, 260.620, 260.630, 260.640, and 260.650 collectively authorizes the Kentucky Department of agriculture to establish and determine the rules and administrative regulations for egg marketing in Kentucky. This administrative regulation repeals 302 KAR 10:010, 302 KAR 10:020, 302 KAR 10:030, 302 KAR 10:040, 302 KAR 10:050, 302 KAR 10:060, 302 KAR 10:070, 302 KAR 10:080, and 302 KAR 10:090 because the KDA is adopting the USDA grading manual and consolidating other filings.

Section 1. The following administrative regulations are hereby repealed:

(1) 302 KAR 10:010, Definitions;

(2) 302 KAR 10:020, Inedible eggs;

(3) 302 KAR 10:030, Sampling;

(4) 302 KAR 10:040, License refusal, revocation or suspension;

(5) 302 KAR 10:050, Appeal procedure;

(6) 302 KAR 10:060, Consumer grades;

(7) 302 KAR 10:070, Consumer grade quality standards;

(8) 302 KAR 10:080, Shell, albumen and yolk specifications; and

(9) 302 KAR 10:090, Unclassified eggs.

RYAN F. QUARLES, Commissioner
APPROVED BY AGENCY: January 13, 2020
FILED WITH LRC: January 14, 2020 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2020 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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) 330-6360, 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 unneeded egg marketing regulations.
(b) The necessity of this administrative regulation: This regulation repeals unneeded egg marketing regulations, leaving only the ones necessary for grading.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260 commands the KDA to establish administrative regulations for an egg marketing program
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making rules clear for egg marketing 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 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: The Kentucky Department of Agriculture, and egg sellers 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: Entities will be required to follow the instructions in the remaining applicable regulations.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Fees are not included in this repealer.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.
(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: No costs are associated with this filing.
(b) On a continuing basis: No costs are associated with this filing.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated by participants in other regulations.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No costs are associated with this filing.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No costs are associated with this filing.
(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Contact Person: Clint Quarles, Staff Attorney
(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture shall be affected by this administrative regulation.
(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.540-.650
(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 income will be generated 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? No income will be generated by this repealer.
(c) How much will it cost to administer this program for the first year? 2019 program costs were $265,000 for staff for the egg program.
(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the egg program as a whole.
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:

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(New Administrative Regulation)

302 KAR 10:015. Egg grading and classification.

RELATES TO: KRS 260.620
STATUTORY AUTHORITY: KRS 260.620
NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.620 requires the department to establish standards governing eggs offered for sale as graded eggs. This administrative regulation establishes the specifications for the Kentucky consumer grades for shell eggs offered for sale in Kentucky.

Section 1. Shell eggs that are offered for sale in Kentucky as graded eggs shall be classified using the procedures found in the United State Department of Agriculture Egg Grading Manual.

Section 2. Unclassified Eggs.
(1) All unclassified eggs offered for sale in cartons must be

plainly marked "unclassified" on the carton with letters not less than one-fourth (1/4) inch in height.

(2) All unclassified eggs sold in bulk shall be plainly marked "unclassified" on a placard with letters not less than one-half (1/2) inch, in height.

(3) Unclassified eggs shall not consist of eggs unfit for human food in whole or in part, addled or moldy, containing black rot, white rot, or blood ring, adherent yolks, bloody whites, incubated be-yond the blood ring stage, or consisting to any extent of filthy decomposed substance.

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "USDA Egg Grading Manual" July 2019;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Egg Marketing Program, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 13, 2020

FILED WITH LRC: January 14, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2020 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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) 330-6360, 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 establishes egg grading and classification standards by incorporating a USDA standard.

(b) The necessity of this administrative regulation: This regulation establishes egg grading and classification standards by incorporating a USDA standard.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260 commands the KDA to establish administrative regulations for an egg marketing program, his regulation establishes egg grading and classification standards by incorporating a USDA standard.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making grading and classification clear for egg marketing 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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and egg sellers 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: Entities will be required to follow the instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed whatsoever, so little to no costs would be incurred.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities.

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

(a) Initially: No costs are associated with this filing.

(b) On a continuing basis: No costs are associated with this filing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated by participants established in statute.

(7) Provide an assessment of whether an 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 costs are associated with this filing.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No costs are associated with this filing.

(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 260.540-.650

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 income will be generated by this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No income will be generated by this filing.

(c) How much will it cost to administer this program for the first year? 2019 program costs were $265,000 for staff for the egg program.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the egg program as a whole.

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:

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(New Administrative Regulation)

302 KAR 10:025. License application, refusal, revocation, suspension, and appeals.

RELATES TO: KRS 260.580
STATUTORY AUTHORITY: KRS 260.580
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation prescribes the grounds for refusal, revocation, or suspension of a license and for placing licensee on a probationary period and the process for appeals.

Section 1. License Application. Persons requiring licensure under KRS 260.550 shall apply to the Kentucky Department of Agriculture using forms Application for Retail License to Handle Eggs or Application for Wholesale Egg Handler License.

Section 2. Refusal to Grant License. An application for a license may be denied where the applicant has previously failed to comply with the egg marketing law as provided in KRS Chapter 260 and there is reason to believe that he or she will continue to refuse to comply with the law.

Section 3. Suspension of Licenses. When a licensee is found by an inspector to have sold or have eggs on hand for sale which have not been graded or classified properly, or have sold or offered eggs for sale which have not been handled in such a manner as to maintain and preserve the quality and grade in which they were sold or offered for sale, or to have sold, offered or exposed for sale, or have in his or her possession for sale, for human consumption, eggs that are inedible, then the inspector may suspend the egg license of the licensee for a period not to exceed five (5) days. The inspector will notify the suspended party of his or her administrative appellate rights. The inspector will also immediately notify the department of his or her action.

Section 4. Probationary Period. When a licensee is found by an inspector to have sold or have eggs on hand for sale which have not been candled, or which are of a lower grade than labeled, or to have sold or offered for sale eggs which have not been handled in such a manner as to maintain and preserve the quality and grade in which they were sold or offered for sale, or have in his or her possession for sale, for human consumption, eggs that are inedible, then the inspector may place the licensee on probation for a period not to exceed ten (10) days. The inspector will notify the licensee of the probation and inform him that unless he or she takes necessary corrective measures within this or her period, then his or her license will be suspended or revoked. The inspector will immediately notify the department of his or her action.

Section 5. Revocation of Licenses. When a licensee is found by an inspector to have sold eggs or have eggs on hand for sale which have not been candled, or which are of a lower grade than labeled, or has failed to preserve the grade and quality of eggs for sale, or has sold, or offered or exposed for sale, or has in his or her possession for sale for human consumption eggs that are inedible; then the inspector may recommend to the department that the licensee's license be revoked.

Section 6. Appeals. All appeals of KDA determinations shall be done in accordance with KRS 13B.

Section 7. Incorporation by Reference.
(1) The following material is incorporated by reference:
(a) "Application for Retail License to Handle Eggs" July 2019; and
(b) "Application for Wholesale Egg Handler License" July 2019;
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Egg Marketing Program, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner
APPROVED BY AGENCY: January 13, 2020
FILED WITH LRC: January 14, 2030 at 3 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2020 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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) 330-6360, 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 establishes egg licensure rules.
(b) The necessity of this administrative regulation: This regulation establishes egg licensure rules. This is necessary to create the forms and procedures for participants.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260 commands the KDA to establish administrative regulations for an egg marketing program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making licensure procedures clear for egg marketing 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 is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, and egg sellers 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: Entities will be required to follow the instructions in the filing.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed whatsoever, so little to no costs would be incurred.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of

the KDA and clear guidance for entities.

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

(a) Initially: No costs are associated with this filing.

(b) On a continuing basis: No costs are associated with this filing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Fees generated by participants are established in statute.

(7) Provide an assessment of whether an 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 costs are associated with this filing. Fees generated by participants are established in statute.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No costs are associated with this filing. Fees generated by participants are established in statute.

(9) TIERING: Is tiering applied? (Explain why or why not) 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 260.540-.650

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 income will be generated by this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No income will be generated by this filing. Fees generated by participants are established in statute.

(c) How much will it cost to administer this program for the first year? 2019 program costs were $265,000 for staff for the egg program.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the egg program as a whole.

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

Revenues (+/-): Fees generated by participants are established in statute. Approximately $230,000 in revenue was collected last year.

Expenditures (+/-): 2019 program costs were $265,000 for staff for the egg program.

Other Explanation:

DEPARTMENT OF AGRICULTURE
Office of the Commissioner
(Repealer)

302 KAR 20:013. Repeal of 302 KAR 20:110, 302 KAR 20:115, 302 KAR 20:120, 302 KAR 20:130, 302 KAR 20:140, 302 KAR 20:180, 302 KAR 20:185, and 302 KAR 20:261.

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 20:110, 302 KAR 20:115, 302 KAR 20:120, 302 KAR 20:130, 302 KAR 20:140, 302 KAR 20:180, 302 KAR 20:185, and 302 KAR 20:261 because these regulations are migrating into the new chapter 22.

Section 1. The following administrative regulations hereby repealed:

(7) 302 KAR 20:110, Treatment of imported mares;

(8) 302 KAR 20:115, Vesicular stomatitis;

(9) 302 KAR 20:120, Treatment of imported stallions;

(10) 302 KAR 20:130, Treatment of contagious equine metritis;

(11) 302 KAR 20:140, Breeding shed for imported female equines;

(13) 302 KAR 20:180, Restrictions equine viral arteritis;

(14) 302 KAR 20:185, Equine infectious anemia positive horses; and

(15) 302 KAR 20:261, Approved Kentucky horse sale.

DR. ROBERT STOUT, State Veterinarian

APPROVED BY AGENCY: January 14, 2020

FILED WITH LRC: January 14, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 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 March 31, 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 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 Commissioner
(Repealer)

302 KAR 20:014. Repeal of 302 KAR 20:070.

RELATES TO: KRS CHAPTER 261

STATUTORY AUTHORITY: KRS 261

NECESSITY, FUNCTION, AND CONFORMITY: KRS chapter 261 authorizes the board to establish and determine the rules and administrative regulations for stockyards. This administrative regulation repeals 302 KAR 20:070 because this regulation is migrating into the new chapter 22.

Section 1. The following administrative regulation is hereby repealed:

(1) 302 KAR 20:070, Stockyards.

DR. ROBERT STOUT, Kentucky State Veterinarian

APPROVED BY AGENCY:

FILED WITH LRC: January 10, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 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 March 31, 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 the current stockyards administrative regulation 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 261 commands KDA and OSV to regulate stockyards. This regulation repeals the current stockyards administrative regulation within the OSV. They are replaced with 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, and stockyard owners.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: 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 22:050. Stockyards.

RELATES TO: KRS Chapter 257, 261

STATUTORY AUTHORITY: KRS 257.020, 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.020(3) requires the Board of Agriculture to prevent, control, and eradicate any communicable disease of livestock. KRS 257.030(4) authorizes the board to promulgate administrative regulations necessary to administer any provision of KRS Chapter 257. This administrative regulation establishes operational procedures for all stockyards relative to disease control.

Section 1. General Requirements.

(1) All stockyards shall apply annually, on or before July 1st, to the Office of the State Veterinarian (OSV) for a license to operate in accordance with KRS 261, by submitting the form Application for Kentucky Stockyard Approval.

(2) All stockyards shall be maintained in a workable and acceptable sanitary condition. Stockyards shall be inspected as required by the OSV.

(3) After an occurrence of any infectious, contagious, parasitic, or communicable disease of livestock in a stockyard, exposed facilities capable of transmitting disease shall be cleaned and disinfected according to 9 C.F.R. 71.10, 71.11, and 71.12, and at the direction and under the supervision of the OSV.

(4) Livestock found to be infected and showing clinical or diagnostic symptoms of an infectious, contagious, parasitic, or communicable disease shall, upon recommendation of the market veterinarian or representative of the OSV, be quarantined in an isolated portion of the yards for treatment, additional diagnostic laboratory procedures, disposition to slaughter, or other disposition pursuant to accepted methods of disease prevention and control.

(5) All livestock originating from a quarantined herd or premises shall be sold only with specific written approval from the OSV, for immediate slaughter.

(6) A bill of sale or other document showing number of livestock, purchaser, and identifiers required shall be given to the purchaser and the entity hauling livestock away from the facility.

(7) It is the responsibility of the stockyard to document and identify livestock exiting the facility as if they are moving under 9 C.F.R. 86.This shall include official identification for all dairy cattle of any age, and all sexually intact cattle over eighteen (18) months of age.

(8) Stockyards shall submit to the OSV a Stockyards Multipurpose Form within seven (7) calendar days of a sale. Beginning January 1, 2021 the Multipurpose form or the contents therein shall be submitted to the OSV electronically as an excel or other importable format.

(9) The person operating a stockyard shall provide separate pens for isolating animals classed as reactors to brucellosis or any contagious, infectious, or communicable disease. The pens shall be permanently identified as isolation or quarantine pens and these words shall be spelled out on the pen gates. The pens shall be constructed so as to facilitate easy cleaning and disinfecting after each use. The pens shall have concrete floors and complete walls with no fences or gates to permit contact with adjacent animals. Any watering troughs or feed bunks in the isolation or quarantine pens shall be located so that no other livestock in the market can access them at any time. All diseased animals shall be yarded in the isolation or quarantine pens and shall be sold last. The animals shall be identified as reactors or diseased animals on the invoices of both the buyer and the seller. The isolation or quarantine pens shall not be used at any time except for known or suspected contagious, infectious, or communicable disease reactors, or diseased animals. Livestock from these pens shall move directly to a recognized slaughter establishment, or to any place that is requested and authorized by the OSV in writing. Temporary bangs, isolation, or quarantine pens may be used if necessary and if prior

approval for the use of the pens has been obtained from an agent of the OSV. Temporary pens shall be identified as isolation or quarantine pens as provided in this section.

(10) The owner operating a stockyard shall provide adequate space, utilities, hot water and assistance for the market veterinarian to carry out the provisions of this administrative regulation. All licensed Kentucky livestock markets shall provide the following requirements for the market's official market veterinarian. This space shall:

(a) Be constructed and equipped so as to be maintained at room temperature (normal working temperature) in both summer and winter (i.e., heaters and air conditioners);

(b) Contain a sink with hot and cold running water;

(c) Be equipped with a refrigerator in good working condition;

(d) Be constructed so that the market veterinarian shall have sufficient space and privacy to conduct the required tests and fill out the associated records and forms;

(e) Be constructed so that it can be kept clean easily and locked at all times if not in use;

(f) Contain a work counter and sufficient shelf space, cabinets with locks, and storage space to keep forms, ear tags, and other supplies as required by the official market veterinarian in carrying out his or her duties;

(g) Be supplied with adequate artificial light. The electrical wiring shall be adequate to carry at a minimum a centrifuge, electrical refrigerator, and cooling facility and have at least two (2) additional electrical outlets; and

(h) Be located so as to be convenient for the veterinarian and the public while conducting his or her duties as the official market veterinarian.

(9) The owner or operator shall furnish and maintain one (1) or more cattle chutes suitable for restraining animals for inspection of any infectious, contagious, or parasitic condition, testing, tagging, branding, and other procedures routinely required in providing livestock sanitary services and identification for movement at stockyards.

Section 2. A Stockyard Must Employ a Market Veterinarian.

(1) The owner or manager operating a stockyard shall arrange for an USDA accredited, Kentucky licensed veterinarian, approved by the State Veterinarian, to be available to carry out the provisions of this administrative regulation.

(a) A veterinarian seeking to be designated as an official market veterinarian shall make complete a form Responsibilities of the Market Veterinarian.

(b) The official market veterinarian shall be responsible to replace themself with another veterinarian, approved by the State Veterinarian, if he or she finds it necessary to be absent from the market.

(c) The failure or neglect to properly perform any of the responsibilities and duties of the official market veterinarian shall be cause for termination.

(d) The stockyard shall not conduct a sale without an approved official market veterinarian.

Section 3. Veterinary Compensation. The fees shall be deducted from the seller's check or added to the buyer's check, depending upon conditions of sale, and shall be paid to the market veterinarian. Any deductions shall be printed on the sales documents.

Section 4. Veterinary Duties. The market veterinarian shall perform the following described duties in cooperation with representatives of the department. The market veterinarian shall:

(1) Be available to inspect livestock to clarify the health status of the animals and to qualify the animals for interstate movement;

(2) Collect blood and tissue samples and submit samples to a state-federal approved laboratory to qualify animals for movement as required;

(3) Visually inspection of livestock for clinical signs of a contagious, infectious, or communicable disease prior to the sale;

(4) Report the presence of any animal showing symptoms suggestive of a reportable disease or any other disease that may cause animals to become infected or exposed to a communicable livestock disease;

(5) Forward copies of all forms to the Office of the State Veterinarian. All official forms, certificates, or documents shall be dated and signed by the agent of the market. An official document shall not be presigned by any veterinarian under any circumstance.

(6) Prevent the transmission of infectious agents to livestock.

(7) Shall not resign market duties without written notice to the sale company and the State Veterinarian's office at least ten (10) days prior to resignation.

Section 5. Records Required. The owner or operator shall maintain records of the seller and purchasers of all livestock for at least five (5) years. Additionally, the stockyard shall copy and maintain all movement, Certificate of Verternanry Inspection (CVI), Owner-Shipper Statement (OSS) or Official Identification (OID) materials that pertained to any sale or transaction, including animals that were returned to the consignor. These records shall be made available to OSV representatives for inspection upon request during regular business hours.

Section 6. Cattle and Bison General Requirements.

(1) Cattle and bison may only enter the premises of the stockyard with a valid CVI or an Owner-Shipper Statement.

(2) The stockyard shall scan or otherwise record the CVI or OSS at the time of unloading and prior to the sale.

(3) All sexually intact cattle or bison eighteen (18) months of age or older leaving the stockyards, regardless of change of ownership, and all dairy animals regardless of age shall have official identification.

(4) Any cattle or bison not receiving OID by owner designation as feeders shall be subject to an on farm inspection by the OSV.

Section 7. Swine Requirements. A qualifying stockyard must select designation as either an all class swine market, or a slaughter only market at the time of application.

(1) All class swine stockyards shall:

(a) Maintain well-constructed pens and swine handling facilities that are clean and in good repair;

(b) Provide pens surfaced with impervious material for holding and handling all swine;

(c) Provide satisfactory, well-lighted facilities for inspection and proper restraint;

(d) Handling and holding pens and alleys shall be cleaned and disinfected after being used by each lot of swine.

(e) Procedures for cleaning and disinfecting shall be performed according to 9 C.F.R. 71.10, 71.11, and 71.12.

(f) Maintain records of origin and destination for all swine entering market and grant federal and state inspectors access to the records. Identification as to farm where farrowed shall be maintained for all feeder pigs and breeding stock and all slaughter swine which may be diverted for purposes other than slaughter. Records shall be maintained for five (5) years;

(g) Place feeding and breeding swine in pens separate and apart from slaughter swine.

(h) All swine designated for slaughter shall be delivered directly to an approved slaughter establishment with no diversion en route. The stockyard shall record the name and information of the slaughter facility destination.

(i) All swine exiting the stockyard shall require official identification as required in 9 C.F.R. 71.19. The stockyard shall record the owner and premises of destination information.

(j) Not permit feeder pigs or breeding swine to remain in the market more than seventy-two (72) hours.

(2) Slaughter swine stockyards

(a) Swine moving interstate to the stockyard shall be identified in accordance with 9 C.F.R. Part 71.

(b) Slaughter swine stockyards shall maintain well-constructed pens and swine handling facilities that are clean and in good repair;

(c) Maintain records of origin and destination for all swine

entering market and grant federal and state inspectors access to the records. Records shall be maintained one (5) year;

(d) Isolate all swine suspected of being affected with or exposed to an infectious disease, promptly notify the state or federal agency, and hold the swine in isolation pending instructions on disposition; and

(e) Clean and disinfect holding and handling pens, alleys, and other facilities used in selling swine according to 9 C.F.R. 71.10, 71.11, and 71.12.

(f) Swine entering onto the stockyards premises shall be only for slaughter, and swine shall not be permitted to leave the stockyard premises for any purpose other than slaughter.

(g) All swine shall be delivered directly to an approved slaughter establishment with no diversion en route, except for swine designated as farm slaughter. The stockyard shall record the name and information of the slaughter facility destination.

(h) The number of swine purchased for farm slaughter for family consumption only shall not exceed six (6) head of animals per premises within twelve (12) months.

(i) Farm slaughter swine shall not be commingled with other swine on the purchaser's premises.

(j) The purchaser of farm slaughter swine shall document slaughter of animals within seven (7) days of purchase. This record shall be made available to the OSV upon request.

(k) All swine exiting the stockyard shall require official identification as required in 9 C.F.R. 71.19. The stockyard shall record the owner and premises of destination information.

Section 8. Sheep and Goat Requirements.

(1) All sheep and goats shall be required to be tagged with an Official Scrapie Tag prior to arrival at the stockyards facility.

(2) No official scrapie tags shall be affixed at the stockyard facility by any person, including the market veterinarian.

