VOLUME 45, NUMBER 8 LEGISLATIVE RESEARCH COMMISSION FEBRUARY 1, 2019

ADMINISTRATIVE REGISTER OF KENTUCKY

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

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The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on February 11, 2019, at 1:00 p.m. in room 149 Capitol Annex. **ARRS Tentative Agenda - 2295**

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

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The following agenda may not take into consideration all of the administrative regulations that may be deferred by promulgating agencies. Deferrals may be made any time prior to or during the meeting.

Administrative Regulation Review Subcommittee
Tentative Meeting Agenda
Monday, February 11, 2019, 1:00 PM
Annex Room 149

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2. **Regulations for Committee Review**

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Income Tax; Corporations

103 KAR 016:151. Repeal of 103 KAR 016:100, 103 KAR 016:110, 103 KAR 016:120, 103 KAR 016:130, 103 KAR 016:145, and 103 KAR 016:150. (Deferred from January)

103 KAR 016:250. Net operating loss computation and deduction for corporations.

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201 KAR 002:370. Pharmacy services in long-term care facility (LTCF). (Amended After Comments) (Deferred from December)

Board of Nursing

201 KAR 020:056. Advanced practice registered nurse licensure and certification requirements. (Deferred from January)

201 KAR 020:062. Standards for advanced practice registered nurse (APRN) programs of nursing. (Deferred from January)

201 KAR 020:065. Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid disorder.

201 KAR 020:161. Investigation and disposition of complaints. (Deferred from January)

201 KAR 020:162. Disciplinary proceedings. (Deferred from January)

201 KAR 020:215. Continuing competency requirements. (Deferred from January)

201 KAR 020:220. Nursing continuing education provider approval. (Deferred from January)

201 KAR 020:226. Repeal of 201 KAR 020:235, 201 KAR 020:420, 201 KAR 020:430, 201 KAR 020:440, and 201 KAR 020:460. (Deferred from January)

201 KAR 020:240. Fees for applications and for services. (Deferred from January)

201 KAR 020:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing. (Deferred from January)

201 KAR 020:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs. (Deferred from January)

201 KAR 020:310. Faculty for prelicensure registered nurse and practical nurse programs. (Deferred from January)

201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs. (Not Amended After Comments)

201 KAR 020:340. Students in prelicensure registered nurse and practical nurse programs. (Deferred from January)

201 KAR 020:350. Educational facilities and resources for pre-licensure registered nurse and practical nurse programs. (Deferred from January)

201 KAR 020:360. Continuing approval and periodic evaluation (Deferred from January)

201 KAR 020:362. Fines for programs of nursing. (Deferred from January)

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Board of Physical Therapy

201 KAR 022:070. Requirements for foreign-educated physical therapists and physical therapist assistants.

201 KAR 022:170. Physical Therapy Compact Commission.

Board of Social Work

201 KAR 023:150. Complaint procedure, disciplinary action, and reconsideration. (Deferred from December)

TOURISM, ARTS, AND HERITAGE CABINET: Department of Fish and Wildlife Resources

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301 KAR 001:152 & E. Asian Carp and Scaled Rough Fish Harvest Program. ("E" expires 5-18-2019)

301 KAR 001:155. Commercial fishing requirements.

DEPARTMENT Of AGRICULTURE: Office of Agricultural Marketing

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302 KAR 050:090. Enforcement, corrective action plans, and mandatory reporting to state and federal agencies, Department to retain growing site information for at least three (3) years.

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Office of Kentucky Nature Preserves

400 KAR 002:060. Definitions. (Deferred from January)
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400 KAR 002:080. Dedication of nature preserves and registration of natural areas. (Deferred from January)
400 KAR 002:090. Management, use, and protection of nature preserves and natural areas. (Deferred from January)
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401 KAR 039:060. General requirements. (Deferred from December)
401 KAR 039:080. Hazardous waste handlers. (Deferred from December)
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418 KAR 001:050. Procedures for acquisition of land. (Deferred from January)
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505 KAR 001:190. Department of Juvenile Justice Policy and Procedures: Interstate compact for juveniles.

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704 KAR 003:305. Minimum requirements for high school graduation. (Amended After Comments) (Deferred from January)

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808 KAR 012:111. Repeal of 808 KAR 012:002, 012:021, 012:022, 012:023, 012:024, 012:026, 012:030, and 012:110.

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808 KAR 014:20. Annual reporting.