(3) All sheep or goats that are that show evidence of an infectious, contagious, communicable, or parasitic disease shall be moved only with permission of the OSV.

Section 9. Horse Requirements.

(1) All equine shall require a valid CVI and a negative Equine infectious anemia test prior to entering the stockyards premises.

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

(a) Application for Kentucky Stockyard Approval,

(b) Stockyards Multipurpose Form, and

(c) Responsibilities Of The Market Veterinarian and

(d) Owner-Shipper Statement.

(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: January 10, 2020

FILED WITH LRC: January 10, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 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 March 31, 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 establishes rules for operation of stockyards in the Commonwealth.

(b) The necessity of this administrative regulation: This regulation is necessary to prevent the transmission of communicable diseases in livestock.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 261vests authority in the Board of Agriculture to regulate stockyards and their operation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making rules clear for owners of stockyards and livestock what is expected for transactions in those marketplaces.

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

(a) How the amendment will change this existing administrative regulation: This filing is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This filing is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This filing is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This filing is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, State Veterinarian, and stockyards owners and transporters of livestock. Currently 36 stockyards and buying stations are licensed 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: Entities will be required to follow the individual regulatory instructions in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A twenty five (25) dollar application fee is required of each stockyard.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities. The entities will also have security against further spread of communicable diseases.

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

(a) Initially: Approximately 2 full time staff equivalents. Costs for postage and office materials, and other calculable costs is approximately $4,500.

(b) On a continuing basis: Approximately 2 full time staff equivalents. Costs for postage and office materials, and other calculable costs is approximately $4,500.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The fees collected and the KDA general fund.

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

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

(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 Chapter 261

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? $1,600 annually.

(c) How much will it cost to administer this program for the first year? This program will require approximately 2 full time staff equivalents. Costs for postage and office materials, and other calculable costs is approximately $4,500.

(d) How much will it cost to administer this program for subsequent years? The KDA expect to require approximately 2 full time staff equivalents. Costs for postage and office materials, and other calculable costs is approximately $4,500.

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

Revenues (+/-): $1,600

Expenditures (+/-): Approximately 2 full time staff equivalents. Costs for postage and office materials, and other calculable costs is approximately $4,500.

Other Explanation:

DEPARTMENT OF AGRICULTURE
Office of the State Veterinarian
(New Administrative Regulation)

302 KAR 22:130. Equine.

RELATES TO: KRS 257.020, 257.030, 257.080
STATUTORY AUTHORITY: KRS 257.550, KRS 257.552
NECESSITY, FUNCTION, AND CONFORMITY: HORSE

Section 1. Definitions.

(1) "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) "Animal health authority" means the person or entity holding the title of state veterinarian or chief livestock official in any particular state or region.

(3) "Book" or "booking" means the contracting or scheduling of a mare to breed to a stallion.

(4) "Breeding" or "bred" means the natural covering of a mare.

(5) "CEM" means contagious equine metritis.

(6) "CEM Infected stallion" means a stallion proven or believed to be a carrier of the CEM organism.

(7) "Certificate of Veterinary Inspection" or "CVI" means an official document approved by the chief animal health authority of the state of origin or by USDA APHIS VS to verify the completion of a veterinary inspection by a licensed and USDA accredited veterinarian.

(8) "Certificate of Veterinary Inspection Reconsignment Form" means an official document, on a form approved by the animal health authority of the state of origin, that is attached to a valid CVI for the movement of animals from a sale to the buyer's premises.

(9) "CF test" means a complement-fixation test on equine serum for the detection of specific antibodies to the contagious equine metritis bacterium.

(10) "Cover" means the act of breeding a stallion to a mare.

(11) "Directly" means moved in a means of conveyance, without stopping to unload while en route, except for stops of less than twenty four (24) hours to feed, water, or rest the animals being moved, and with no commingling of animals at such stops.

(12) "EAV" means equine arteritis virus, the organism which causes the disease equine viral arteritis.

(13) "EIA" means equine infectious anemia.

(14) "EVA" means equine viral arteritis which is a communicable disease in equines.

(15) "EVA Sero-negative" means a horse has reacted negatively to a blood test for EVA.

(16) "EVA Sero-positive" means a horse has demonstrated a positive reaction in serum neutralization with a titer of greater than one (1) to four (4) to a blood test for EVA.

(17) "EVA Vaccinated" or "vaccination" means an equine has been vaccinated with an approved EVA modified live virus vaccine and the vaccination status has been kept current in accordance with the manufacturer's recommendations.

(18) "Exhibition" means a fair, show, exposition, rodeo, competition, trail ride, or racing event; or any presentation that might result in a transfer of ownership; or any presentation for sale.

(19) "High risk mare" means a mare that is culture positive or complement-fixation (CF) positive after being bred to an CEM Infected stallion before stallion was removed from service and treated.

(20) "Interstate movement" means movement from one State into or through any other State.

(21) "Intrastate movement" means movement solely within the boundaries of the Commonwealth of Kentucky.

(22) "Kentucky approved veterinarian" or "KAV" means a licensed veterinarian who is accredited to do regulatory work by the USDA and who has physically demonstrated proper swabbing and sampling methods to a representative of the Office of the State Veterinarian.

(23) "Location identification (LID) number" means a nationally unique number issued by a State, Tribal, or Federal animal health authority to a location as determined by the State or Tribe in which it is issued. The LID number may be used in conjunction with a producer's own unique livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN).

(24) "Maiden mare" means a female equine over 731 days of age that has not been covered by a stallion.

(25) "Mare" means a female horse over 731 days of age.

(26) "Medium risk mare" means a mare that is CF negative and culture negative but bred to an CEM Infected stallion prior to treatment.

(27) "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.

(28) "National Uniform Eartagging System" or "NUES" means a numbering system for the identification of individual animals in the United States that provides a nationally unique identification number for each animal.

(29) "Office of State Veterinarian" or "OSV" means that section of the Kentucky Department of Agriculture in KRS 246.030.

(30) "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 must bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals must 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 must be tamper-resistant and have a high retention rate in the animal.

(31) "Official identification number" or "OID" means a nationally unique number that is permanently associated with an animal or group of animals and that adheres to one of the following systems:

(a) National Uniform Eartagging System (NUES);

(b) Animal identification number (AIN);

(c) Location-based number system (LID);

(d) Any other numbering system approved by the Administrator for the official identification of animals, including a group identification number;

(e) The animal's breed association tattoo registration number, or freeze brand number which uniquely identifies the animal, when accompanied by the registration documents; or

(f) Tattoo.

(32) "Owner" is defined by KRS 257.010(11) and means any person owning or leasing from another, or having in charge any equine.

(33) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

(34) "Premises identification number" or "PIN" means a nationally unique number assigned by a State, Tribal, or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, 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) "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.

(36) "Set of CEM swabs" means:

(a) For a female equine, a swab obtained from the clitoral sinus and clitoral fossa; and

(b) For an intact male equine, a swab obtained from the prepuce, the urethral sinus, and the fossa glandis, including the diverticulum of the fossa glandis.

(37) "Shedder" or "shedding" means an equine has been determined to have EAV in its body and is capable of transmitting the EAV to other equine.

(38) "Stallion" means a male horse, other than a gelding, over 731 days of age.

(39) "USDA" means the United States Department of Agriculture.

(40) "USDA APHIS VS" means the USDA, Animal Plant and Health Inspection Service, Veterinary Services.

Section 2. Certificate of Veterinary Inspection.

(1) CVI Expiration Period.

(a) A CVI shall remain valid for thirty (30) days after date of issuance, for all purposes except intrastate exhibition.

(b) A CVI for intrastate exhibition shall remain valid for the duration of the EIA test certificate's validity, but in any event shall not remain valid for more than one (1) year from the date when the CVI was issued.

(2) A CVI shall contain the following information:

(a) Identification of each animal recorded on the certificate;

(b) An official identification (OID) for each equine;

(c) The species, breed, sex, and age of the equine;

(d) The name and address of the owner or agent shipping the animal;

(e) The location from which the animal is loaded for movement;

(f) The name and address of the person receiving the animal;

(g) The location at which the animal will be received;

(h) The purpose of the movement and the total number of animals;

(i) All blank spots for data are crossed out by the accredited Veterinarian prior to signing;

(j) The import permit or movement 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 (except if noted). The vaccinations and results of tests are as indicated on the certificate. To the best of my knowledge, the animals listed on this certificate meet the state of destination and federal interstate requirements."; and

(l) The signature, date of signature, and licensure number of the accredited veterinarian.

(3) Where the accredited veterinarian shall send a paper CVI.(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 photocopy) of the first page may be submitted in lieu of the first physical page.

(c) The second page shall physically accompany the animal being moved and be readily accessible during the movement.

(d) The third page shall be sent to the Animal health authority 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 a period of 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.

(g) Any equine listed on the CVI, but not moved, shall be struck through and initialed.

(4) Electronically submitted CVI.

(a) CVI 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) Animals moving with an electronically submitted CVI shall be accompanied by a paper copy or have the electronic material stored on a device that may be read immediately upon request.

(5) CVI Reconsignment Form. Sale animals purchased at a Kentucky sale venue may move to the buyer's destination with a CVI Reconsignment Form attached to the original CVI for the sale if the following conditions are met:

(a) The animal health authority in the state of destination agrees to accept a reconsigned CVI;

(b) The animal will reach its final destination within thirty (30) days from the date stated on the original CVI;

(c) The requirements of the state of destination, including required test results, have been met and denoted on the CVI Reconsignment Form; and

(d) The reconsigning veterinarian submits the Reconsignee Certificate and a copy of the original CVI to the animal health authority in the state of destination and to the OSV within seven (7) days of the date of reconsignment, and meets the other requirements set forth in section (3) above for paper submission or (4) for electronic submission.

Section 3. Movement Permit.

(1) A permit for interstate movement into Kentucky is only required during times of equine disease outbreaks, or from such areas where such an outbreak has occurred. Persons wishing to move equine interstate into Kentucky shall consult any applicable requirements as found on the Web site at www.kyagr.com. Instructions and a permit, if required, may be obtained on the Web site.

(2) Entry permit instructions may be obtained by calling the OSV at 502-573-0282, Monday through Friday, 8 a.m. EST to 4:30 p.m. EST.

(3) Required testing or vaccinations. All required tests and vaccinations shall be performed by one (1) of the following:

(a) A licensed and accredited veterinarian;

(b) A representative of the State Veterinarian; or

(c) A representative of the USDA.

(4) Required tests shall be conducted at no expense to the

Commonwealth of Kentucky.

(5) Required laboratory tests shall be conducted in a state-federal approved laboratory.

Section 4. Official Identification and Other Acceptable Identification. Methods of official identification. The official individual identification shall consist of a set of alphanumeric characters or physical characteristics that are uniquely associated with an individual equine as listed in this subsection:

(1) A written or graphic description of an equine that uniquely identifies that equine and includes all of the following information:

(a) Breed;

(b) Age;

(c) Color;

(d) Distinctive markings; and

(e) Gender and sexual status.

(2) An official breed association tattoo, tag, or photograph

(3) A microchip that complies with ISO 11784/11785;

(4) A non-ISO electronic identification injected to the equine on or before March 11, 2014;

(5) An RFID if all the following apply:

(a) The RFID uniquely identifies the animal;

(b) The RFID is attached to or implanted in the animal;

(c) The RFID is registered to a PIN or to a person; and

(d) Only one (1) RFID shall be placed on an animal.

Section 5. Premises of Origin Information.

(1) Premises of origin information shall be provided about premises from which the equines were loaded.

(2) The premises of origin information of the specific location the equines were loaded shall include:

(a) A PIN or LID issued by the USDA, OSV or the animal health authority in the state of origin or the physical address of the location or origin; and

(b) The equine owner at the time of movement, and that owner's address and contact information.

Section 6. Requirements for Interstate Movement into Kentucky.

(1) No equine entering Kentucky without having a valid CVI and either a Form VS 10-11, or an EIA test form verifying negative EIA from a laboratory approved by the USDA, within the past twelve (12) months; except when:

(a) The equine has a valid Equine Interstate Event Permit;

(b) The equine is an unweaned foal accompanied by their dam, the foal shall be exempt from the EIA test requirement or a VS 10-11;

(c) The equine is directly moving to a Kentucky veterinary facility; or

(d) The equine is directly moving to an APPROVED KENTUCKY HORSE SALE.

Section 7. Requirements for Movement within Kentucky.

(1) Equines moving intrastate for sale, racing, change of ownership, exhibition, or into a public stable, fairgrounds, or showgrounds shall meet the following requirements:

(a) CVI or Equine Interstate Event Permit.

1. Equines moving intrastate shall be accompanied by a valid CVI.

2. A CVI for change of ownership or sale shall be valid for thirty (30) days from the date of issuance.

3. A CVI for intrastate exhibition shall remain valid for the duration of the EIA negative test result certificate date, but shall exceed one (1) year from the date of CVI issuance.

4. An Equine Interstate Event Permit issued within the previous twelve (12) months shall be accepted in lieu of a CVI and EIA test report for exhibition purposes.

5. A CVI or an Equine Interstate Event Permit shall be deemed void upon change of ownership.

(b) Equine Infectious Anemia (EIA) test results.

1. Except for unweaned foals accompanied by their dam, equines shall be negative to an USDA official test for EIA within the previous twelve (12) months.

2. A copy of Form VS 10-11 or an EIA test form verifying a negative EIA test result from a laboratory approved by the USDA shall accompany the CVI. The laboratory accession number and date of test shall be recorded on the CVI.

3. Unweaned foals accompanied by their dam shall be exempt from EIA test requirements.

(2) Equine exempt from intrastate movement requirements:

(a) Equines moving farm-to-farm with no change of ownership or to a veterinary facility shall not be required to obtain a CVI or negative EIA test result.

(b) Equines moving directly to an APPROVED KENTUCKY HORSE SALE shall meet the requirements established in section 17 of this administrative regulation.

Section 8. Requirements for Movement for Export from Kentucky. Equines being moved for export 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 9. Requirements for Interstate Movement through Kentucky. Equines being moved interstate 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.

Section 10. Extended Equine CVI Program.

(1) The Extended Equine CVI shall be accepted from equines from any states participating in a Memorandum of Agreement with Kentucky. The participating states are four at the link: https://www.globalvetlink.com/eecvi/.

(2) The Extended Equine CVI shall be issued through Global Vet Link, and shall be valid for six (6) months from date of issue for out-of-state equines.

(3) The Extended Equine CVI shall be valid until one (1) year after date of issue for intrastate movement for exhibition or until the expiration of the EIA test, whichever occurs first.

(4) Each equine shall have a permanent individual animal identification in the form of a unique identifier, lip tattoo, brand, electronic implant, or digital photograph, which shall be referenced on the issued permit.

(5) An accurate event itinerary log shall be in the owner or transporter's possession documenting each equine movement during the period of permit.

Section 11. Treatment of Imported Mares.

(1) A mare imported into Kentucky for breeding from a country known to be affected by Contagious Equine Metritis (CEM) shall be tested and treated for CEM by or under the direct supervision of a KAV who is approved by the Kentucky Department of Agriculture according to the procedures established in this section.

(a) Prior to the mare's arrival, the premises shall be inspected by a representative of the OSV in accordance with USDA Veterinary Services Guidance 13406.1 and an Agreement to Import form shall be completed at the time of inspection and signed by the farm manager or authorized representative.

(b) Upon arrival, the mare shall be placed in quarantine until released by the OSV.

(c) Following arrival, the Kentucky approved veterinarian shall determine the mare's pregnancy status, review the prescribed testing and treatment schedule, and submit to the OSV the reported findings and acceptance, or required amendments to the testing schedule, based on the conditions of the mare by completing the Import Mare Pregnancy and Schedule form.

(d) During the course of the quarantine, the Kentucky approved veterinarian shall collect and submit for CEM culture three (3) sets of swabs from the mare. The sets of swabs shall be collected during a twelve (12) day period with at least of seventy-two (72) hours lapsing between each set being collected. Mares determined and reported to be non-pregnant shall have an additional swab collected from the endometrium or distal cervix to be included with

the third set of CEM swabs.

(e) Following the third set of CEM swabs being submitted for culture, the Kentucky approved veterinarian shall manually remove all organic debris from the clitoral fossa and sinuses. The sinuses shall then be flushed with an approved ceruminolytic agent until all remaining debris has been removed. The Kentucky approved veterinarian shall, for five (5) consecutive days, wash and clean (scrub), with a solution of not less than two (2) percent chlorhexidine in a detergent base, the external genitalia, vaginal vestibule, clitoral fossa, and clitoral sinuses. The clitoral fossa, clitoral sinuses, external genitalia, and vaginal vestibule shall be filled and covered with an antibiotic ointment that is effective against the CEM organism and is approved by USDA and the Kentucky State Veterinarian.

(f) After the procedures established in paragraphs (c) and (d) of this section have been satisfactorily completed and all three (3) of the swabs are reported to the OSV as testing negative for CEM bacterium, the completed CEM Worksheet shall be submitted and the imported mare may be released from quarantine by the OSV.

(g) Before an imported mare may be bred in Kentucky, a swab shall be collected from the endometrium and cultured negative for CEM. This swab may be included with any of the three (3) required sets of swabs, or for a pregnant mare, may be collected after foaling.

(h) An imported mare bred in Kentucky shall be prophylactically scrubbed and bred last of the group of mares bred during that session. The external genitalia of the covering stallion shall be cleansed, as defined in Section 12(2)(e) of this administrative regulation, after breeding an imported mare. The next three (3) mares bred to the stallion, after the imported mare, shall have a blood sample collected and submitted for CF testing fifteen (15) to twenty-five (25) days post-breeding. Included with the submission of the sample shall be the name of the imported mare that was bred prior to the mare being tested, and the name of the covering stallion, date, and time bred.

(i) The farm manager where the stallion is standing shall notify the owner or agent of the three (3) mares bred to the stallion, following an imported mare, that a post-breeding CF test is required.

(j) The farm manager where the stallion is standing shall contact the OSV and provide the name, breeding date, time, and location of the imported mare covered, and the name, breeding date, time, and location of the three (3) mares bred to the stallion following the imported mare.

(2) A CEM culture positive mare shall remain under quarantine and shall be treated as described in subsection (1) (d) and (g) of this administrative regulation. The mare shall have sets of swabs obtained, as described in subsection (1) (c) of this administrative regulation, no less than twenty-one (21) days after the last day of treatment. If all required specimens taken from the mare test negative for the CEM bacterium, then the mare may be released from quarantine.

(3) User fees shall be assessed for an equine import.

(a) 1. An import broker making application to import mares into Kentucky for completion of a CEM quarantine shall pay a fee for the processing, implementation, and monitoring of the quarantine.

2. If multiple destinations are declared for equine to be quarantined, each listed destination shall constitute a separate application.

(b) An application processing and premise inspection fee of $100 shall be assessed for each application received to import mares into Kentucky for completion of the CEM quarantine.

(c) Upon receipt of the mare(s) at the quarantine facility, the broker shall be assessed a fee of $120 per individual mare for the receipt, inspection, quarantine, and monitoring to establish the equine's disease status during the quarantine period.

(d) An import broker shall pay an additional fee for each shipment of mares which arrives at a Kentucky quarantine destination on weekends, state-recognized holidays, and between the hours of 5:01 p.m. and 6:59 a.m.

1. For weekends, and between the hours of 5:01 p.m. and 6:59 a.m., the assessed fee shall be sixty (60) dollars per hour with a minimum of two (2) hours, including the travel time of KDA employees.

2. For state-recognized holidays, the assessed fee shall be $120 per hour with a minimum of two (2) hours charged. The holiday fee shall apply to all mares received during the holiday period which runs from the close of business on the last scheduled work day preceding the holiday, through the start of business on the next scheduled work day following the holiday, including the travel time of KDA employees.

(e) The broker shall pay the assessed fees by check. The check shall be made payable to the Kentucky State Treasurer and mailed to the OSV within ninety-six (96) hours of receipt of the charges.

(f) Failure to comply with the user fee schedule may result in an application for importation to be delayed or denied.

Section 4. An imported mare shall be released from quarantine if:

1. The requirements of all sections of this administrative regulation have been completed;

2. The required specimens taken from the mare test negative for the CEM bacterium; and

3. No other evidence of CEM conditions, indication of possible CEM suppression, or other related medical issues were found.

Section 12. Treatment of Imported Stallions.

(1) A stallion imported into Kentucky from a country identified or classified by the USDA to be affected with Contagious Equine Metritis, and which imports into the United States and Kentucky via a breeding permit issued by USDA shall be quarantined by the OSV until the testing for CEM is complied with, and it is determined the stallion is free of the disease-causing organism.

(2) Stallions, other than those addressed in Subsection (1) of this administrative regulation, that are imported from any country outside the continental United States, its territories, possessions, or Canada shall, before breeding in Kentucky, be treated by or under the direct supervision of a KAV according to the procedures established in this section.

(a) While wearing disposable gloves and using disposable equipment, the Kentucky approved veterinarian shall collect one (1) set of CEM swabs from the stallion to be cultured for CEM.

(b) The stallion shall be bred to two (2) test mares that have been qualified as CEM-free. The test mares shall qualify as CEM-free if:

1. They test negative to a CF test; and

2. If three (3) sets of swabs taken from the mares during a twelve (12) day period, with at least of seventy-two (72) hours lapsing between each set being collected, are culture negative for the CEM bacterium.

(c) After being bred by the stallion, a set of CEM swabs shall be collected from the test mares on the third, sixth, and ninth days after breeding.

(d) The test mares shall have a CF test conducted fifteen (15) days after breeding.

(e) With the stallion in full erection, the Kentucky approved veterinarian shall, for five (5) consecutive days, wash and clean (scrub) with a solution of not less than two (2) percent chlorhexidine in a detergent base, the prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis. The external genitalia, the prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis, shall then be filled and covered with an antibiotic ointment that is effective against the CEM organism and which is approved by the USDA and the OSV.

(f) All tests and cultures required by this section shall be conducted at a laboratory approved by the USDA's National Veterinary Services Laboratory and the OSV. A list of approved laboratories may be found at http://www.aphis.usda.gov/animal health/lab info services/downloads/Approvedlabs CEM.pdf. If all required specimens taken from the test mares and stallion are test-negative and culture-negative for the CEM bacterium, then the stallion and the test mares may be released from quarantine.

(3) User fees shall be assessed for an equine import.

(a) An import broker making application to import a stallion into Kentucky for completion of a CEM quarantine shall pay a fee for the processing, implementation, and monitoring of the quarantine. If multiple destinations are declared for equines to be quarantined, each listed destination shall constitute a separate application.

(b) An application processing and premise inspection fee of $100 shall be assessed for each application received to import horses into Kentucky for completion of the prescribed CEM quarantine and testing.

(c) Upon receipt of the stallion at the quarantine facility the broker shall be assessed a fee of $260 per individual stallion for the receipt, inspection, quarantine, test breeding, and monitoring of the stallion and test mares to establish the animal's disease status during the quarantine period.

(d) An import broker shall pay an additional fee for each shipment of stallions which arrive at a Kentucky quarantine destination on weekends, state-recognized holidays, and between the hours of 5:01 p.m. and 6:59 a.m.

1. For weekends and between the hours of 5:01 p.m. and 6:59 a.m., the assessed fee shall be sixty (60) dollars per hour with a minimum of two (2) hours time charged including the travel time of OSV employees.

2. For state-recognized holidays, the assessed fee shall be $120 per hour with a minimum of two (2) hours of time charged. The holiday fee shall apply to all stallions received during the holiday period which runs from the close of business on the last scheduled work day preceding the holiday, through the start of business on the next scheduled work day following the holiday including the travel time of OSV employees.

(e) The broker shall pay the assessed fees by check. The check shall be made payable to the Kentucky State Treasurer and mailed to the OSV within ninety-six (96) hours of receipt of the charges.

(f) Failure to comply with the user fee schedule may result in an application for importation to be delayed or denied.

Section 13. Treatment of Contagious Equine Metritis. Treatment of CEM in stallions shall occur in accordance with the plan developed by OSV and the veterinarian for the stallion.

Section 14. Breeding Shed for Imported Female Equines.

(1) Maiden mares over 731 days of age at the time of importation from any country outside the continental United States, its territories, possessions, or Canada shall, before being bred in Kentucky, have two (2) sets of swabs testing negative for CEM bacterium with a minimum of seventy-two (72) hours lapsing between collecting the swabs. One (1) of the two (2) sets of swabs shall include a swab collected from the endometrium. Imported maiden mares bred in Kentucky shall be prophylactically scrubbed and bred last of any group of mares bred during that session. After the breeding, the external genitalia of the covering stallion shall be cleansed as defined in Section 12(2)(e of this administrative regulation.

(a) The next three (3) mares bred to the stallion, after the imported mare, shall have a blood sample collected and submitted for CF testing fifteen (15) to twenty-five (25) days postbreeding. Included with the submission of the sample shall be the name of the imported mare that was bred prior to the mare being tested, and the name of the covering stallion, date, and time bred.

(b) It shall be the responsibility of the farm where the stallion is standing to notify the owner or agent of the three (3) mares bred to the stallion, following an imported mare, that a postbreeding CF test is required.

(c) The farm where the stallion is standing shall contact the OSV, and provide the name, breeding date, time, and location of the imported mare covered, and the name, breeding date, time, and location of the three (3) mares bred to the stallion following the imported mare.

(2) Mares over 731 days of age imported from any country outside the continental United States, its territories, possessions, or Canada, that are not listed in the Code of Federal Regulations as being affected by CEM shall, before being bred in Kentucky, have two (2) negative sets of swabs with a minimum of seventy-two (72) hours lapsing between collecting the swabs. Prior to being bred, a swab shall be collected from the endometrium and tested negative for CEM. This swab may be included with either of the required sets, or for a pregnant mare, may be collected after foaling. Imported mares, addressed in this section, bred in Kentucky shall be prophylactically scrubbed and bred last of any group of mares bred during that session. The covering stallion shall be cleansed as defined in Section 1 of this administrative regulation after breeding.

(a) The next three (3) mares bred to the stallion, after the imported mare, shall have a blood sample collected and submitted for testing fifteen (15) to twenty-five (25) days postbreeding. Included with the submission of the sample shall be the name of the imported mare that was bred prior to the mare being tested, and the name of the covering stallion, date, and time bred.

(b) It shall be the responsibility of the farm where the stallion is standing to notify the owner or agent of the three (3) mares bred to the stallion, following an imported mare, that the postbreeding CF test is required.

(c) The farm where the stallion is standing shall contact the OSV and provide the name, breeding date, time, and location of the imported mare covered, and the name, breeding date, time, and location of the three (3) mares bred to the stallion following the imported mare.

(3) Mares, other than maidens, over 731 days of age imported into Kentucky for breeding from countries listed in the Code of Federal Regulations as being affected with CEM shall be treated in accordance with Section 11 of this administrative regulation.

Section 15. Equine Viral Arteritis in Thoroughbreds.

(1) EVA Shedding Stallions. A thoroughbred stallion known to be shedding EAV shall not be permitted to breed until the State Veterinarian determines that the stallion does not pose a threat of transmitting EAV. In making this determination, the State Veterinarian shall consider whether the requirements of paragraphs (b) and (c) of this section will be complied with by the farm on which the shedding stallion is located. The following restrictions shall apply to a shedding stallion that is permitted to breed:

(a) An owner or agent of a mare booking or seeking to book a mare to a shedding stallion shall be notified in writing by the owner or agent that the stallion is classified as an EVA shedder. A written copy of the booking confirmation shall be sent to the OSV;

(b) A shedding stallion shall be housed, handled, and bred in a facility isolated from a nonshedding stallion; and

(c) A shedding stallion shall be bred to a mare that:

1. Has been vaccinated against EVA at least twenty-one (21) days prior to breeding; or

2. Demonstrates an EVA titer from vaccination or exposure to EAV, if the serological EVA test to determine the mare is EVA EVA Sero positive was conducted no sooner than November 1 of the previous calendar year for the following breeding season.

(2) EVA Sero positive Nonshedding Stallions. The following restrictions shall apply to a nonshedding stallion that was previously classified as a shedding stallion:

(a) During the first breeding season following the stallion's classification as a nonshedder, the first five (5) EVA Sero negative mares covered by the stallion shall have a blood sample collected for an EVA test twenty-eight (28) days after breeding; and

(b) During the second breeding season, the stallion shall be bred to two (2) mares negative for EAV antibodies or have its semen collected and cultured for EAV. If the culture report and blood samples are negative for EAV, there shall not be restrictions placed on a future breeding season.

(3) A EVA Sero positive EVA vaccinated (arvac) stallion that did not have an EVA negative test prior to vaccination shall be eligible for breeding by complying with one (1) of the following:

(a) Semen shall be collected and cultured for EAV and culture shall be reported as negative; or

(b) Prior to entering the breeding shed, the stallion shall be bred to two (2) mares negative for EAV antibodies. The two (2)

mares shall have blood collected for an EVA test twenty-eight (28) days after breeding. Test results shall be reported as negative for EAV antibodies.

(4) A nonvaccinated EVA Sero positive stallion (or EVA vaccinated stallion that does not have documentation of the vaccination or a stallion with unknown exposure to EAV) shall be eligible for breeding by complying with the following:

(a) Semen shall be collected and cultured for EAV; or

(b) Prior to entry into the breeding shed, the stallion shall be bred to two (2) mares negative for EVA antibodies. The two (2) mares shall have blood collected for an EVA test twenty-eight (28) days after breeding. Test results shall be reported as negative for EVA antibodies.

(c) The first two (2) EVA Sero negative mares covered by the stallion shall have a blood sample collected for an EVA test twenty-eight (28) days after breeding.

(d) The Kentucky State Veterinarian may monitor a EVA Sero negative mare covered by the stallion during a breeding season by having a blood sample collected for an EVA test twenty-eight (28) days after breeding.

(5) The determination that a stallion is not a shedder shall be made based on a scientific procedure approved by the state veterinarian. The procedures shall be conducted in the presence of the State Veterinarian or his or her designee.

(6) EVA Classification Category.

(a) Category One Mares. Category One Mares shall include mares bred to a shedding stallion for the first time. Category One Mares shall be EVA vaccinated a minimum of twenty-one (21) days prior to the first cover by a shedding stallion and shall be isolated a minimum of twenty-one (21) days after the first cover.

1. During isolation, the Category One Mare shall be physically separated from other equine(s) in a separate isolation area approved by the State Veterinarian or designated personnel.

2. After the isolation period, a Category One Mare may move without restriction.

3. A Category One Mare that does not conceive after being bred to a shedding stallion and has completed the twenty-one (21) day isolation period following the first cover shall be reclassified as a Category Two Mare for the remainder of the breeding season.

(b) Category Two Mares. Category Two Mares shall include a mare:

1. Bred to a shedding stallion within the previous two (2) years; or

2. Previously classified as a Category One Mare that has completed the twenty-one (21) day isolation period; and

3. May move without restrictions after being covered by a shedding stallion.

(c) A mare bred to a shedding stallion may return to the farm of origin in a van or other transport vehicle by herself, or with EVA Sero positive equine. Upon returning to the farm of origin, the van or other transport vehicle and equipment used to move the mare shall be immediately cleaned and disinfected.

(d) A mare bred to a shedding stallion shall be bred to a shedding stallion during that estrus cycle. A mare may be bred to a nonshedding, EVA vaccinated stallion on subsequent estrus cycles during the breeding season.

(e)1.Except as provided in subparagraph 2 of this subsection, in cooperation with the stallion's owner or manager, the State Veterinarian shall determine that a stallion is not shedding EAV prior to the stallion being permitted to breed.

2. A stallion shall be permitted to breed with an EVA EVA Sero negative test mare without the determination required by paragraph (a) of this subsection.

(7) A stallion or mare infected with EAV during the breeding season shall immediately cease breeding, and the State Veterinarian shall be immediately notified. An owner or agent with a mare booked or bred to a stallion that became infected with EAV during the breeding season shall be immediately notified in writing by the stallion's owner or agent. A copy of the written notification shall be sent to the State Veterinarian. A stallion infected with EAV during the breeding season shall be classified as a shedder and shall be handled accordingly. Following the stallion's classification as a shedder, the State Veterinarian may reclassify the stallion as a nonshedder in accordance with Section 15(5) of this administrative regulation.

(8) Equine Vaccinated Against EVA. Equine vaccinated for the first time against EVA shall have a blood sample collected for an EVA test prior to vaccination. A certificate documenting the equine has been EVA Vaccinated shall be sent to the State Veterinarian within seven (7) days of the vaccination date. A EVA Vaccinated stallion shall not be exposed to an EVA affected equine and shall not be used for breeding within twenty-one (21) days after vaccination. A thoroughbred stallion used for breeding in Kentucky shall be EVA Vaccinated annually with an approved state federal EVA vaccine.

(9) A nurse mare shall be:

(a) EVA Sero negative;

(b) Officially EVA Vaccinated; and

(c) Isolated from other equine on the farm.

(10) A teaser shall be officially EVA Vaccinated against EVA.

(11) (a) An EVA test mare shall be isolated from the other equine and under the supervision of state personnel if the mare becomes:

1. Affected with EAV after breeding; or

2. EVA Sero positive after breeding.

(b) An isolated mare shall be eligible for release from isolation by the State Veterinarian after:

1. Twenty-eight (28) days in isolation; or

2. The spread of EAV is no longer a risk, whichever is longer.

Section16. Equine Infectious Anemia Positive Horses

(1) Equines positive ans confirmed to an USDA approved test for EIA shall be officially identified and permanently identified using the numbers and letter 61A with a brand on the left neck region.

(2) All classified positive EIA equines not slaughtered or euthanized shall be isolated and quarantined. Isolation shall include stabling in a stall that is screened to preclude entry and exit of mosquitoes, stable flies, and horse flies during seasons of the year when such insects are prevalent. EIA positive equines will also be kept at least 200 yards from all other equine.

(3) The movement of any quarantined positive EIA equines shall occur only with permission by the OSV.

(4) All equines on the premises where a EIA-positive equine was identified shall be quarantined pending a negative test for EIA.

Section 17. Approved Kentucky Horse Sale.

(1) Operating Sale Requirements. The sale management shall meet the following requirements pertaining to the sale and the premises at which the sale is conducted:

(a) Furnish a schedule of sale days to the OSV;

(b) Submit an Application for an APPROVED KENTUCKY HORSE SALE to the OSV and have approval confirmed by the OSV prior the first sale date;

(c) Maintain well-constructed pens and handling facilities that are clean, well-lighted and in good repair;

(d) Maintain a cleaning and disinfection program;

(e) Ensure that all equines on the premises without valid negative EIA test certificates shall have a blood sample drawn for EIA testing by the approved market veterinarian at the owner's expense prior to the sale;

(f) Insure that all horses be identified by a back tag or other official ID tag, with each horse's color, sex, breed, age, and back tag number shall be recorded by sales staff;

(g) Maintain on file for twelve (12) months complete records of the origin and destination of each equine going through the sale. These records shall be made available to the department upon request. Records shall include the following:

1. Identification of each equine sold that meets the requirements as established in paragraph (e) of this subsection; and

2. The premises of origin address for the equine, the name and address for the seller, and the name and address for the buyer. A driver's license or other valid identification shall be used to verify complete address of both the buyer and seller of each equine; and

(h) Post notices announcing that equines are being sold without proof of negative testing for EIA in visible locations throughout the market and sale area.

(i) Arrange for a licensed and accredited veterinarian, approved by the OSV as the equine market veterinarian, to implement the provisions established in Section 3 of this administrative regulation.

(2) Veterinary Duties. The equine market veterinarian shall:

(a) Submit an application of the form titled Responsibilities of the Equine Market Veterinarian to the OSV and be approved by the OSV.

(b) Visually inspect each equine for clinical evidence of communicable diseases prior to the equine leaving the sales premises and report the presence of any communicable disease condition to the State Veterinarian or an authorized representative;

(c) Provide direct supervision for the collection of required blood samples from each eligible equine and for the recording of corresponding identification of each sample; and

(d) Cooperate with state-federal inspectors, and sale management, in carrying out all applicable laws and regulations governing the sale and movement of equines.

Section 20. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) CVI

(b) CVI Reconsignment Form

(c) Form VS 10-11

(d) EIA test form

(e) Import Mare Agreement Form

(g) Import Mare Pregnancy and Schedule form

(h) Import Mare Worksheet Form

(i) Import Stallion Worksheet Form

(j) Import Stallion Agreement Form and CEM Imported Stallion Worksheet Form

(k) Responsibilities of the Equine Market Veterinarian

(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, State Veterinarian

APPROVED BY AGENCY: January 14, 2020

FILED WITH LRC: January 14, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2020 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through March 31, 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 equine industry in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish rules for the equine industry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257

(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 equine owners to be in compliance with the KDA.

(2) If 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, and equine producers and shippers.

(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 ensure equine health in breeding operations.

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

(a) Initially: Approximately 2 full time staff and support annually.

(b) On a continuing basis: Approximately 2 full time staff and support 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. They have not changed from the pervious number.

(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

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or 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 $49,000

(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 $49,000 this past year.

(c) How much will it cost to administer this program for the first year? Approximately 2 full time staff and support annually.

(d) How much will it cost to administer this program for subsequent years? Approximately 2 full time staff and support annually.

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

Revenues (+/-): $49,000

Expenditures (+/-): Approximately 2 full time staff and support annually.

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of January 13, 2020

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Monday, January 13, at 1:00 p.m. In Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the December 2019 were approved.

Present were:

Members: Senators Alice Forgy Kerr, Julie Raque-Adams and Stephen West. Representatives Deanna Frazier, David Hale, Marylou Marzian, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Beau Barnes, Teachers' Retirement; Jeremy Branham, Gary Morris, Cathy Thompson, Department of Revenue; Jane Alexander, Brock MacKay, Board of Landscape Architects; Kimberly Field, Clint Quarles, Michael Williams, Department of Agriculture; Jeff Baird, Michael Mullins, Courtney Skaggs, Department of Natural Resources; Todd Allen, Department of Education; John Melvin, DJ Wasson, Department of Insurance; Stephanie Brammer-Barnes, Office Inspector General; Julie Brooks, Krista Hamilton, Ron Horseman, Department for Public Health; Laura Begin, Melanie Taylor, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Monday, January 13, 2020, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:035. Employment by retired members; calculation of the daily wage threshold and average daily rate. Beau Barnes, deputy executive secretary and general counsel, represented the system.

In response to questions by Co-Chair West, Mr. Barnes stated that these administrative regulations were being amended for cleanup purposes and to make minor clarifications. There were no substantive changes to calculations.

A motion was made and seconded to approve the following amendments: to amend 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.

102 KAR 1:036. Part-time service for university, college and community college members.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:037. Administrative staff memberships.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:100. Insurance.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:135. Interest credited to accounts.

In response to a question by Representative Frazier, Mr. Barnes stated that the reference to KRS 161.580, pertaining to voiding individual accounts, might relate to accounts that became inactive after a period of three (3) years without contributions.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Section 1 to comply with the drafting requirements of KRS

Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of Revenue: General Administration

103 KAR 1:120. Employee access to federal tax information (FTI). Jeremy Branham, tax policy and research consultant, and Gary Morris, executive advisor, represented the department.

A motion was made and seconded to approve the following amendments: to amend the TITLE 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.

Ad Valorem Tax; State Assessment

103 KAR 8:170. Pollution control facilities exception.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

Income Tax; Withholding

103 KAR 18:150. Employer's withholding reporting requirements.

Sales and Use Tax; Administration and Accounting

103 KAR 31:020. Records.

103 KAR 31:080. Coupons or redemption certificates.

In response to a question by Representative Frazier, Mr. Branham stated that this administrative regulation added a definition for the term, "cash discount."

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 31:090. Tax-paid purchases resold.

In response to a question by Representative Frazier, Mr. Branham stated that this administrative regulation was not expected to have a cost impact, except perhaps for a form change.

103 KAR 31:200. Energy efficiency projects.

A motion was made and seconded to approve the following amendment: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

Selective Excise Tax; Alcoholic Beverages

103 KAR 40:010. Maintaining records.

A motion was made and seconded to approve the following amendments: to amend the TITLE 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.

Selective Excise Tax; Cigarettes

103 KAR 41:040. Cigarette vending machine operators.

A motion was made and seconded to approve the following amendment: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

103 KAR 41:100. Segregation of cigarettes.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

103 KAR 41:110. Sample of cigarettes.

Selective Excise Tax; Motor Fuels

103 KAR 43:010. Accountable losses.

103 KAR 43:051. Repeal of 103 KAR 043:050.

BOARDS AND COMMISSIONS: Board of Landscape Architects

201 KAR 10:050. Fees. Jane Alexander, executive director, and Brock MacKay, president, represented the board.

In response to a question by Co-Chair West, Mr. MacKay stated that licensees expressed no concerns about fee increases.

201 KAR 10:080. Continuing education.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 through 5 and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 4 to establish standards for self-directed courses. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT: Department of Agriculture: Office of Agricultural Marketing: Fairs and Shows

302 KAR 15:010. Administration; state aid to local fairs. Kimberly Field, program coordinator, Animal Forage Testing Program; Clint Quarles, staff attorney; and Michael Williams, director, Division of Environmental Services, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 7, 9, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 15:020. Dairy cattle shows and sales.

In response to a question by Representative Frazier, Mr. Quarles stated that 302 KAR 15:020 and 15:030 would not require new staff because these administrative regulations were implemented with an existing staff person.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 15:030. Beef cattle shows and sales.

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 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.

Livestock

302 KAR 21:011. Repeal of 302 KAR 021:005.

Livestock, Poultry, and Fish

302 KAR 22:030. Livestock, poultry, and fish diseases to be reported.

In response to questions by Representative Turner, Mr. Quarles stated that these requirements were being consolidated from 302 KAR 21:011, which was being repealed. There were two (2) new international diseases added to the list of reportable diseases.

A motion was made and seconded to approve the following amendments: to amend the TITLE and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Consumer and Environmental Protection: Pesticides

302 KAR 31:040. Storage and handling of pesticides and bulk fertilizer.

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, 2, 4 through 6, and 9 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Agricultural Marketing: Hay Grading

302 KAR 37:010. Forage Testing Program.

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.

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. Jeff Baird, director; Michael Mullins, regulation coordinator; and Courtney Skaggs, acting director, represented the division.

In response to a question by Representative Marzian, Mr. Baird stated that changes to these administrative regulations were nonsubstantive, technical updates.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 5:032. Permit requirements.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 5, 6, 8, 12, 14 through 17, 19 through 21, 25 through 27, 29, and 30 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

General Provisions

405 KAR 7:040. General obligations of operators and permittees.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4, 6, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter

13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 7:050. Coal processing waste disposal sites.

A motion was made and seconded to approve the following amendments: to amend RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Permits

405 KAR 8:010. General provisions for permits.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 10 through 14, 18, 20 through 22, 24, and 25 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 8:030. Surface coal mining permits.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 3, 13 through 16, 18, 20, 21, 23, 24, 30, 32, 34, 36, and 37 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Bond and Insurance Requirements

405 KAR 10:050. Bond forfeiture.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph 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.

Performance Standards for Surface Mining Activities

405 KAR 16:100. Permanent and temporary impoundments.

A motion was made and seconded to approve the following amendments: to amend 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.

405 KAR 16:210. Post mining land use capability.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 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.

Performance Standards for Underground Mining Activities

405 KAR 18:100. Permanent and temporary impoundments.

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 Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

405 KAR 18:220. Post mining land use capability.

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 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Special Performance Standards

405 KAR 20:040. Prime farmland.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Operation of Two (2) Acres or Less

405 KAR 26:011. Repeal of 405 KAR 026:001.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Instruction

704 KAR 3:303. Required academic standards. Todd Allen, interim general counsel, represented the department.

In response to questions by Co-Chair West, Mr. Allen stated that this administrative regulation was being amended to reorganize requirements. The cabinet was putting each program into its own administrative regulation. This amendment moved vocational standards into a separate administrative regulation and updated standards pursuant to statutory changes.

Academic Standards

704 KAR 8:080. Required academic standards in career studies and financial literacy.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Technical Education: Management of the Kentucky TECH System

780 KAR 2:040. Live work projects.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Insurance: Rates and Rating Organizations

806 KAR 13:040. Automobile fleet insurance defined. D. J. Wasson, executive advisor, represented the department.

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.

806 KAR 13:071. Repeal of 806 KAR 013:070.

806 KAR 13:101. Repeal of 806 KAR 013:100.

Life Insurance and Annuity Contracts

806 KAR 15:090. Notice of rights as an owner of a life insurance policy.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and formatting 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: Long-Term Care

900 KAR 2:050. Transfer and discharge rights. Stephanie Brammer – Barnes, regulation coordinator, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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

902 KAR 8:040. Definitions for 902 KAR Chapter 008. Julie Brooks, policy specialist; Krista Hamilton, branch manager; and Ron Horseman, assistant division director, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

902 KAR 8:060. Salary adjustments for local health departments.

902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

902 KAR 8:110. Disciplinary appeal process applicable for local health department employees.

Health Services and Facilities

902 KAR 20:450. Ambulatory infusion agencies. Stephanie Brammer – Barnes, regulation coordinator, represented the division.

A motion was made and seconded to approve the following amendments: to amend Section 3 to allow a patient's plan of care to be established by other prescribers in addition to physicians. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:330 & E. Child protective services. Laura Begin, regulation coordinator, and Melanie Taylor, assistant director, represented the division.

The following administrative regulations were deferred or removed from the January 13, 2020, subcommittee agenda:

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:120. Additional and emergency precinct officers.

FINANCE AND ADMINISTRATION CABINET: Kentucky Teachers' Retirement System: General Rules

102 KAR 1:125. Omitted contributions. Beau Barnes, deputy executive secretary and general counsel, represented the system.

A motion was made and seconded to approve the following amendments: To amend the TITLE and Statutory AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

In response to a question by Co-Chair Hale, Mr. Barnes requested that this administrative regulation be deferred to the February meeting of the subcommittee. A motion was made and seconded to defer consideration of this administrative regulation to the February meeting. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Ad Valorem Tax; State Assessment

103 KAR 008:160. Valuation of municipal solid waste landfill facilities.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:095. Pharmacist interns.

Board of Veterinary Examiners

201 KAR 16:500. Code of ethical conduct for veterinarians.

201 KAR 16:510. Fees for veterinarians.

201 KAR 16:512. Fees for veterinary technicians.

201 KAR 16:514. Fees for animal control agencies and animal euthanasia specialists.

201 KAR 16:516. Fees – other fees.

201 KAR 16:520. Approved veterinary colleges; approved programs for veterinary technicians.

201 KAR 16:530. Examination requirements for veterinarians and veterinary technicians.

201 KAR 16:540. Application requirements for veterinarians and veterinary technicians.

201 KAR 16:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.

201 KAR 16:560. Certification as an animal euthanasia specialist.

201 KAR 16:570. License renewal for veterinarians and veterinary technicians.

201 KAR 16:572. License renewal for registered animal control agencies and animal euthanasia specialists; renewal notice.

201 KAR 16:580. Board issued licenses and certificates, inactive and retired statuses.

201 KAR 16:590. Continuing education requirements, veterinarians and veterinary technicians.

201 KAR 16:600. Prescription and dispensation of drugs for animal use.

201 KAR 16:610. Procedures for grievances, investigations, and administrative charges.

201 KAR 16:700. Material incorporated by reference.

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.

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers.

GENERAL GOVERNMENT: Department of Agriculture: Office of the State Veterinarian: Livestock, Poultry, and Fish

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 22:070. Restrictions on biological materials in Kentucky.

302 KAR 22:040. Carcass transport and composting.

302 KAR 22:080. Feed restrictions.

JUSTICE AND PUBLIC SAFETY CABINET: Asset Forfeiture
500 KAR 9:011. Repeal of 500 KAR 009:010, 500 KAR 009:020, 500 KAR 009:030, and 500 KAR 009:040.

Motorcycle Safety Education Commission
500 KAR 15:010 & E. Motorcycle safety education program.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration
601 KAR 2:030E. Ignition interlock.

Department for Technical Education: Management of the Kentucky TECH System
780 KAR 2:060. Discipline of students.

LABOR CABINET: Department of Workers' Claims
803 KAR 25:260. Treatment guidelines.

PUBLIC PROTECTION CABINET: Department of Housing, Buildings, and Construction: Plumbing
815 KAR 20:010. Definitions for 815 KAR Chapter 020.

815 KAR 20:020. Parts or materials list.

Plumbing
815 KAR 20:030. Plumbing licenses.

815 KAR 20:050. Installation permits.

815 KAR 20:055. Water heating devices.

815 KAR 20:060. Quality, weight, installation, and storage of materials.

815 KAR 20:070. Plumbing fixtures.

815 KAR 20:080. Waste pipe size.

815 KAR 20:090. Soil, waste, and vent systems, traps, and clean-outs.

815 KAR 20:111. 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 20:120. Water supply and distribution.

815 KAR 20:130. House sewers and storm water piping; methods of installation.

815 KAR 20:150. Inspection and tests.

815 KAR 20:170. Manufactured home and mobile home community waste system distribution and connections.

815 KAR 020:180. Special connections.

815 KAR 20:195. Medical gas piping installations.

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.

Division of Audits and Investigations: Controlled Substances
902 KAR 55:130. Electronic prescribing of controlled substances.

Department for Medicaid Services: Division of Provider Integrity
907 KAR 5:005. Health Insurance Premium Payment (HIPP) Program.

The subcommittee adjourned at 1:35 p.m. The next meeting of the subcommittee is tentatively scheduled for February 10, 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 NATURAL RESOURCES AND ENERGY
Meeting of November 19, 2019

The following administrative regulation was available for consideration and placed on the agenda of the Interim Joint Committee on Natural Resources and Energy for its meeting of November 19, 2019, having been referred to the Committee on November 6, 2019, pursuant to KRS 13A.290(6):

401 KAR 051:010 Attainment status designations

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

SENATE STANDING COMMITTEE ON HEALTH AND FAMILY SERVICES
Meeting of January 22, 2020

The following administrative regulations were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of January 22, 2020, having been referred to the Committee on January 2, 2020, pursuant to KRS 13A.290(6):

202 KAR 007:020
902 KAR 020:280

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 22, 2019 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH AND FAMILY SERVICES
Meeting of January 23, 2020

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.

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Family Services for its meeting of January 23, 2020, having been referred to the Committee on January 2, 2020, pursuant to KRS 13A.290(6):

902 KAR 020:280

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 23, 2019 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 46th year of the *Administrative Register of Kentucky*, from July 2019 through June 2020.

Locator Index - Effective Dates **H - 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 **H- 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 **H - 27**

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year. Additionally, this index includes information regarding regulations that had letters that stated a regulation shall be amended within 18 months.

Technical Amendment Index **H - 32**

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 **H - 33**

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

REGISTER YEAR 45

The administrative regulations listed under VOLUME 44 are those administrative regulations that were originally published in Volume 44 (last year's) issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *2018 Kentucky Administrative Regulations Service* was published.

SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
*** Withdrawn before being printed in Register
IJC Interim Joint Committee
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

9 KAR 1:010E	3382	5-15-2019
Replaced	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		
Amended	2152	
101 KAR 002:034		
Amended	2955	
As Amended	3390	7-5-2019
101 KAR 002:180		
Amended	3443	
101 KAR 002:190	3592	
101 KAR 003:045		
Amended	2960	
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

Regulation Number	46 Ky.R. Page No.	Effective Date
201 KAR 013:055		
Amended	3251	
201 KAR 013:060		
Amended	3253	
201 KAR 020:370		
Amended	3469	
201 KAR 020:506		
Amended	3471	8-19-2019
201 KAR 022:135		
Amended	3258	7-19-2019
201 KAR 023:150	1459	
Withdrawn		7-30-2019
201 KAR 025:062*(r)*	3597	
Withdrawn		7-2-2019
201 KAR 025:090		
Amended	3472	
201 KAR 041:020		
Amended	3475	9-6-2019
201 KAR 041:030		
Amended	3477	
201 KAR 041:040		
Amended	3478	
201 KAR 041:060		
Amended	3480	9-6-2019
201 KAR 041:065		
Amended	3482	
201 KAR 041:070		
Amended	3483	
201 KAR 041:080		
Amended	3486	
201 KAR 046:010		
Amended	2967	
As Amended	3403	7-5-2019
201 KAR 046:020		
Amended	2970	7-5-2019
201 KAR 046:030		
Amended	2971	7-5-2019
201 KAR 046:040		
Amended	2972	7-5-2019
201 KAR 046:045		
Amended	2975	7-5-2019
201 KAR 046:081		
Amended	2976	7-5-2019
202 KAR 003:010		
Amended	3259	9-6-2019
202 KAR 007:520		
Amended	2760	
As Amended	3405	7-5-2019
202 KAR 007:560		
Amended	3489	
202 KAR 007:575	2805	
As Amended	3409	7-5-2019
301 KAR 002:030		
Amended	3260	
301 KAR 002:221		
Amended	3491	8-20-2019
301 KAR 002:222		
Amended	3493	8-20-2019
301 KAR 002:300		
Amended	3498	8-20-2019
301 KAR 003:090		
Repealed	2996	7-5-2019
301 KAR 003:091*(r)*	2996	7-5-2019
302 KAR 016:010		
Amended	3502	
302 KAR 016:020		
Amended	3503	
302 KAR 016:040		
Amended	3504	
302 KAR 016:070		
Amended	3506	8-22-2019
302 KAR 016:091		
Amended	3507	8-22-2019
302 KAR 016:101		
Amended	3509	8-22-2019
302 KAR 016:111		
Amended	3510	
302 KAR 016:121		
Amended	3511	
302 KAR 016:131		
Amended	3513	
302 KAR 078:020		
Repealed	3598	9-6-2019
302 KAR 078:021*(r)*	3598	9-6-2019
302 KAR 101:010	3599	
401 KAR 5:010		
Amended	3514	
401 KAR 008:030		
Amended	3516	11-1-2019
401 KAR 008:050		
Amended	3519	11-1-2019
401 KAR 011:001		
Amended	3522	
401 KAR 011:030		
Amended	3524	
401 KAR 011:040		
Amended	3527	
401 KAR 011:050		
Amended	3531	
401 KAR 011:060		
Amended	3535	
405 KAR 010:001		
Amended	2979	
405 KAR 010:015		
Amended	2982	
500 KAR 009:011*(r)*	3354	
500 KAR 0015:010	3355	
601 KAR 002:030		
Withdrawn		8-7-2019
704 KAR 003:303		
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804 KAR 007:031*(r)*	3360	8-2-2019
805 KAR 003:100		
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806 KAR 009:001		
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806 KAR 009:061*(r)*	3361	1-3-2020
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806 KAR 009:190		
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806 KAR 009:200		
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806 KAR 009:310		
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806 KAR 009:321*(r)*	3362	1-3-2020
806 KAR 009:340		
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806 KAR 009:341*(r)*	3600	1-3-2020
806 KAR 009:350		
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806 KAR 010:030		
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806 KAR 010:051*(r)*	3363	8-2-2019
806 KAR 015:080		
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806 KAR 015:081*(r)*	3601	10-4-2019
806 KAR 047:010		
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806 KAR 047:020	2997	
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806 KAR 047:021*(r)*	2997	9-6-2019
806 KAR 047:030	2997	
Repealed	2997	9-6-2019
807 KAR 005:056		
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808 KAR 001:180	2266	
815 KAR 007:120		
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Amended	3277	8-2-2019
831 KAR 001:010		
Amended	3546	
831 KAR 001:020		
Amended	3549	9-6-2019
831 KAR 001:030		
Amended	3551	
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902 KAR 050:101*(r)*	3364	7-19-2019
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907 KAR 001:330		
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907 KAR 001:441 *(r)*	2813	8-2-2019
907 KAR 001:436		
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907 KAR 001:604		
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907 KAR 005:005		
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908 KAR 001:341*(r)*	2538	8-19-2019
908 KAR 001:370		
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911 KAR 001:010	2814	
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911 KAR 001:020	2819	
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911 KAR 001:070		
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911 KAR 001:071*(r)*	2828	7-19-2019
911 KAR 001:080		
Repealed	2828	7-19-2019
921 KAR 001:380		
Amended	3583	
921 KAR 002:015		
Amended	2520	
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922 KAR 001:310		
Amended	3326	
922 KAR 001:350		
Amended	3340	
922 KAR 001:470		
Amended	3587	
922 KAR 001:495		
Amended	3350	
922 KAR 001:510		
Amended	3589	

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))

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*** Withdrawn before being printed in Register
IJC Interim Joint Committee
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

REGISTER YEAR 46

SYMBOL KEY:
* Statement of Consideration not filed by deadline
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
*** Withdrawn before being printed in Register
IJC Interim Joint Committee
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS
(Notes: Emergency regulations filed on or before 7/15/2019 expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)
Emergency regulations filed after 7/15/2019 expire 240 days from the date filed; or 240 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

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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
Replaced	1465	1-3-2020
401 KAR 006:310E	313	7-11-2019
Replaced	1468	1-3-2020
401 KAR 006:320E	323	7-11-2019
Replaced	1477	1-3-2020
401 KAR 006:350E	327	7-11-2019
Replaced	1481	1-3-2020
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
895 KAR 001:002E	2211	12-27-2019
900 KAR 006:075	2213	1-2-2020
902 KAR 020:430E	336	6-28-2019
Replaced	1389	12-9-2019
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
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907 KAR 015:010E	359	6-28-2019
Replaced	1878	12-9-2019
907 KAR 015:015E	371	6-28-2019
Replaced	1888	12-9-2019
907 KAR 015:020E	374	6-28-2019
Replaced	1889	12-9-2019
907 KAR 015:022E	385	6-28-2019
Replaced	1890	12-9-2019
907 KAR 015:025E	396	6-28-2019
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921 KAR 002:015	2216	12-27-2019
922 KAR 001:320E	400	6-28-2019
922 KAR 001:330E	855	8-14-2019
Replaced	1573	12-9-2019

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013 KAR 001:020		
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013 KAR 004:010		
Amended	1913	
016 KAR 006:031*(r)*	1376	
016 KAR 008:030		
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016 KAR 009:060		
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030 KAR 008:005	2349	
032 KAR 001:060		
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032 KAR 001:061*(r)*	281	10-4-2019
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101 KAR 001:325	2290	
101 KAR 002:102		
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101 KAR 002:230		
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103 KAR 001:060		
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103 KAR 002:005		
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103 KAR 002:030		
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103 KAR 005:150		
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103 KAR 005:151*(r)*	282	10-4-2019
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103 KAR 008:030		10-4-2019
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103 KAR 008:011*(r)*	284	10-4-2019
103 KAR 008:110		
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103 KAR 008:140		
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103 KAR 008:141*(r)*	285	10-4-2019
103 KAR 008:150		
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103 KAR 008:160		
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Repealed	884	10-4-2019
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Repealed	884	10-4-2019
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301 KAR 001:410		
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302 KAR 020:013*(r)*	2361	
302 KAR 020:014*(r)*	2362	
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302 KAR 022:010	1379	
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806 KAR 007:031(r)	1046	
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902 KAR 045:090		
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Amended	1977				
922 KAR 002:100					
Amended	1985				

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 SECTION	REGULATION
2.013	201 KAR 011:210
2.015	902 KAR 020:370
	922 KAR 001:320
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13A	202 KAR 007:020
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13B.005-13B.170	013 KAR 001:020
13B.050	902 KAR 055:130
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13B.090	902 KAR 055:130
13B.110	902 KAR 055:130
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15A.065	505 KAR 001:160
15A.067	505 KAR 001:160
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16.577	105 KAR 001:200
16.645	105 KAR 001:200
17.500	902 KAR 020:430
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18A.005	101 KAR 001:325
18A.020	101 KAR 002:102
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18A.030	101 KAR 002:102
	101 KAR 002:210
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	101 KAR 003:015
18A.0751	101 KAR 001:325
18A.095	101 KAR 002:102
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18A.110	101 KAR 002:102
	101 KAR 002:230
	101 KAR 003:015
18A.111	101 KAR 001:325
18A.140	101 KAR 002:102
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18A.145	101 KAR 002:102
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18A.195	101 KAR 002:102
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18A.202	101 KAR 002:120
18A.205	105 KAR 001:149
18A.225	101 KAR 002:210
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18A.990	101 KAR 002:102
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18A.2254	101 KAR 002:210
23A.010	922 KAR 001:320
43.010	601 KAR 009:130
43.070	045 KAR 001:050
43.075	045 KAR 001:050
45.149	601 KAR 009:130
45.229	907 KAR 010:840
45.237 - 45.241	922 KAR 001:565
45A	601 KAR 002:030E
	702 KAR 003:130
45A.045	200 KAR 006:015
49.220	103 KAR 001:010
49.250	103 KAR 001:010
61.373	101 KAR 003:015
61.394	101 KAR 002:102
	101 KAR 003:015
61.410	702 KAR 003:130
61.505	105 KAR 001:390
61.510	105 KAR 001:390
61.510-61.705	105 KAR 001:149
61.590	105 KAR 001:200
	105 KAR 001:390
61.595	105 KAR 001:200
61.623	105 KAR 001:200
61.637	105 KAR 001:200
	105 KAR 001:390
61.645	105 KAR 001:445
61.673	101 KAR 002:102
61.680	105 KAR 001:200
61.705	105 KAR 001:200
61.805 – 61.850	702 KAR 007:065
61.870 - 61.884	405 KAR 008:010
61.872	902 KAR 008:070
64.810	045 KAR 001:050
65A	739 KAR 002:140
65.7621	202 KAR 006:070
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65.7621 – 65.7643	202 KAR 006:010
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65.7627	202 KAR 006:070
	202 KAR 006:080
	202 KAR 006:090
65.7629	202 KAR 006:070
	202 KAR 006:080
	202 KAR 006:090
65.7631	202 KAR 006:070
	202 KAR 006:080
	202 KAR 006:090
65.7635	202 KAR 006:080
	202 KAR 006:090
65.7636	202 KAR 006:080
65.7639	202 KAR 006:080
	202 KAR 006:090
65.7643	202 KAR 006:070
	202 KAR 006:080
	202 KAR 006:090
66.480	702 KAR 003:130
68.210	045 KAR 001:050
75.430	739 KAR 002:140
78.510	105 KAR 001:390
78.545	105 KAR 001:200
78.5302	105 KAR 001:250
91A.350	300 KAR 001:010
91A.400	103 KAR 027:220
95A	739 KAR 002:140
95A.292	739 KAR 002:140
118.035	101 KAR 002:102
	101 KAR 003:015
121.015	032 KAR 001:061
121.180	032 KAR 001:061
131.010	103 KAR 001:010
131.030	103 KAR 001:010
131.032	103 KAR 001:120
131.081	103 KAR 001:010
	103 KAR 001:120
131.110	103 KAR 001:010
	103 KAR 026:110
131.130	103 KAR 001:120
	103 KAR 002:030
131.155	103 KAR 001:060
	103 KAR 018:150
131.180	103 KAR 001:010
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131.190	103 KAR 001:120

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131.990	103 KAR 001:120
132.010	815 KAR 020:010
132.020	103 KAR 008:130
	103 KAR 008:141
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132.200	103 KAR 008:130
	103 KAR 008:141
	103 KAR 008:170
132.285	103 KAR 007:031
132.370	103 KAR 005:151
	103 KAR 005:160
132.530	103 KAR 007:031
136.181	103 KAR 008:011
136.182	103 KAR 008:011
138.130	103 KAR 041:040
138.135	103 KAR 041:031
	103 KAR 041:110
	103 KAR 041:220
138.140	103 KAR 041:110
138.143	103 KAR 041:031
	103 KAR 041:220
138.146	103 KAR 041:031
	103 KAR 041:100
	103 KAR 041:220
138.155	103 KAR 041:110
138.195	103 KAR 041:031
	103 KAR 041:040
	103 KAR 041:220
138.210	103 KAR 043:010
138.220	103 KAR 043:010
138.250	103 KAR 043:051
138.344	103 KAR 043:101
138.450	103 KAR 027:100
138.460	103 KAR 027:100
139.010	103 KAR 025:050
	103 KAR 025:060
	103 KAR 026:010
	103 KAR 026:030
	103 KAR 026:080
	103 KAR 026:090
	103 KAR 026:110
	103 KAR 026:120
	103 KAR 027:020
	103 KAR 027:080
	103 KAR 027:100
	103 KAR 027:120
	103 KAR 027:140
	103 KAR 027:180
	103 KAR 027:220
	103 KAR 028:010
	103 KAR 028:090
	103 KAR 030:170
	103 KAR 030:270
	103 KAR 031:020
	103 KAR 031:030
	103 KAR 031:080
	103 KAR 031:090
	103 KAR 031:111
	103 KAR 031:200
139.200	103 KAR 025:050
	103 KAR 025:060
	103 KAR 026:010
	103 KAR 026:090
	103 KAR 026:110
	103 KAR 026:120
	103 KAR 027:020
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	103 KAR 027:100
	103 KAR 027:220
	103 KAR 028:010
	103 KAR 030:261
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	103 KAR 031:020
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	103 KAR 031:111
139.210	103 KAR 026:070
	103 KAR 027:220
139.240	103 KAR 026:070
	103 KAR 027:180
	103 KAR 031:030
139.250	103 KAR 031:030
139.260	103 KAR 026:070
	103 KAR 026:090
	103 KAR 026:110
	103 KAR 026:120
	103 KAR 027:120
	103 KAR 027:180
	103 KAR 027:220
	103 KAR 028:010
	103 KAR 030:261
	103 KAR 030:270
	103 KAR 031:030
	103 KAR 031:111
139.270	103 KAR 026:070
	103 KAR 026:110
	103 KAR 026:120
	103 KAR 027:220
	103 KAR 030:261
	103 KAR 030:270
	103 KAR 031:020
	103 KAR 031:111
139.280	103 KAR 026:120
	103 KAR 030:270
	103 KAR 031:111
139.290	103 KAR 026:090
	103 KAR 027:220
	103 KAR 030:270
	103 KAR 031:090
	103 KAR 031:111
139.300	103 KAR 031:111
139.310	103 KAR 026:070
	103 KAR 026:110
	103 KAR 026:120
	103 KAR 027:220
	103 KAR 030:261
	103 KAR 030:270
	103 KAR 031:090
139.330	103 KAR 026:110
	103 KAR 026:120
	103 KAR 027:220
	103 KAR 030:261
	103 KAR 030:270
139.340	103 KAR 025:050
	103 KAR 026:070
139.430	103 KAR 031:111
139.440	103 KAR 031:111
139.470	103 KAR 026:050
	103 KAR 027:100
	103 KAR 027:180
	103 KAR 028:010
	103 KAR 030:170
	103 KAR 030:270
139.480	103 KAR 026:050
	103 KAR 026:090
	103 KAR 026:110
	103 KAR 027:220
	103 KAR 028:010
	103 KAR 030:261
	103 KAR 030:270
139.482	103 KAR 028:010
139.485	103 KAR 027:180
	103 KAR 027:220
139.495	103 KAR 028:010
139.518	103 KAR 031:200
139.540	103 KAR 026:110
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139.550	103 KAR 025:060
	103 KAR 026:110
	103 KAR 030:261
	103 KAR 031:030
139.590	103 KAR 025:131
	103 KAR 026:110
	103 KAR 031:030
139.620	103 KAR 031:020
139.660	103 KAR 025:060
	103 KAR 031:030
139.710	103 KAR 026:070
	103 KAR 031:030
139.720	103 KAR 026:110
	103 KAR 027:180
	103 KAR 031:020
	103 KAR 031:030
	103 KAR 031:200
139.730	103 KAR 026:070
139.760	103 KAR 031:111
139.980	103 KAR 025:131
139.990	103 KAR 025:131
	103 KAR 031:111
140.100	103 KAR 002:005
141.011	103 KAR 016:250
141.120	103 KAR 016:400
141.121	103 KAR 016:400
141.200	103 KAR 016:200
	103 KAR 016:250
141.201	103 KAR 016:250
141.202	103 KAR 016:250
	103 KAR 016:400
141.330	103 KAR 018:150
142.303	907 KAR 010:830
	907 KAR 010:840
142.406	300 KAR 001:010
146/080 – 146.115	416 KAR 001:010
146.200 – 146.360	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
	405 KAR 008:010
146.410 – 146.535	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
146.550 – 146.570	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
146.600 – 146.619	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
146.990	401 KAR 010:001
	401 KAR 010:026
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148.522	300 KAR 001:010
148.525	300 KAR 001:010
150.010	301 KAR 001:152
	301 KAR 001:201
	301 KAR 001:410
	301 KAR 002:049
	301 KAR 002:090
	301 KAR 002:185
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	301 KAR 002:300
	301 KAR 004:090
150.015	301 KAR 002:185

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150.025	301 KAR 002:090
150.092	301 KAR 002:049
	301 KAR 002:300
150.170	301 KAR 001:152
	301 KAR 001:201
	301 KAR 001:410
	301 KAR 002:049
	301 KAR 002:251
	301 KAR 002:300
	301 KAR 003:100
150.175	301 KAR 001:152
	301 KAR 001:201
	301 KAR 001:410
	301 KAR 002:300
	301 KAR 003:100
	301 KAR 004:090
150.180	301 KAR 002:195
	301 KAR 002:251
	301 KAR 004:090
150.183	301 KAR 002:195
	301 KAR 004:090
150.235	301 KAR 001:410
150.290	301 KAR 002:195
150.305	301 KAR 002:090
	301 KAR 002:195
	301 KAR 004:090
150.320	301 KAR 002:195
150.330	301 KAR 002:090
	301 KAR 002:195
	301 KAR 004:090
150.340	301 KAR 001:201
150.360	301 KAR 002:090
	301 KAR 002:195
150.370	301 KAR 002:049
	301 KAR 002:251
	301 KAR 004:090
150.399	301 KAR 002:049
	301 KAR 002:251
150.411	301 KAR 004:090
150.415	301 KAR 002:251
150.416	301 KAR 002:251
150.445	301 KAR 001:152
	301 KAR 001:410
150.450	301 KAR 001:152
150.470	301 KAR 001:185
150.620	301 KAR 001:201
	301 KAR 001:410
150.722	301 KAR 004:090
150.990	301 KAR 001:152
	301 KAR 001:185
	301 KAR 001:201
	301 KAR 001:410
	301 KAR 002:049
	301 KAR 002:185
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	301 KAR 002:300
	301 KAR 004:090
150.995	301 KAR 002:049
	301 KAR 002:251
151	401 KAR 005:091
151.100	405 KAR 016:100
	405 KAR 018:100
151.125	405 KAR 007:050
151.250	405 KAR 016:100
	405 KAR 018:100
151.297	405 KAR 007:050
156.029	702 KAR 003:130
	704 KAR 007:090
156.035	704 KAR 007:090
156.070	702 KAR 007:065
	704 KAR 003:303
	704 KAR 008.080
156.076	702 KAR 003:130
156.160	702 KAR 003:130

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	702 KAR 005:080
	704 KAR 003:303
	704 KAR 007:090
	704 KAR 008.080
156.200	702 KAR 003:130
156.290	702 KAR 003:130
156.496	922 KAR 001:565
156.557	704 KAR 003:370
156.800	704 KAR 003:370
156.802	780 KAR 002:040
	780 KAR 002:060
157	922 KAR 002:090
157.320	702 KAR 007:125
157.350	702 KAR 007:125
157.360	702 KAR 007:125
158.030	702 KAR 007:125
	922 KAR 002:090
	922 KAR 002:100
158.031	703 KAR 005:140
158.070	702 KAR 007:125
158.100	702 KAR 007:125
158.150	780 KAR 002:060
158.240	702 KAR 007:125
158.1411	704 KAR 008.080
158.1413	704 KAR 008.080
158.444	780 KAR 002:060
158.645	703 KAR 005:270
	704 KAR 008.080
158.6451	703 KAR 005:240
	703 KAR 005:270
	704 KAR 003:303
	704 KAR 008.080
158.6453	703 KAR 005:140
	703 KAR 005:240
	703 KAR 005:270
	703 KAR 005:280
	704 KAR 003:303
	704 KAR 008.080
158.6455	703 KAR 005:240
	703 KAR 005:270
	703 KAR 005:280
158.782	703 KAR 005:280
159.010	702 KAR 007:125
159.030	702 KAR 007:125
159.035	702 KAR 007:125
159.140	702 KAR 007:125
	922 KAR 001:330
159.170	702 KAR 007:125
160	702 KAR 003:130
160.290	704 KAR 003:303
	704 KAR 008.080
160.346	703 KAR 005:280
160.380	702 KAR 007:065
160.445	702 KAR 007:065
161.011	702 KAR 005:080
161.028	016 KAR 009:060
161.030	016 KAR 009:060
161.048	016 KAR 009:060
161.049	016 KAR 009:060
161.200	702 KAR 007:125
161.220	102 KAR 001:036
	102 KAR 001:037
161.420	102 KAR 001:032
161.440	102 KAR 001:135
161.500	102 KAR 001:035
161.540	102 KAR 001:032
	702 KAR 003:130
161.545	102 KAR 001:036
161.560	102 KAR 001:125
	702 KAR 003:130
161.580	102 KAR 001:135
161.605	102 KAR 001:032
	102 KAR 001:035
161.675	102 KAR 001:100

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161.677	102 KAR 001:032
161.700	102 KAR 001:032
161.705	102 KAR 001:135
161.740	704 KAR 003:370
161.770	701 KAR 005:090
161.790	701 KAR 005:090
161.5465	102 KAR 001:036
163.500	920 KAR 001:070
163.506	920 KAR 001:070
164.020	013 KAR 001:020
164.020(23)	013 KAR 004:010
164.945	013 KAR 001:020
164.946	013 KAR 001:020
	013 KAR 004:010
164.947	013 KAR 001:020
	013 KAR 004:010
164.992	013 KAR 001:020
	013 KAR 004:010
165A.320	013 KAR 001:020
	013 KAR 004:010
165A.450	013 KAR 004:010
176.050	603 KAR 005:150
176.430	401 KAR 010:030
177.047	603 KAR 005:150
177.103	603 KAR 005:150
177.106	603 KAR 005:150
186.010	601 KAR 002:030E
	601 KAR 009:130
186.018	922 KAR 002:100
186.020	922 KAR 002:100
186.050	601 KAR 009:130
186.053	601 KAR 009:130
186.162	601 KAR 009:130
186.172	601 KAR 009:130
186.174	601 KAR 009:130
186.411	601 KAR 013:090
	601 KAR 013:100
186.440	601 KAR 002:030E
	601 KAR 013:100
186.442	601 KAR 002:030E
186.444	601 KAR 013:090
	601 KAR 013:100
186.480	601 KAR 002:030E
186.531	601 KAR 002:030E
186.560	601 KAR 002:030E
186.570	601 KAR 002:030E
	601 KAR 013:090
	601 KAR 013:100
186A.060	601 KAR 009:130
186A.070	601 KAR 009:130
186A.120	601 KAR 009:130
189.010	103 KAR 027:100
189.125	922 KAR 002:100
189A.005	601 KAR 002:030E
189A.010	601 KAR 002:030E
189A.040	601 KAR 002:030E
189A.070	601 KAR 002:030E
189A.085	601 KAR 002:030E
189A.090	601 KAR 002:030E
189A.103	601 KAR 002:030E
189A.105	601 KAR 002:030E
189A.107	601 KAR 002:030E
189A.200	601 KAR 002:030E
189A.240	601 KAR 002:030E
189A.250	601 KAR 002:030E
189A.340	601 KAR 002:030E
189A.345	601 KAR 002:030E
189A.400	601 KAR 002:030E
189A.410	601 KAR 002:030E
189A.420	601 KAR 002:030E
189A.440	601 KAR 002:030E
189A.500	601 KAR 002:030E
189.540	702 KAR 005:080
194A	921 KAR 002:015

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194A.005	920 KAR 001:070
	922 KAR 001:320
	922 KAR 001:330
	922 KAR 001:565
194A.025	907 KAR 015:005
194A.030	920 KAR 001:070
	922 KAR 001:320
194A.050	902 KAR 008:110
	902 KAR 045:065
	902 KAR 045:070
	922 KAR 001:330
	922 KAR 001:565
	922 KAR 002:100
194A.060	907 KAR 003:170
	920 KAR 001:070
	922 KAR 001:560
194A.125	907 KAR 003:170
196	501 KAR 006:020
	501 KAR 006:060
	501 KAR 006:110
	501 KAR 006:140
196.035	501 KAR 006:280
196.700 – 196.705	500 KAR 010:050
196.700 – 196.736	500 KAR 010:001
	500 KAR 010:020
	500 KAR 010:030
	500 KAR 010:040
197	501 KAR 006:020
	501 KAR 006:060
	501 KAR 006:110
	501 KAR 006:140
197.020	501 KAR 006:280
197.105	500 KAR 010:050
198B.050	815 KAR 020:195
198B.260	902 KAR 020:280
	902 KAR 020:430
199.011	922 KAR 001:320
	922 KAR 001:560
	922 KAR 001:565
	922 KAR 002:090
	922 KAR 002:100
199.462	922 KAR 001:565
199.470 - 199.590	922 KAR 001:565
199.480	922 KAR 001:560
199.505	922 KAR 001:560
199.555	101 KAR 002:120
	922 KAR 001:320
199.557	922 KAR 001:320
199.892	922 KAR 002:090
199.894	922 KAR 002:090
	922 KAR 002:100
199.895	922 KAR 002:090
	922 KAR 002:100
199.8951	922 KAR 002:100
199.896 - 199.898	922 KAR 002:090
	922 KAR 002:100
199.8982	922 KAR 002:100
199.990	922 KAR 001:560
200.080-120	505 KAR 001:160
200.503	902 KAR 020:430
202A.011	921 KAR 002:015
	922 KAR 001:330
205.211	922 KAR 001:565
205.245	921 KAR 002:015
205.510	902 KAR 020:430
	907 KAR 003:170
	907 KAR 010:830
	907 KAR 015:005
205.520	895 KAR 001:002E
	902 KAR 021:020
	907 KAR 015:010
	907 KAR 015:015
	907 KAR 015:020
	907 KAR 015:022

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205.559	907 KAR 003:170
205.560	806 KAR 017:480
	907 KAR 003:170
205.565	907 KAR 010:830
	907 KAR 010:840
205.637	907 KAR 010:830
	907 KAR 010:840
205.638	907 KAR 010:830
	907 KAR 010:840
205.639	907 KAR 010:830
	907 KAR 010:840
205.640	907 KAR 010:830
	907 KAR 010:840
205.641	907 KAR 010:830
205.6405	907 KAR 010:840
205.6406	907 KAR 010:840
205.6407	907 KAR 010:840
205.6408	907 KAR 010:840
205.712	601 KAR 002:030E
205.8451	907 KAR 015:005
209.020	921 KAR 002:015
	922 KAR 001:320
209.550	902 KAR 002:065
209.552	902 KAR 002:065
209A.020	922 KAR 001:320
210.005	902 KAR 020:430
211.005	902 KAR 045:065
	902 KAR 045:070
211.015	902 KAR 008:040
	902 KAR 045:065
	902 KAR 045:070
211.025	902 KAR 045:065
	902 KAR 045:070
211.090	902 KAR 002:065
	902 KAR 008:096
	902 KAR 008:100
211.170	902 KAR 008:040
	902 KAR 008:060
	902 KAR 008:070
	902 KAR 008:080
	902 KAR 008:090
	902 KAR 008:096
	902 KAR 008:100
	902 KAR 008:110
	902 KAR 008:120
	902 KAR 008:140
211.180	902 KAR 002:065
211.684	922 KAR 001:330
211.760	902 KAR 045:065
211.892	805 KAR 001:060
211.893	805 KAR 001:060
211.1751	902 KAR 008:040
	902 KAR 008:060
	902 KAR 008:070
	902 KAR 008:090
	902 KAR 008:096
	902 KAR 008:100
211.1752	902 KAR 008:060
211.1755	902 KAR 008:060
	902 KAR 008:090
	902 KAR 008:110
212.040	902 KAR 008:080
212.170	902 KAR 008:040
	902 KAR 008:060
	902 KAR 008:070
	902 KAR 008:090
	902 KAR 008:096
	902 KAR 008:100
	902 KAR 008:110
	902 KAR 008:120
	902 KAR 008:140
231.230	902 KAR 008:140
212.850	902 KAR 008:080

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212.870	902 KAR 008:040
	902 KAR 008:060
	902 KAR 008:070
	902 KAR 008:080
	902 KAR 008:090
	902 KAR 008:096
	902 KAR 008:100
	902 KAR 008:110
	902 KAR 008:120
	902 KAR 008:140
214.010	902 KAR 002:065
	922 KAR 002:090
	922 KAR 002:100
214.036	922 KAR 001:330
	922 KAR 002:090
	922 KAR 002:100
214.540	902 KAR 021:020
214.542	902 KAR 021:020
214.543	902 KAR 021:020
216.380	907 KAR 010:830
	907 KAR 010:840
216.510	900 KAR 002:050
	902 KAR 002:065
216.515	902 KAR 002:065
216.525	900 KAR 002:050
216.530	902 KAR 002:065
	921 KAR 002:015
216.555	900 KAR 002:050
216.557	900 KAR 002:050
	921 KAR 002:015
216.560	900 KAR 002:050
216.750	921 KAR 002:015
216.765	921 KAR 002:015
216.875	902 KAR 020:280
216.880	902 KAR 020:280
216.885	902 KAR 020:280
216B	921 KAR 002:015
216B.010	900 KAR 006:075
216B.015	900 KAR 002:050
	900 KAR 006:075
216B.020	902 KAR 020:370
216B.040	900 KAR 006:075
216B.042	902 KAR 020:450
216B.050	902 KAR 020:430
216B.062	900 KAR 006:075
216B.090	900 KAR 006:075
216B.095	900 KAR 006:075
216B.105	902 KAR 020:430
216B.115	900 KAR 006:075
216B.155	806 KAR 017:480
216B.455	900 KAR 006:075
216B.990	900 KAR 006:075
217.005 – 217.215	902 KAR 045:090
217.290	902 KAR 045:090
217.992	902 KAR 045:090
217B	302 KAR 031:040
217B.555	902 KAR 045:090
217B.990	902 KAR 045:090
217C.010	902 KAR 050:005
217C.070	902 KAR 050:003
218A.182	902 KAR 055:130
218A.205	201 KAR 002:020
	201 KAR 008:540
223.170	401 KAR 006:211
223.180	401 KAR 006:211
223.190	401 KAR 006:211
223.210	401 KAR 006:211
223.400	401 KAR 006:001
223.400-223.460	401 KAR 006:001
	401 KAR 006:310
	401 KAR 006:320
	401 KAR 006:350
223.991	401 KAR 006:001
	401 KAR 006:310

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	401 KAR 006:350
224	401 KAR 005:091
224.071	405 KAR 007:050
224.01-300	103 KAR 030:261
224.1-310	103 KAR 030:261
224.1-010	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.1-300	103 KAR 008:170
224.1-310	103 KAR 008:170
224.1-400	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.1-405	401 KAR 006:350
224.10-010	401 KAR 006:320
224.10-100	401 KAR 006:320
	401 KAR 058:005
	401 KAR 052:100
224.10-110	401 KAR 006:211
224.10-410	400 KAR 001:110
224.10-410 – 224.10-470	401 KAR 006:320
224.16-050	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.16-070	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.20	401 KAR 063:010
224.10-100	401 KAR 063:010
224.20-100	401 KAR 051:010
	401 KAR 052:100
	401 KAR 058:005
224.20-110	401 KAR 051:010
	401 KAR 052:100
	401 KAR 058:005
224.20-120	401 KAR 051:010
	401 KAR 052:100
	401 KAR 058:005
224.20-300	401 KAR 058:005
224.20-310	401 KAR 058:005
224.20-320	401 KAR 058:005
224.43-010 – 224.43-815	401 KAR 006:350
224.46-012 – 224.46-870	401 KAR 006:350
224.60-100 – 224.60-160	401 KAR 006:350
224.70-100 – 224.70-140	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
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224.71-100 – 224.71-145	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.73-100 – 224.30-120	401 KAR 010:001
	401 KAR 010:026
	401 KAR 010:029
	401 KAR 010:030
	401 KAR 010:031
224.73-100 – 224.30-120	416 KAR 001:010
224.99-010	401 KAR 058:005
227.550	103 KAR 027:100
237.109	902 KAR 008:100
237.115	902 KAR 008:100
241.067	804 KAR 010:040

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241.069	804 KAR 010:040
241.021	804 KAR 010:040
243.020	103 KAR 040:050
243.200	103 KAR 040:050
243.720	103 KAR 040:091
243.850	103 KAR 040:050
244.150	103 KAR 040:010
246.030	302 KAR 045:010
246.250	302 KAR 015:020
	302 KAR 015:030
246.650	302 KAR 045:010
246.660	302 KAR 045:010
246.990	302 KAR 045:010
247	302 KAR 034:011
	302 KAR 035:011
	302 KAR 036:011
247.220	302 KAR 015:010
257	302 KAR 020:011
	302 KAR 020:012
	302 KAR 020:013
	302 KAR 022:050
257.020	302 KAR 021:011
	302 KAR 022:010
	302 KAR 022:020
	302 KAR 022:030
	302 KAR 022:070
	302 KAR 022:080
	302 KAR 022:130
	302 KAR 022:150
257.030	302 KAR 021:011
	302 KAR 022:010
	302 KAR 022:030
	302 KAR 022:040
	302 KAR 022:130
	302 KAR 022:150
257.080	302 KAR 021:011
	302 KAR 022:030
	302 KAR 022:130
	302 KAR 022:150
257.160	302 KAR 022:040
260	302 KAR 010:011
260.010	302 KAR 037:010
260.020	302 KAR 045:010
260.030	302 KAR 045:010
260.580	302 KAR 010:025
260.620	302 KAR 010:015
	302 KAR 010:100
260.850 – 260.869	302 KAR 050:050
261	302 KAR 020:014
	302 KAR 022:050
262.010 – 262.660	416 KAR 001:010
273.161 – 273.405	300 KAR 001:010
278	807 KAR 005:056
278.548	920 KAR 001:070
286.4	808 KAR 001:170
286.8-010	808 KAR 001:170
286.8-020	808 KAR 001:170
286.8-030	808 KAR 001:170
286.8-032	808 KAR 001:170
286.8-034	808 KAR 001:170
286.8-036	808 KAR 001:170
286.8-060	808 KAR 001:170
286.8-070	808 KAR 001:170
286.8-080	808 KAR 001:170
286.8-090	808 KAR 001:170
286.8-255	808 KAR 001:170
286.8-260	808 KAR 001:170
286.8-290	808 KAR 001:170
286.9-010	808 KAR 001:170
	808 KAR 009:050
286.9-020	808 KAR 001:170
	808 KAR 009:050
286.9-030	808 KAR 001:170
	808 KAR 009:050

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	808 KAR 009:050
286.9-050	808 KAR 001:170
	808 KAR 009:050
286.9-060	808 KAR 001:170
	808 KAR 009:050
286.9-070	808 KAR 009:050
286.9-071	808 KAR 001:170
	808 KAR 009:050
286.9-073	808 KAR 001:170
	808 KAR 009:050
286.9-080	808 KAR 001:170
	808 KAR 009:050
286.9-104	808 KAR 009:050
304.1-040	806 KAR 010:061
304.17A-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
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304.5-070	806 KAR 005:060
304.5-140	806 KAR 005:025
304.7-010 - 304.7-350	806 KAR 007:021
304.7-361	806 KAR 007:031
304.9-030	806 KAR 009:221
304.9-105	806 KAR 009:025
	806 KAR 009:221
304.9-130	806 KAR 009:025
304.9-150	806 KAR 009:025
304.9-160	806 KAR 009:025
	806 KAR 009:221
304.9-190	806 KAR 009:221
304.9-230	806 KAR 009:025
	806 KAR 009:221
304.9-270	806 KAR 009:025
304.9-295	806 KAR 009:025
	806 KAR 009:221
304.9-320	806 KAR 009:221
304.9-430	806 KAR 009:025
	806 KAR 009:221
304.9-505	806 KAR 009:221
	806 KAR 009:265
304.10-030	806 KAR 010:061
304.10-040	806 KAR 010:061
304.10-140	806 KAR 010:061
304.12-090 - 304.12-110	806 KAR 013:101
304.13-051 - 304.13-065	806 KAR 013:101
304.13-057	806 KAR 013:120
304.13-121	806 KAR 013:040
304.13-151	806 KAR 013:071
304.13-167	806 KAR 013:120
304.13-400 – 304.13-420	806 KAR 013:120
304.14-010	806 KAR 013:101
304.14-120	806 KAR 014:061
	806 KAR 015:090
304.14-642	806 KAR 009:221
304.15-075	806 KAR 015:090
304.15-700	806 KAR 009:221
304.20-400 - 304.20-450	806 KAR 013:101
304.17A-257	902 KAR 021:020
304.47-010	806 KAR 047:010
304.47-020	806 KAR 047:010
304.47-040	806 KAR 047:010
304.47-050	806 KAR 047:010
304.47-080	806 KAR 047:010
304.99-020	806 KAR 003:230
309.080	907 KAR 015:005
309.130	902 KAR 020:430
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309.300 - 309.319	920 KAR 001:070
311.530-311.620	201 KAR 009:270
311.571	902 KAR 020:280
311.646	922 KAR 002:100
311.840	907 KAR 015:005
311.860	902 KAR 020:430
311.990	201 KAR 009:270
311A.015	202 KAR 007:020
311A.020	202 KAR 007:020
311A.030	202 KAR 007:555
311A.145	202 KAR 007:020
311A.190	202 KAR 007:555
313.021	201 KAR 008:590
313.035	201 KAR 008:550
313.060	201 KAR 008:540
313.085	201 KAR 008:540
314.011	907 KAR 015:005
	922 KAR 002:090
	922 KAR 002:100
314.041	902 KAR 020:280
	902 KAR 020:370
314.042	902 KAR 020:430
314.051	902 KAR 020:370
314.404-314.416	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
314A.110	201 KAR 029:015
314A.112	201 KAR 029:015
314A.215	201 KAR 029:015
314A.220	201 KAR 029:015
315.010	201 KAR 002:230
315.020	201 KAR 002:230
315.035	201 KAR 002:230
315.050	201 KAR 002:020
315.191	201 KAR 002:230
316	201 KAR 015:010
316.010	201 KAR 015:110
316.030	201 KAR 015:040
	201 KAR 015:050
	201 KAR 015:110
316.125	201 KAR 015:030
	201 KAR 015:110
316.127	201 KAR 015:110
316.130	201 KAR 015:030
	201 KAR 015:110
316.132	201 KAR 015:030
316.140	201 KAR 015:030
	201 KAR 015:120
316.150	201 KAR 015:080
316.165	201 KAR 015:125
316.170	201 KAR 015:015
316.210	201 KAR 015:015
316.260	201 KAR 015:110
317A.020	201 KAR 012:030
	201 KAR 012:082
317A.050	201 KAR 012:030
	201 KAR 012:082
	201 KAR 012:260
317A.060	201 KAR 012:030
	201 KAR 012:060
	201 KAR 012:140
317a.062	201 KAR 012:260
317A.090	201 KAR 012:082
	201 KAR 012:140
317B.020	201 KAR 012:060
318	815 KAR 020:010
	815 KAR 020:080

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	815 KAR 020:111
318.010	815 KAR 020:020
	815 KAR 020:030
	815 KAR 020:070
	815 KAR 020:130
	815 KAR 020:180
	815 KAR 020:195
318.015	815 KAR 020:020
	815 KAR 020:070
	815 KAR 020:090
	815 KAR 020:130
318.020	815 KAR 020:030
318.030	815 KAR 020:030
	815 KAR 020:050
318.040	815 KAR 020:030
318.050	815 KAR 020:030
318.054	815 KAR 020:030
318.060	815 KAR 020:030
318.080	815 KAR 020:030
318.090	815 KAR 020:150
318.130	815 KAR 020:020
	815 KAR 020:060
	815 KAR 020:090
	815 KAR 020:120
	815 KAR 020:130
	815 KAR 020:150
	815 KAR 020:170
	815 KAR 020:180
318.134	815 KAR 020:050
	815 KAR 020:150
	815 KAR 020:195
318.140	815 KAR 020:150
318.150	815 KAR 020:020
	815 KAR 020:060
	815 KAR 020:070
	815 KAR 020:090
	815 KAR 020:120
	815 KAR 020:130
	815 KAR 020:170
318.160	815 KAR 020:050
	815 KAR 020:150
318.165	815 KAR 020:120
318.170	815 KAR 020:150
318.200	815 KAR 020:020
	815 KAR 020:055
	815 KAR 020:070
	815 KAR 020:130
319	907 KAR 015:010
319.050	902 KAR 020:430
319.053	907 KAR 015:005
319.056	902 KAR 020:430
	907 KAR 015:005
319.064	902 KAR 020:430
	907 KAR 015:005
319A.010	902 KAR 020:280
319C.010	902 KAR 020:430
	907 KAR 015:005
321	201 KAR 016:012
321.181	201 KAR 016:600
321.193	201 KAR 016:510
	201 KAR 016:520
	201 KAR 016:530
	201 KAR 016:540
	201 KAR 016:570
321.201	201 KAR 016:516
321.207	201 KAR 016:514
	201 KAR 016:550
	201 KAR 016:560
	201 KAR 016:572
	201 KAR 016:580
321.211	201 KAR 016:510
	201 KAR 016:570
	201 KAR 016:580
	201 KAR 016:590

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321.221	201 KAR 016:540
	201 KAR 016:590
321.235	201 KAR 016:590
	201 KAR 016:610
	201 KAR 016:700
321.240	201 KAR 016:510
	201 KAR 016:512
	201 KAR 016:516
321.351	201 KAR 016:500
	201 KAR 016:610
	201 KAR 016:700
321.353	201 KAR 016:610
321.360	201 KAR 016:610
	201 KAR 016:700
321.441	201 KAR 016:512
	201 KAR 016:520
	201 KAR 016:530
	201 KAR 016:540
	201 KAR 016:570
	201 KAR 016:580
	201 KAR 016:590
322	401 KAR 006:320
322.010	405 KAR 008:010
322.340	405 KAR 008:010
322A	401 KAR 006:320
323A.040	201 KAR 010:050
323A.050	201 KAR 010:050
323A.060	201 KAR 010:050
323A.070	201 KAR 010:050
323A.100	201 KAR 010:050
	201 KAR 010:080
323A.210	201 KAR 010:080
324.010	201 KAR 011:011
	201 KAR 011:121
	201 KAR 011:170
	201 KAR 011:210
	201 KAR 011:220
324.020	201 KAR 011:210
	201 KAR 011:220
324.040	201 KAR 011:210
324.045	201 KAR 011:190
	201 KAR 011:210
324.046	201 KAR 011:011
	201 KAR 011:170
	201 KAR 011:190
	201 KAR 011:210
324.085	201 KAR 011:170
	201 KAR 011:210
324.090	201 KAR 011:170
	201 KAR 011:210
324.111	201 KAR 011:011
	201 KAR 011:121
324.121	201 KAR 011:121
324.117	201 KAR 011:011
	201 KAR 011:105
324.141	201 KAR 011:210
324.150	201 KAR 011:190
324.151	201 KAR 011:190
324.160	201 KAR 011:011
	201 KAR 011:105
	201 KAR 011:121
	201 KAR 011:170
	201 KAR 011:190
	201 KAR 011:210
324.170	201 KAR 011:190
324.200	201 KAR 011:190
324.281	201 KAR 011:121
	201 KAR 011:170
	201 KAR 011:190
	201 KAR 011:210
324.282	201 KAR 011:002
	201 KAR 011:105
324.287	201 KAR 011:210
324.310	201 KAR 011:121

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	201 KAR 011:210
324.330	201 KAR 011:210
324.360	201 KAR 011:121
324.395	201 KAR 011:220
324.410	201 KAR 011:011
324.420	201 KAR 011:011
324.990	201 KAR 011:210
324A	201 KAR 030:010
324A.020	201 KAR 030:190
324A.015	201 KAR 030:021
	201 KAR 030:040
324A.020	201 KAR 030:070
	201 KAR 030:110
324A.030	201 KAR 030:190
	201 KAR 030:330
324A.035	201 KAR 030:040
	201 KAR 030:110
	201 KAR 030:130
	201 KAR 030:190
	201 KAR 030:330
324A.040	201 KAR 030:110
	201 KAR 030:190
324A.045	201 KAR 030:110
	201 KAR 030:190
324A.047	201 KAR 030:110
324A.050	201 KAR 030:040
	201 KAR 030:070
324A.052	201 KAR 030:070
	201 KAR 030:190
324A.065	201 KAR 030:110
	201 KAR 030:190
324A.075	201 KAR 030:190
324A.152	201 KAR 030:330
324A.154	201 KAR 030:330
324A.155	201 KAR 030:330
324A.163	201 KAR 030:330
325.240	201 KAR 001:100
325.261	201 KAR 001:190
325.270	201 KAR 001:190
325.330	201 KAR 001:100
327.010	902 KAR 020:280
327.300	201 KAR 022:170
334A.020	902 KAR 020:280
335.080	902 KAR 020:430
	907 KAR 015:005
335.090	902 KAR 020:280
335.100	902 KAR 020:430
	907 KAR 015:005
335.300	902 KAR 020:430
	907 KAR 015:005
335.500	201 KAR 036:060
	902 KAR 020:430
	907 KAR 015:005
335.505	201 KAR 036:060
335.525	201 KAR 036:060
337	902 KAR 008:040
	902 KAR 008:120
342.020	803 KAR 025:260
	803 KAR 025:271E
342.035	803 KAR 025:260
	803 KAR 025:271E
342.640	702 KAR 003:130
342.0011	803 KAR 025:260
	803 KAR 025:271E
343	787 KAR 003:010
344.030	101 KAR 002:102
	101 KAR 003:015
344.500	920 KAR 001:070
349.015	805 KAR 001:030
	805 KAR 001:140
	805 KAR 001:170
	805 KAR 009:011
349.035	805 KAR 001:140
	805 KAR 009:011

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349.040	805 KAR 001:140
	805 KAR 009:011
349.075	805 KAR 001:140
	805 KAR 009:011
349.335	805 KAR 001:080
349.045	805 KAR 001:020
349.105	805 KAR 001:170
349.110	805 KAR 001:020
	805 KAR 009:011
349.115	805 KAR 001:030
349.120	805 KAR 001:050
	805 KAR 001:140
	805 KAR 001:170
	805 KAR 001:200
	805 KAR 009:011
349.155	805 KAR 001:140
	805 KAR 001:170
	805 KAR 009:011
350	405 KAR 010:001
	405 KAR 026:011
350.010	400 KAR 001:110
	405 KAR 005:002
	405 KAR 005:032
	405 KAR 026:011
350.020	405 KAR 007:050
	405 KAR 008:010
	405 KAR 010:050
	405 KAR 026:011
350.028	400 KAR 001:110
	405 KAR 026:011
350.050	405 KAR 007:040
	405 KAR 026:011
350.055	405 KAR 008:010
	405 KAR 026:011
350.057	405 KAR 007:040
	405 KAR 026:011
350.060	405 KAR 007:040
	405 KAR 008:010
	405 KAR 008:030
	405 KAR 010:050
	405 KAR 026:011
350.062	405 KAR 026:011
350.064	405 KAR 010:050
	405 KAR 026:011
350.070	400 KAR 001:110
	405 KAR 008:010
	405 KAR 026:011
350.085	405 KAR 008:010
	405 KAR 026:011
350.090	400 KAR 001:110
	405 KAR 007:050
	405 KAR 008:010
	405 KAR 026:011
350.093	400 KAR 001:110
	405 KAR 010:050
	405 KAR 016:210
	405 KAR 018:220
	405 KAR 026:011
350.095	405 KAR 010:050
	405 KAR 016:210
	405 KAR 018:220
	405 KAR 026:011
350.100	405 KAR 016:100
	405 KAR 016:210
	405 KAR 018:100
	405 KAR 018:220
	405 KAR 020:040
	405 KAR 026:011
350.110	405 KAR 026:011
350.113	405 KAR 026:011
350.130	400 KAR 001:110
	405 KAR 005:032
	405 KAR 008:010
	405 KAR 010:050

KRS SECTION	REGULATION
350.131	405 KAR 010:050
350.135	405 KAR 008:010
	405 KAR 026:011
350.151	405 KAR 010:050
	405 KAR 018:100
	405 KAR 018:220
	405 KAR 026:011
350.240	405 KAR 005:002
	405 KAR 005:032
350.255	400 KAR 001:110
350.300	405 KAR 005:002
	405 KAR 005:032
350.405	405 KAR 016:210
	405 KAR 020:040
350.410	405 KAR 007:040
	405 KAR 016:210
	405 KAR 018:220
350.415	405 KAR 020:040
350.420	405 KAR 007:050
	405 KAR 016:100
	405 KAR 018:100
350.445	405 KAR 026:011
350.450	405 KAR 007:040
	405 KAR 008:010
	405 KAR 016:210
	405 KAR 018:220
	405 KAR 020:040
	405 KAR 026:011
350.455	405 KAR 016:100
	405 KAR 018:100
350.465	400 KAR 001:110
	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
	405 KAR 020:040
	405 KAR 026:011
350.500 - 350.521	405 KAR 008:010
350.990	400 KAR 001:110
	405 KAR 026:011
350.0301	400 KAR 001:110
351.315	400 KAR 001:110
351.330	805 KAR 004:050
331.335	805 KAR 004:050
331.360	805 KAR 004:050
351.345	400 KAR 001:110
351.350	400 KAR 001:110
352.340	805 KAR 007:101
353.050	805 KAR 001:140
353.060	805 KAR 001:140
353.120	805 KAR 001:060
353.160	805 KAR 001:190
353.170	805 KAR 001:060
353.180	805 KAR 001:060
	805 KAR 001:110
	805 KAR 001:140
	805 KAR 001:170
353.500	805 KAR 001:080
	805 KAR 001:160
	805 KAR 001:190
353.500 - 353.730	805 KAR 001:001
353.510	805 KAR 001:110
	805 KAR 001:140
	805 KAR 001:170
353.520	805 KAR 001:020
	805 KAR 001:080
	805 KAR 001:110
	805 KAR 001:120
	805 KAR 001:140
	805 KAR 001:170
353.540	805 KAR 001:080

KRS SECTION	REGULATION
353.550	805 KAR 001:030
	805 KAR 001:060
	805 KAR 001:080
	805 KAR 001:110
	805 KAR 001:180
	805 KAR 001:200
353.560	805 KAR 001:080
353.561 - 353.564	805 KAR 001:140
	805 KAR 001:170
353.570	805 KAR 001:110
353.590	805 KAR 001:030
	805 KAR 001:050
	805 KAR 001:110
	805 KAR 001:140
	805 KAR 001:170
	805 KAR 001:190
353.5901	805 KAR 001:140
	805 KAR 001:170
	805 KAR 001:190
353.592	805 KAR 001:140
	805 KAR 001:170
353.595	805 KAR 001:170
353.597	805 KAR 001:170
353.610	805 KAR 001:140
353.651	805 KAR 001:140
	805 KAR 001:170
353.652	805 KAR 001:140
	805 KAR 001:170
353.656	805 KAR 001:160
353.6601 - 353.6606	805 KAR 001:140
	805 KAR 001:170
353.730	805 KAR 001:140
	805 KAR 001:170
353.735 - 353.747	805 KAR 001:200
353.737	805 KAR 001:030
	805 KAR 001:140
	805 KAR 001:170
353.745	805 KAR 001:190
353.990	805 KAR 001:060
353.991	805 KAR 001:140
	805 KAR 001:170
	805 KAR 001:190
353.992	805 KAR 001:110
363.410	302 KAR 081:010
363.510	302 KAR 075:130
	302 KAR 076:100
	302 KAR 080:010
	302 KAR 081:010
363.610	302 KAR 081:010
363.710	302 KAR 076:100
363.720	302 KAR 075:130
363.730	302 KAR 075:130
363.770	302 KAR 076:100
363.780	302 KAR 076:100
363.800	302 KAR 076:100
365.650	103 KAR 025:060
365.665	103 KAR 025:060
365.680	103 KAR 025:060
369.101 - 369.120	907 KAR 015:010
369.102	601 KAR 009:130
369.107	601 KAR 009:130
383.085	902 KAR 045:065
	902 KAR 045:070
387	922 KAR 001:565
387.010	902 KAR 045:065
	902 KAR 045:070
401	105 KAR 001:149
402	105 KAR 001:149
403	105 KAR 001:149
403.270 - 403.355	922 KAR 001:565
405.024	922 KAR 001:565
416.120	921 KAR 002:015
416.212	921 KAR 002:015
416.2030	921 KAR 002:015

KRS SECTION	REGULATION
416.2095	921 KAR 002:015
416.2096	921 KAR 002:015
416.2099	921 KAR 002:015
422.317	201 KAR 008:540
	907 KAR 003:170
423	030 KAR 008:005
424	805 KAR 001:140
424.110 - 424.120	405 KAR 008:010
424.260	702 KAR 003:130
431.600	922 KAR 001:330
434.840 – 434.860	907 KAR 003:170
439	501 KAR 006:020
	501 KAR 006:060
	501 KAR 006:110
	501 KAR 006:140
	501 KAR 006:160
436.265	501 KAR 006:280
439.315	501 KAR 001:040
439.330	501 KAR 001:040
	501 KAR 001:071
439.331	501 KAR 006:280
439.340	501 KAR 001:071
439.341	501 KAR 001:040
	501 KAR 001:071
439.346	501 KAR 001:040
	501 KAR 001:071
439.348	501 KAR 006:280
439.390	501 KAR 001:040
439.430	501 KAR 001:040
	501 KAR 001:071
439.440	501 KAR 001:040
439.480	501 KAR 006:280
439.3101	501 KAR 006:280
439.3104	501 KAR 006:280
439.3105	501 KAR 006:280
439.3401	902 KAR 020:430
	902 KAR 020:450
439.3406	501 KAR 001:040
446.010	501 KAR 006:280
503.110	922 KAR 001:330
514	921 KAR 002:015
527.070	922 KAR 002:100
527.100	922 KAR 001:565
527.110	922 KAR 001:565
529.010	922 KAR 001:330
532.043	501 KAR 001:040
	501 KAR 001:071
532.045	922 KAR 001:330
532.060	501 KAR 001:071
532.400	501 KAR 001:040
600.010	922 KAR 001:330
600.020	922 KAR 001:320
	922 KAR 001:330
	922 KAR 001:565
	922 KAR 002:090
	922 KAR 002:100
600 - 645	505 KAR 001:160
605.090	922 KAR 001:320
	922 KAR 001:330
605.120	922 KAR 001:565
605.130	922 KAR 001:330
	922 KAR 001:565
605.150	922 KAR 001:330
	922 KAR 001:565
610.010	922 KAR 001:330
610.110	922 KAR 001:320
	922 KAR 001:565
620.010 - 620.050	922 KAR 001:330
620.020	922 KAR 001:320
	922 KAR 001:560
	922 KAR 001:565
	922 KAR 002:090
	922 KAR 002:100
620.030	902 KAR 020:280

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	922 KAR 002:090
	922 KAR 002:100
620.070	922 KAR 001:330
620.072	922 KAR 001:330
620.090	922 KAR 001:565
620.140	922 KAR 001:320
	922 KAR 001:565
620.142	922 KAR 001:320
	922 KAR 001:565
620.157	922 KAR 001:320
620.170	922 KAR 001:565
620.180	922 KAR 001:320
	922 KAR 001:330
620.230	922 KAR 001:320
620.350	922 KAR 001:330
620.363	922 KAR 001:320
620.990	922 KAR 001:330
625.065	922 KAR 001:560
2019 RS HB220	806 KAR 003:240
7 C.F.R.	405 KAR 008:030
	405 KAR 010:001
	921 KAR 003:050
	922 KAR 002:100
12 C.F.R.	201 KAR 030:040
	201 KAR 030:190
	201 KAR 030:330
16 C.F.R.	201 KAR 015:110
	922 KAR 002:100
20 C.F.R.	921 KAR 002:015
21 C.F.R.	902 KAR 045:090
	902 KAR 055:120
24 C.F.R.	201 KAR 011:121
26 C.F.R.	102 KAR 001:032
	105 KAR 001:390
	921 KAR 003:050
27 C.F.R.	405 KAR 008:010
28 C.F.R.	201 KAR 011:210
	902 KAR 045:065
	902 KAR 045:070
	920 KAR 001:070
29 C.F.R.	101 KAR 002:102
	101 KAR 003:015
	202 KAR 007:555
	902 KAR 008:040
	902 KAR 008:120
	902 KAR 045:065
	902 KAR 045:070
30 C.F.R.	400 KAR 001:110
	405 KAR 008:010
	405 KAR 008:030
	405 KAR 010:001
	405 KAR 010:050
	405 KAR 016:100
	405 KAR 016:210
	405 KAR 018:100
	405 KAR 018:220
40 C.F.R.	302 KAR 031:040
	401 KAR 010:001
	401 KAR 010:029
	401 KAR 051:010
	401 KAR 052:100
	401 KAR 058:005
	405 KAR 008:030
	405 KAR 010:001
	805 KAR 001:110
	805 KAR 001:190
42 C.F.R.	900 KAR 002:050
	902 KAR 002:065
	902 KAR 020:450
	907 KAR 003:170
	907 KAR 005:005
	907 KAR 010:830
	907 KAR 010:840
	907 KAR 015:005

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	907 KAR 015:010
	907 KAR 015:020
44 C.F.R.	201 KAR 011:121
45 C.F.R.	902 KAR 020:370
	902 KAR 020:430
	902 KAR 020:450
	907 KAR 015:010
	907 KAR 015:020
	920 KAR 001:070
	922 KAR 001:320
	922 KAR 002:090
	922 KAR 002:100
49 C.F.R.	302 KAR 031:040
	702 KAR 005:080
	805 KAR 001:190
	922 KAR 002:100
7 U.S.C.	302 KAR 050:050
8 U.S.C	921 KAR 002:015
9 U.S.C.	202 KAR 006:010
	202 KAR 006:050
	202 KAR 006:080
	202 KAR 006:090
12 U.S.C.	201 KAR 030:010
	201 KAR 030:040
	201 KAR 030:110
	201 KAR 030:130
	201 KAR 030:190
15 U.S.C.	201 KAR 030:330
	806 KAR 003:230
16 U.S.C.	405 KAR 008:010
	405 KAR 008:030
18 U.S.C.	501 KAR 006:160
	601 KAR 002:030E
20 U.S.C.	013 KAR 001:020
	702 KAR 007:065
	703 KAR 005:270
	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

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	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		
	907 KAR 005:005		
	907 KAR 010:830		
	907 KAR 010:840		
	907 KAR 015:010		
	907 KAR 015:015		
	907 KAR 015:020		
	907 KAR 015:022		
	907 KAR 015:025		
	920 KAR 001:070		
	921 KAR 002:015		
	922 KAR 001:320		
	922 KAR 001:330		
	922 KAR 001:565		
	922 KAR 002:090		
	922 KAR 002:100		
47 U.S.C.	202 KAR 006:010		
	202 KAR 006:020		
	202 KAR 006:030		
	202 KAR 006:050		
	202 KAR 006:060		
	202 KAR 006:070		
	202 KAR 006:080		
	202 KAR 006:090		
	202 KAR 006:100		
50 C.F.R.	302 KAR 045:010		
Pub.L. 104-191	920 KAR 001:070		
Pub.L. 110-325	920 KAR 001:070		

CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
012 KAR 001:120	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:125	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:130	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:160	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:170	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:175	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:080	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:090	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:100	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:110	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:120	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:130	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:140	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:160	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:170	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:010	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:020	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:030	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:040	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:050	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:060	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:070	06-06-2019	To be amended, filing deadline 12-10-20
020 KAR 001:010	06-07-2019	Remain in Effect As Is
020 KAR 001:020	06-07-2019	Remain in Effect As Is
020 KAR 001:030	06-07-2019	Remain in Effect As Is
020 KAR 001:040	06-07-2019	Remain in Effect As Is
020 KAR 001:050	06-07-2019	Remain in Effect As Is
020 KAR 001:060	06-07-2019	Remain in Effect As Is
020 KAR 001:070	06-07-2019	Remain in Effect As Is
020 KAR 001:080	06-07-2019	Remain in Effect As Is
020 KAR 001:090	06-07-2019	Remain in Effect As Is
020 KAR 001:100	06-07-2019	Remain in Effect As Is
032 KAR 001:080	09-27-2019	Remain in Effect As Is
032 KAR 001:090	09-27-2019	Remain in Effect As Is
032 KAR 001:100	09-27-2019	To be amended, filing deadline 3-27-21.
032 KAR 001:190	09-27-2019	To be amended, filing deadline 3-27-21.
032 KAR 002:020	09-27-2019	Remain in Effect As Is
032 KAR 002:030	09-27-2019	Remain in Effect As Is
032 KAR 002:040	09-27-2019	Remain in Effect As Is
032 KAR 002:050	09-27-2019	Remain in Effect As Is
032 KAR 002:060	09-27-2019	Remain in Effect As Is
032 KAR 002:070	09-27-2019	Remain in Effect As Is
032 KAR 002:080	09-27-2019	Remain in Effect As Is
032 KAR 002:100	09-27-2019	Remain in Effect As Is
032 KAR 002:110	09-27-2019	Remain in Effect As Is
032 KAR 002:130	09-27-2019	Remain in Effect As Is
032 KAR 002:170	09-27-2019	Remain in Effect As Is
032 KAR 002:180	09-27-2019	Remain in Effect As Is
032 KAR 002:190	09-27-2019	Remain in Effect As Is
032 KAR 002:200	09-27-2019	Remain in Effect As Is
032 KAR 002:210	09-27-2019	Remain in Effect As Is
032 KAR 002:220	09-27-2019	Remain in Effect As Is
040 KAR 001:010	08-23-2019	Remain in Effect As Is
040 KAR 001:020	08-23-2019	Remain in Effect As Is
040 KAR 001:030	08-23-2019	Remain in Effect As Is
040 KAR 005:010	08-23-2019	Remain in Effect As Is
045 KAR 001:060	06-10-2019	Remain in Effect As Is
045 KAR 001:080	06-10-2019	Remain in Effect As Is
102 KAR 001:010	07-03-2019	Remain in Effect As Is
102 KAR 001:030	07-03-2019	Remain in Effect As Is
102 KAR 001:038	07-03-2019	Remain in Effect As Is
102 KAR 001:039	07-03-2019	Remain in Effect As Is
102 KAR 001:045	07-03-2019	Remain in Effect As Is
102 KAR 001:050	07-03-2019	Remain in Effect As Is
102 KAR 001:057	07-03-2019	Remain in Effect As Is
102 KAR 001:060	07-03-2019	Remain in Effect As Is
102 KAR 001:070	07-03-2019	Remain in Effect As Is
102 KAR 001:100	07-03-2019	Remain in Effect As Is
102 KAR 001:105	07-03-2019	Remain in Effect As Is
102 KAR 001:110	07-03-2019	Remain in Effect As Is
102 KAR 001:130	07-03-2019	Remain in Effect As Is
102 KAR 001:140	07-03-2019	Remain in Effect As Is
102 KAR 001:145	07-03-2019	Remain in Effect As Is
102 KAR 001:150	07-03-2019	Remain in Effect As Is
102 KAR 001:155	07-03-2019	Remain in Effect As Is
102 KAR 001:163	07-03-2019	Remain in Effect As Is
102 KAR 001:165	07-03-2019	Remain in Effect As Is
102 KAR 001:168	07-03-2019	Remain in Effect As Is
102 KAR 001:170	07-03-2019	Remain in Effect As Is
102 KAR 001:175	07-03-2019	Remain in Effect As Is
102 KAR 001:178	07-03-2019	Remain in Effect As Is
102 KAR 001:180	07-03-2019	Remain in Effect As Is
102 KAR 001:185	07-03-2019	Remain in Effect As Is
102 KAR 001:195	07-03-2019	Remain in Effect As Is
102 KAR 001:210	07-03-2019	Remain in Effect As Is
102 KAR 001:220	07-03-2019	Remain in Effect As Is
102 KAR 001:225	07-03-2019	Remain in Effect As Is
102 KAR 001:230	07-03-2019	Remain in Effect As Is
102 KAR 001:240	07-03-2019	Remain in Effect As Is
102 KAR 001:245	07-03-2019	Remain in Effect As Is
102 KAR 001:250	07-03-2019	Remain in Effect As Is
102 KAR 001:270	07-03-2019	Remain in Effect As Is
102 KAR 001:280	07-03-2019	Remain in Effect As Is
102 KAR 001:290	07-03-2019	Remain in Effect As Is
102 KAR 001:300	07-03-2019	Remain in Effect As Is
102 KAR 001:310	07-03-2019	Remain in Effect As Is
102 KAR 001:320	07-03-2019	Remain in Effect As Is

CERTIFICATION LETTER SUMMARIES

Regulation Number	Letter Filed Date	Action
102 KAR 001:330	07-03-2019	Remain in Effect As Is
102 KAR 001:340	07-03-2019	Remain in Effect As Is
102 KAR 001:350	07-03-2019	Remain in Effect As Is
102 KAR 002:010	07-03-2019	Remain in Effect As Is
102 KAR 002:025	07-03-2019	Remain in Effect As Is
103 KAR 001:070	06-07-2019	Remain in Effect As Is
103 KAR 001:092	06-07-2019	Remain in Effect As Is
103 KAR 001:150	06-07-2019	Remain in Effect As Is
103 KAR 002:020	06-07-2019	Remain in Effect As Is
103 KAR 005:180	06-07-2019	Remain in Effect As Is
103 KAR 005:190	06-07-2019	Remain in Effect As Is
103 KAR 005:220	06-07-2019	Remain in Effect As Is
103 KAR 005:230	06-07-2019	Remain in Effect As Is
103 KAR 027:030	06-07-2019	Remain in Effect As Is
103 KAR 027:040	06-07-2019	Remain in Effect As Is
103 KAR 027:130	09-04-2019	Remain in Effect As Is
103 KAR 027:240	06-07-2019	Remain in Effect As Is
103 KAR 028:020	06-07-2019	Remain in Effect As Is
103 KAR 028:030	11-06-2019	Remain in Effect As Is
103 KAR 028:051	06-07-2019	Remain in Effect As Is
103 KAR 028:130	06-07-2019	Remain in Effect As Is
103 KAR 030:160	06-07-2019	Remain in Effect As Is
103 KAR 030:235	06-07-2019	Remain in Effect As Is
103 KAR 030:280	06-07-2019	Remain in Effect As Is
103 KAR 031:011	06-07-2019	Remain in Effect As Is
103 KAR 031:050	06-07-2019	Remain in Effect As Is
103 KAR 031:102	06-07-2019	Remain in Effect As Is
103 KAR 031:170	06-07-2019	Remain in Effect As Is
103 KAR 031:190	06-07-2019	Remain in Effect As Is
103 KAR 040:035	08-05-2019	Remain in Effect As Is
103 KAR 040:100	08-09-2019	Remain in Effect As Is
103 KAR 041:090	08-05-2019	Remain in Effect As Is
103 KAR 041:120	12-03-2019	Remain in Effect As Is
103 KAR 041:130	08-06-2019	Remain in Effect As Is
103 KAR 041:140	08-05-2019	Remain in Effect As Is
103 KAR 041:150	09-04-2019	Remain in Effect As Is
103 KAR 041:160	08-05-2019	Remain in Effect As Is
103 KAR 043:320	08-07-2019	Remain in Effect As Is
103 KAR 043:330	08-07-2019	Remain in Effect As Is
103 KAR 044:070	08-07-2019	Remain in Effect As Is
103 KAR 044:090	08-07-2019	Remain in Effect As Is
103 KAR 044:100	08-07-2019	Remain in Effect As Is
103 KAR 044:120	08-07-2019	Remain in Effect As Is
103 KAR 045:015	08-07-2019	Remain in Effect As Is
105 KAR 001:130	06-28-2019	Remain in Effect As Is
105 KAR 001:150	06-28-2019	Remain in Effect As Is
105 KAR 001:160	06-28-2019	Remain in Effect As Is
105 KAR 001:170	06-28-2019	Remain in Effect As Is
105 KAR 001:190	06-11-2019	Remain in Effect As Is
105 KAR 001:220	06-11-2019	Remain in Effect As Is
105 KAR 001:260	06-11-2019	Remain in Effect As Is
105 KAR 001:400	06-11-2019	Remain in Effect As Is
105 KAR 001:430	06-28-2019	Remain in Effect As Is
105 KAR 001:440	06-11-2019	Remain in Effect As Is
201 KAR 008:520	12-03-2010	To be amended, filing deadline 6-3-21
201 KAR 008:540	04-18-2019	To be amended. Amendment filed 06-14-19.
201 KAR 008:550	07-29-2019	To be amended, filing deadline 1-29-21.
201 KAR 008:581	04-08-2019	To be amended. Amendment filed 04-15-19, effective 9-9-2019.
201 KAR 021:001	12-11-2019	To be amended, filing deadline 6-11-21
201 KAR 010:010	01-16-2020	Remain in Effect As Is

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201 KAR 010:030	01-16-2020	Remain in Effect As Is
201 KAR 010:040	01-16-2020	Remain in Effect As Is
201 KAR 010:050	01-16-2020	Remain in Effect As Is
201 KAR 010:070	01-16-2020	Remain in Effect As Is
201 KAR 010:080	01-16-2020	Remain in Effect As Is
201 KAR 021:015	12-11-2019	To be amended, filing deadline 6-11-22
201 KAR 021:025	12-11-2019	To be amended, filing deadline 6-11-23
201 KAR 021:035	12-11-2019	To be amended, filing deadline 6-11-24
201 KAR 021:041	12-11-2019	To be amended, filing deadline 6-11-25
201 KAR 021:042	12-11-2019	To be amended, filing deadline 6-11-26
201 KAR 021:045	12-11-2019	To be amended, filing deadline 6-11-27
201 KAR 021:051	12-11-2019	To be amended, filing deadline 6-11-28
201 KAR 021:052	12-11-2019	To be amended, filing deadline 6-11-29
201 KAR 021:053	12-11-2019	To be amended, filing deadline 6-11-30
201 KAR 021:054	12-11-2019	To be amended, filing deadline 6-11-31
201 KAR 021:055	12-11-2019	To be amended, filing deadline 6-11-32
201 KAR 021:060	12-11-2019	To be amended, filing deadline 6-11-33
201 KAR 021:065	12-11-2019	To be amended, filing deadline 6-11-34
201 KAR 021:070	12-11-2019	To be amended, filing deadline 6-11-35
201 KAR 021:075	12-11-2019	To be amended, filing deadline 6-11-36
201 KAR 021:085	12-11-2019	To be amended, filing deadline 6-11-37
201 KAR 021:090	12-11-2019	To be amended, filing deadline 6-11-38
201 KAR 021:095	12-11-2019	To be amended, filing deadline 6-11-39
201 KAR 021:100	12-11-2019	To be amended, filing deadline 6-11-40
201 KAR 023:020	06-21-2019	Remain in Effect As Is
201 KAR 023:050	06-21-2019	To be amended, filing deadline 12-21-20
201 KAR 023:060	06-21-2019	Remain in Effect As Is
201 KAR 023:080	06-21-2019	Remain in Effect As Is
201 KAR 023:120	06-21-2019	Remain in Effect As Is
201 KAR 023:140	06-21-2019	Remain in Effect As Is
201 KAR 026:115	09-05-2019	To be amended, filing deadline 3-5-21
201 KAR 026:121	09-05-2019	Remain in Effect As Is
201 KAR 026:125	09-05-2019	Remain in Effect As Is
201 KAR 026:130	09-05-2019	Remain in Effect As Is
201 KAR 026:140	09-05-2019	Remain in Effect As Is
201 KAR 026:145	09-05-2019	Remain in Effect As Is
201 KAR 026:155	09-05-2019	Remain in Effect As Is
201 KAR 026:160	09-05-2019	Remain in Effect As Is
201 KAR 026:165	09-05-2019	Remain in Effect As Is
201 KAR 026:171	09-05-2019	Remain in Effect As Is
201 KAR 026:175	09-05-2019	Remain in Effect As Is
201 KAR 026:180	09-05-2019	Remain in Effect As Is
201 KAR 026:185	09-05-2019	Remain in Effect As Is
201 KAR 026:190	09-05-2019	To be amended, filing deadline 3-5-21
201 KAR 026:200	09-05-2019	To be amended, filing deadline 3-5-21
201 KAR 026:215	09-05-2019	Remain in Effect As Is

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Regulation Number	Letter Filed Date	Action
201 KAR 026:225	09-05-2019	Remain in Effect As Is
201 KAR 026:230	09-05-2019	To be amended, filing deadline 3-5-21
201 KAR 026:250	09-05-2019	To be amended, filing deadline 3-5-21
201 KAR 026:270	09-05-2019	Remain in Effect As Is
201 KAR 026:280	09-05-2019	Remain in Effect As Is
201 KAR 026:290	09-05-2019	Remain in Effect As Is
201 KAR 026:300	09-05-2019	To be amended, filing deadline 3-5-21
201 KAR 026:310	09-05-2019	To be amended, filing deadline 3-5-21
201 KAR 029:010	12-06-2019	Remain in Effect As Is
201 KAR 029:015	12-06-2019	Remain in Effect As Is
201 KAR 029:040	12-06-2019	Remain in Effect As Is
201 KAR 029:070	12-06-2019	Remain in Effect As Is
201 KAR 030:130	08-06-2019	Remain in Effect As Is
201 KAR 030:160	08-06-2019	Remain in Effect As Is
201 KAR 030:170	08-06-2019	Remain in Effect As Is
201 KAR 041:020	12-11-2019	Remain in Effect As Is
201 KAR 041:030	12-11-2019	Remain in Effect As Is
201 KAR 041:040	12-11-2019	Remain in Effect As Is
201 KAR 041:060	12-11-2019	Remain in Effect As Is
201 KAR 041:065	12-11-2019	Remain in Effect As Is
201 KAR 041:070	12-11-2019	Remain in Effect As Is
201 KAR 041:080	12-11-2019	Remain in Effect As Is
201 KAR 041:090	12-11-2019	Remain in Effect As Is
201 KAR 041:100	12-11-2019	Remain in Effect As Is
301 KAR 001:010	11-08-2019	Remain in Effect As Is
301 KAR 001:012	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 001:016	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 001:018	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 001:019	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 001:031	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 001:035	11-08-2019	Remain in Effect As Is
301 KAR 001:050	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 001:058	11-08-2019	Remain in Effect As Is
301 KAR 001:060	11-08-2019	Remain in Effect As Is
301 KAR 001:080	11-08-2019	Remain in Effect As Is
301 KAR 001:082	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 001:110	11-08-2019	Remain in Effect As Is
301 KAR 001:120	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 001:125	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 001:140	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 001:171	11-08-2019	Remain in Effect As Is
301 KAR 001:180	11-08-2019	Remain in Effect As Is
301 KAR 001:210	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 001:400	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 002:015	11-19-2019	To be amended, filing deadline 5-19-21
301 KAR 002:041	11-19-2019	To be amended, filing deadline 5-19-22
301 KAR 002:050	11-19-2019	To be amended, filing deadline 5-19-23
301 KAR 002:084	11-19-2019	To be amended, filing deadline 5-19-24
301 KAR 002:111	11-19-2019	To be amended, filing deadline 5-19-25
301 KAR 002:230	11-19-2019	To be amended, filing deadline 5-19-26
301 KAR 002:260	11-19-2019	To be amended, filing deadline 5-19-27
301 KAR 003:040	12-13-2019	Remain in Effect As Is
301 KAR 003:061	12-13-2019	Remain in Effect As Is
301 KAR 004:040	12-13-2019	Remain in Effect As Is
301 KAR 004:061	12-13-2019	Remain in Effect As Is
302 KAR 029:070	06-27-2019	Remain in Effect As Is
401 KAR 058:005	07-30-2018	To be amended. Amendment filed 06-14-19, effective 6-14-2019.
500 KAR 010:001	12-03-2010	To be amended. Amendment filed 12-3-2019.
500 KAR 010:020	12-03-2010	To be amended. Amendment filed 12-3-2019.
500 KAR 010:030	12-03-2010	To be amended. Amendment filed 12-3-2019.
500 KAR 010:040	12-03-2010	To be amended. Amendment filed 12-3-2019.
501 KAR 001:040	10-21-2019	To be amended. Amendment filed 10-21-2019.
600 KAR 005:010	12-04-2019	Remain in Effect As Is
601 KAR 001:005	11-26-2019	Remain in Effect As Is
601 KAR 001:020	11-26-2019	Remain in Effect As Is
601 KAR 001:040	11-26-2019	Remain in Effect As Is
601 KAR 001:080	09-09-2019	Remain in Effect As Is
601 KAR 001:140	09-09-2019	Remain in Effect As Is
601 KAR 001:200	09-09-2019	Remain in Effect As Is
601 KAR 003:030	11-26-2019	Remain in Effect As Is
601 KAR 004:055	11-26-2019	Remain in Effect As Is
601 KAR 009:040	11-26-2019	Remain in Effect As Is
601 KAR 009:045	11-26-2019	Remain in Effect As Is
601 KAR 009:115	09-09-2019	Remain in Effect As Is
601 KAR 009:140	09-25-2019	Remain in Effect As Is
601 KAR 011:040	11-26-2019	Remain in Effect As Is
601 KAR 014:010	11-12-2019	Remain in Effect As Is
601 KAR 035:060	11-26-2019	Remain in Effect As Is
601 KAR 035:060	03-18-2019	Remain in Effect As Is
601 KAR 040:020	11-26-2019	Remain in Effect As Is
603 KAR 003:030	03-18-2019	Remain in Effect As Is
603 KAR 005:066	11-26-2019	Remain in Effect As Is
603 KAR 005:071	11-26-2019	Remain in Effect As Is
603 KAR 005:320	11-29-2019	Remain in Effect As Is
603 KAR 007:020	11-26-2019	Remain in Effect As Is
603 KAR 040:020	03-18-2019	Remain in Effect As Is
702 KAR 003:100	06-28-2019	Remain in Effect As Is
702 KAR 003:110	06-28-2019	Remain in Effect As Is
702 KAR 003:120	06-28-2019	Remain in Effect As Is
702 KAR 003:220	06-28-2019	Remain in Effect As Is
702 KAR 005:030	06-28-2019	Remain in Effect As Is
702 KAR 005:110	06-28-2019	Remain in Effect As Is
702 KAR 006:110	06-28-2019	Remain in Effect As Is
703 KAR 005:140	06-28-2019	Remain in Effect As Is
704 KAR 003:095	12-09-2019	Remain in Effect As Is
704 KAR 007:160	12-09-2019	Remain in Effect As Is
704 KAR 019:002	12-09-2019	Remain in Effect As Is
705 KAR 002:140	06-28-2019	Remain in Effect As Is
707 KAR 001:002	06-28-2019	Remain in Effect As Is
707 KAR 001:310	06-28-2019	Remain in Effect As Is
707 KAR 001:340	06-28-2019	Remain in Effect As Is
755 KAR 001:010	12-16-2019	Remain in Effect As Is

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Regulation Number	Letter Filed Date	Action
755 KAR 001:020	12-16-2019	Remain in Effect As Is
755 KAR 001:030	12-16-2019	Remain in Effect As Is
755 KAR 001:040	12-16-2019	Remain in Effect As Is
755 KAR 001:050	12-16-2019	Remain in Effect As Is
755 KAR 001:060	12-16-2019	Remain in Effect As Is
755 KAR 001:070	12-16-2019	Remain in Effect As Is
760 KAR 001:0030	01-22-2020	Remain in Effect As Is
760 KAR 001:010	01-22-2020	Remain in Effect As Is
760 KAR 001:020	01-22-2020	Remain in Effect As Is
760 KAR 001:040	01-22-2020	Remain in Effect As Is
760 KAR 001:050	01-22-2020	Remain in Effect As Is
760 KAR 001:060	01-22-2020	Remain in Effect As Is
760 KAR 001:070	01-22-2020	Remain in Effect As Is
770 KAR 001:010	06-21-2019	Remain in Effect As Is
770 KAR 001:020	06-21-2019	Remain in Effect As Is
770 KAR 001:030	06-21-2019	Remain in Effect As Is
770 KAR 001:040	06-21-2019	Remain in Effect As Is
770 KAR 001:050	06-21-2019	Remain in Effect As Is
770 KAR 001:060	06-21-2019	Remain in Effect As Is
770 KAR 001:070	06-21-2019	Remain in Effect As Is
772 KAR 001:010	07-01-2019	Remain in Effect As Is
772 KAR 001:020	07-01-2019	Remain in Effect As Is
772 KAR 001:030	07-01-2019	Remain in Effect As Is
772 KAR 001:040	07-01-2019	Remain in Effect As Is
772 KAR 001:050	07-01-2019	Remain in Effect As Is
772 KAR 001:060	07-01-2019	Remain in Effect As Is
772 KAR 001:070	07-01-2019	Remain in Effect As Is
780 KAR 002:040	06-28-2019	Remain in Effect As Is
780 KAR 002:060	06-28-2019	Remain in Effect As Is
780 KAR 002:140	06-28-2019	Remain in Effect As Is
780 KAR 003:050	06-28-2019	Remain in Effect As Is
780 KAR 003:120	06-28-2019	Remain in Effect As Is
780 KAR 003:130	06-28-2019	Remain in Effect As Is
780 KAR 003:140	06-28-2019	Remain in Effect As Is
780 KAR 007:010	06-28-2019	Remain in Effect As Is
803 KAR 025:015	08-20-2019	To be amended, filing deadline 2-20-21
803 KAR 025:021	08-20-2019	To be amended, filing deadline 2-20-21
803 KAR 025:220	08-20-2019	To be amended, filing deadline 2-20-21
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 As Is
815 KAR 020:072	10-14-2019	Remain in Effect As Is
815 KAR 020:073	10-14-2019	Remain in Effect As Is
815 KAR 020:074	10-14-2019	Remain in Effect As Is
815 KAR 020:078	10-14-2019	Remain in Effect As Is
815 KAR 020:110	10-14-2019	Remain in Effect As Is
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 As Is
902 KAR 002:030	10-18-2019	Remain in Effect As Is
902 KAR 002:040	10-18-2019	Remain in Effect As Is
902 KAR 002:050	10-18-2019	Remain in Effect As Is
902 KAR 002:065	10-18-2019	To be amended, filing deadline 4-18-21
902 KAR 002:080	10-15-2019	Remain in Effect As Is
902 KAR 002:090	10-15-2019	Remain in Effect As Is
902 KAR 002:140	11-26-2019	Remain in Effect As Is
902 KAR 004:090	10-15-2019	Remain in Effect As Is
902 KAR 004:110	11-26-2019	To be amended, filing deadline 5-26-21
902 KAR 008:130	06-11-2019	Remain in Effect As Is
902 KAR 008:150	06-11-2019	Remain in Effect As Is
902 KAR 008:160	06-11-2019	Remain in Effect As Is

Regulation Number	Letter Filed Date	Action
902 KAR 010:010	11-18-2019	Remain in Effect As Is
902 KAR 010:030	10-02-2019	Remain in Effect As Is
902 KAR 010:035	10-02-2019	Remain in Effect As Is
902 KAR 010:060	11-18-2019	Remain in Effect As Is
902 KAR 010:110	11-18-2019	Remain in Effect As Is
902 KAR 010:120	10-02-2019	Remain in Effect As Is
902 KAR 010:121	10-02-2019	Remain in Effect As Is
902 KAR 010:130	11-18-2019	Remain in Effect As Is
902 KAR 010:140	11-18-2019	Remain in Effect As Is
902 KAR 010:150	11-18-2019	Remain in Effect As Is
902 KAR 010:160	11-18-2019	Remain in Effect As Is
902 KAR 010:170	11-18-2019	Remain in Effect As Is
902 KAR 015:020	10-18-2019	Remain in Effect As Is
902 KAR 022:040	11-26-2019	Remain in Effect As Is
902 KAR 023:010	11-05-2019	Remain in Effect As Is
902 KAR 028:010	09-11-2019	Remain in Effect As Is
902 KAR 028:020	09-11-2019	Remain in Effect As Is
902 KAR 028:030	09-11-2019	Remain in Effect As Is
902 KAR 028:040	09-11-2019	Remain in Effect As Is
902 KAR 028:050	09-11-2019	Remain in Effect As Is
902 KAR 028:060	09-11-2019	Remain in Effect As Is
902 KAR 045:020	11-05-2019	Remain in Effect As Is
902 KAR 045:080	11-05-2019	Remain in Effect As Is
902 KAR 045:100	11-05-2019	Remain in Effect As Is
902 KAR 048:010	11-05-2019	Remain in Effect As Is
902 KAR 100:005	11-26-2019	Remain in Effect As Is
902 KAR 100:015	08-16-2019	Remain in Effect As Is
902 KAR 100:021	08-16-2019	Remain in Effect As Is
902 KAR 100:040	08-16-2019	Remain in Effect As Is
902 KAR 100:041	08-16-2019	Remain in Effect As Is
902 KAR 100:045	08-16-2019	Remain in Effect As Is
902 KAR 100:050	08-16-2019	Remain in Effect As Is
902 KAR 100:065	08-16-2019	Remain in Effect As Is
902 KAR 100:105	08-16-2019	Remain in Effect As Is
902 KAR 100:110	08-16-2019	Remain in Effect As Is
902 KAR 100:115	08-16-2019	Remain in Effect As Is
902 KAR 100:120	08-16-2019	Remain in Effect As Is
902 KAR 100:125	08-16-2019	Remain in Effect As Is
902 KAR 100:130	08-16-2019	Remain in Effect As Is
902 KAR 100:136	08-16-2019	Remain in Effect As Is
902 KAR 100:137	08-16-2019	Remain in Effect As Is
902 KAR 100:140	08-16-2019	Remain in Effect As Is
902 KAR 100:145	08-16-2019	Remain in Effect As Is
902 KAR 100:150	08-16-2019	Remain in Effect As Is
902 KAR 100:155	08-16-2019	Remain in Effect As Is
902 KAR 100:160	08-16-2019	Remain in Effect As Is
902 KAR 100:165	08-16-2019	Remain in Effect As Is
902 KAR 100:170	08-16-2019	Remain in Effect As Is
907 KAR 001:006	12-06-2019	Remain in Effect As Is
907 KAR 001:008	12-06-2019	Remain in Effect As Is
907 KAR 001:023	12-06-2019	Remain in Effect As Is
907 KAR 001:028	12-06-2019	Remain in Effect As Is
907 KAR 001:031	12-06-2019	Remain in Effect As Is
907 KAR 001:032	12-06-2019	Remain in Effect As Is
907 KAR 001:033	12-06-2019	Remain in Effect As Is
907 KAR 001:037	12-06-2019	Remain in Effect As Is
907 KAR 001:038	12-06-2019	Remain in Effect As Is
907 KAR 001:039	12-06-2019	Remain in Effect As Is
907 KAR 001:042	12-06-2019	Remain in Effect As Is
907 KAR 001:048	12-06-2019	Remain in Effect As Is
907 KAR 001:049	12-06-2019	Remain in Effect As Is
907 KAR 001:054	12-06-2019	Remain in Effect As Is
907 KAR 001:060	12-06-2019	Remain in Effect As Is
907 KAR 001:061	12-06-2019	Remain in Effect As Is
907 KAR 001:082	12-06-2019	Remain in Effect As Is
907 KAR 001:084	12-06-2019	Remain in Effect As Is
907 KAR 001:145	12-06-2019	Remain in Effect As Is
907 KAR 001:155	12-06-2019	Remain in Effect As Is

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Regulation Number	Letter Filed Date	Action
907 KAR 001:180	12-06-2019	Remain in Effect As Is
907 KAR 001:190	12-06-2019	Remain in Effect As Is
907 KAR 001:400	12-06-2019	Remain in Effect As Is
907 KAR 001:434	12-06-2019	Remain in Effect As Is
907 KAR 001:440	12-06-2019	Remain in Effect As Is
907 KAR 001:450	12-06-2019	Remain in Effect As Is
907 KAR 001:575	12-06-2019	Remain in Effect As Is
907 KAR 001:585	12-06-2019	Remain in Effect As Is
907 KAR 001:615	12-06-2019	Remain in Effect As Is
907 KAR 001:631	12-06-2019	Remain in Effect As Is
907 KAR 001:632	12-06-2019	Remain in Effect As Is
907 KAR 001:671	12-06-2019	Remain in Effect As Is
907 KAR 001:672	12-06-2019	Remain in Effect As Is
907 KAR 001:673	12-06-2019	Remain in Effect As Is
907 KAR 001:675	12-06-2019	Remain in Effect As Is
907 KAR 001:677	12-06-2019	Remain in Effect As Is
907 KAR 001:715	12-06-2019	Remain in Effect As Is
907 KAR 001:790	12-06-2019	Remain in Effect As Is
907 KAR 003:015	12-06-2019	Remain in Effect As Is
907 KAR 003:020	12-06-2019	Remain in Effect As Is
907 KAR 003:035	12-06-2019	Remain in Effect As Is
907 KAR 003:130	12-06-2019	Remain in Effect As Is
907 KAR 003:140	12-06-2019	Remain in Effect As Is
907 KAR 003:160	12-06-2019	Remain in Effect As Is
907 KAR 003:215	12-06-2019	Remain in Effect As Is
907 KAR 004:020	05-05-2017	Remain in Effect As Is
907 KAR 004:030	05-05-2017	Remain in Effect As Is
907 KAR 007:005	12-06-2019	Remain in Effect As Is
907 KAR 008:010	12-06-2019	Remain in Effect As Is
907 KAR 008:015	12-06-2019	Remain in Effect As Is
907 KAR 008:020	12-06-2019	Remain in Effect As Is
907 KAR 008:025	12-06-2019	Remain in Effect As Is
907 KAR 008:030	12-06-2019	Remain in Effect As Is
907 KAR 008:035	12-06-2019	Remain in Effect As Is
907 KAR 010:012	12-06-2019	Remain in Effect As Is
907 KAR 010:015	12-06-2019	Remain in Effect As Is
907 KAR 010:183	12-06-2019	Remain in Effect As Is
907 KAR 011:034	12-06-2019	Remain in Effect As Is
907 KAR 011:035	12-06-2019	Remain in Effect As Is
907 KAR 013:005	12-06-2019	Remain in Effect As Is
907 KAR 013:010	12-06-2019	Remain in Effect As Is
907 KAR 013:015	12-06-2019	Remain in Effect As Is
907 KAR 018:005	12-06-2019	Remain in Effect As Is
907 KAR 020:001	12-06-2019	Remain in Effect As Is
907 KAR 020:005	12-06-2019	Remain in Effect As Is
907 KAR 020:010	12-06-2019	Remain in Effect As Is
907 KAR 020:015	12-06-2019	Remain in Effect As Is
907 KAR 020:020	12-06-2019	Remain in Effect As Is
907 KAR 020:025	12-06-2019	Remain in Effect As Is
907 KAR 020:030	12-06-2019	Remain in Effect As Is
907 KAR 020:035	12-06-2019	Remain in Effect As Is
907 KAR 020:040	12-06-2019	Remain in Effect As Is
907 KAR 020:045	12-06-2019	Remain in Effect As Is
907 KAR 020:050	12-06-2019	Remain in Effect As Is
907 KAR 020:055	12-06-2019	Remain in Effect As Is
907 KAR 020:060	12-06-2019	Remain in Effect As Is
907 KAR 020:075	12-06-2019	Remain in Effect As Is
907 KAR 020:100	12-06-2019	Remain in Effect As Is
908 KAR 001:300	01-07-2020	Remain in Effect As Is
908 KAR 001:310	12-18-2019	Remain in Effect As Is
908 KAR 001:315	12-18-2019	Remain in Effect As Is
908 KAR 001:320	12-18-2019	Remain in Effect As Is
908 KAR 001:380	12-18-2019	Remain in Effect As Is
908 KAR 001:400	12-18-2019	Remain in Effect As Is
908 KAR 002:010	12-18-2019	Remain in Effect As Is
908 KAR 002:020	12-18-2019	Remain in Effect As Is
908 KAR 002:030	12-18-2019	Remain in Effect As Is
908 KAR 002:050	12-18-2019	Remain in Effect As Is

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908 KAR 002:060	12-18-2019	Remain in Effect As Is
908 KAR 002:090	12-18-2019	Remain in Effect As Is
908 KAR 003:010	12-18-2019	Remain in Effect As Is
908 KAR 003:020	12-18-2019	Remain in Effect As Is
908 KAR 003:025	12-18-2019	Remain in Effect As Is
908 KAR 003:030	12-18-2019	Remain in Effect As Is
908 KAR 003:040	12-18-2019	Remain in Effect As Is
908 KAR 003:190	12-18-2019	Remain in Effect As Is
908 KAR 005:010	12-18-2019	Remain in Effect As Is
910 KAR 001:150	01-07-2020	Remain in Effect As Is
910 KAR 001:160	01-07-2020	Remain in Effect As Is
920 KAR 001:030	11-12-2019	To be amended, filing deadline 4-18-21
921 KAR 001:020	12-06-2019	To be amended, filing deadline 6-6-21
921 KAR 001:390	12-06-2019	To be amended, filing deadline 6-6-22
921 KAR 003:010	11-26-2019	To be amended, filing deadline 5-26-21
921 KAR 003:020	11-26-2019	To be amended, filing deadline 5-26-21
921 KAR 004:116	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 001:300	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 001:370	11-26-2019	Remain in Effect As Is
922 KAR 001:380	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 001:390	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 001:520	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 001:540	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 002:230	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 002:240	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 002:250	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 005:020	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 006:040	12-06-2019	Remain in Effect As Is
922 KAR 006:045	12-06-2019	Remain in Effect As Is
922 KAR 008:010	11-26-2019	To be amended, filing deadline 5-26-21

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).

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102 KAR 001:036‡	01-13-2020		
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		
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	09-25-2019		
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401 KAR 048:090	10-03-2019		
401 KAR 048:205	05-07-2019		
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401 KAR 048:207	05-07-2019		
401 KAR 048:208	05-07-2019		
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401 KAR 055:010†	09-04-2019		
401 KAR 059:010†	09-04-2019		
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401 KAR 059:021†	09-04-2019		
401 KAR 059:023†	09-04-2019		
401 KAR 061:010†	09-04-2019		
401 KAR 061:011†	09-04-2019		
401 KAR 100:030	05-07-2019		
401 KAR 101:010	05-07-2019		
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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		

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