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815 KAR 006:101. Repeal of 815 KAR 006:020, 815 KAR 006:080, 815 KAR 006:090, and 815 KAR 006:100. (Not Amended After Comments) (Deferred from January)

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Certificate of Need

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921 KAR 003:070 & E. Fair hearings. ("E" expires 4-30-2019) (Deferred from January)

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922 KAR 001:140. Foster care and adoption permanency services.
922 KAR 001:305. Licensure of child-caring facilities and child-placing agencies.
922 KAR 001:400. Supporting services.
922 KAR 001:500. Educational and training vouchers.
922 KAR 001:530. Post-adoption placement stabilization services. (Amended After Comments)
922 KAR 001:565. Service array for a relative or fictive kin caregiver.
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810 KAR 001:301. Repeal of 810 KAR 001:004, 810 KAR 001:005, 810 KAR 001:007, 810 KAR 001:008, 810 KAR 001:009, 810 KAR 001:010, 810 KAR 001:012, 810 KAR 001:014, 810 KAR 001:015, 810 KAR 001:016, 810 KAR 001:017, 810 KAR 001:018, 810 KAR 001:021, 810 KAR 001:024, 810 KAR 001:026, 810 KAR 001:027, 810 KAR 001:028, 810 KAR 001:029, 810 KAR 001:030, 810 KAR 001:037, 810 KAR 001:040, 810 KAR 001:050, 810 KAR 001:060, 810 KAR 001:070, 810 KAR 001:080, 810 KAR 001:090, 810 KAR 001:100, 810 KAR 001:110, 810 KAR 001:130, 810 KAR 001:140, 810 KAR 001:145, 810 KAR 001:150, and 810 KAR 001:300. (Deferred from January)
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810 KAR 002:010. Racing commission and administrative staff. (Deferred from January)
810 KAR 002:020. Thoroughbred and flat racing officials. (Deferred from January)
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810 KAR 002:040. Stewards. (Deferred from January)
810 KAR 002:050. Judges and Standardbred racing officials. (Deferred from January)
810 KAR 002:060. Owners' authorized agents and jockey agents. (Deferred from January)
810 KAR 002:070. Thoroughbred and other flat racing associations. (Comments Received; SOC ext., due 02-15-2019)
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810 KAR 003:020. Licensing of racing participants. (Deferred from January)
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810 KAR 003:040. Advance deposit account wagering. (Deferred from January)
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810 KAR 004:001. Definitions. (Comments Received; SOC ext., due 02-15-2019)
810 KAR 004:010. Horses. (Comments Received; SOC ext., due 02-15-2019)
810 KAR 004:020. Weights. (Comments Received; SOC ext., due 02-15-2019)
810 KAR 004:030. Entries, subscriptions, and declarations. (Deferred from January)

810 KAR 004:040. Running of the race. (Deferred from January)
810 KAR 004:050. Claiming races. (Comments Received; SOC ext., due 02-15-2019)
810 KAR 004:060. Objections and complaints. (Deferred from January)
810 KAR 004:070. Jockeys and apprentices. (Deferred from January)
810 KAR 004:080. Steeplechase racing. (Deferred from January)
810 KAR 004:090. Owners. (Deferred from January)
810 KAR 004:100. Trainers. (Deferred from January)

Standardbred Racing

810 KAR 005:001. Definitions. (Deferred from January)
810 KAR 005:010. Registration and identification of horses. (Deferred from January)
810 KAR 005:020. Eligibility and classification. (Deferred from January)
810 KAR 005:030. Claiming races. (Deferred from January)
810 KAR 005:040. Farm, corporate, or stable name. (Deferred from January)
810 KAR 005:050. Stakes and futurities. (Deferred from January)
810 KAR 005:060. Entries and starters. (Deferred from January)
810 KAR 005:070. Running of the race. (Deferred from January)
810 KAR 005:080. Harness racing and county fairs. (Deferred from January)

Pari-Mutuel Wagering

810 KAR 006:020. Calculation of payouts and distribution of pools. (Deferred from January)

Incentive and Development Funds

810 KAR 007:010. Backside improvement fund. (Deferred from January)
810 KAR 007:020. Kentucky thoroughbred breeders' incentive fund. (Deferred from January)
810 KAR 007:030. Kentucky thoroughbred development fund. (Deferred from January)
810 KAR 007:040. Kentucky Standardbred development fund and Kentucky Standardbred breeders' incentive fund. (Deferred from January)
810 KAR 07:060. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund. (Deferred from January)
810 KAR 007:070. Violations, discipline, disputes, and investigation. (Deferred from January)

Medication Guidelines

810 KAR 008:010. Medication; testing procedures; prohibited practices. (Comments Received; SOC ext., due 02-15-2019)
810 KAR 008:020. Drug, medication, and substance classification schedule and withdrawal guidelines. (Comments Received; SOC ext., due 02-15-2019)
810 KAR 008:030. Disciplinary measures and penalties. (Comments Received; SOC ext., due 02-15-2019)
810 KAR 008:040. Out-of-competition testing. (Comments Received; SOC ext., due 02-15-2019)
810 KAR 008:050. International medication protocol as condition of a race. (Comments Received; SOC ext., due 02-15-2019)
810 KAR 008:060. Post-race sampling and testing procedures. (Deferred from January)

Hearings and Appeals

810 KAR 009:010. Hearings, reviews and appeals. (Comments Received; SOC ext., due 02-15-2019)

Harness Racing

811 KAR 001:301. Repeal of 811 KAR 001:010, 811 KAR 001:015, 811 KAR 001:020, 811 KAR 001:025, 811 KAR 001:030, 811 KAR 001:035, 811 KAR 001:037, 811 KAR 001:040, 811 KAR 001:045, 811 KAR 001:050, 811 KAR 001:055, 811 KAR 001:060, 811 KAR 001:065, 811 KAR 001:070, 811 KAR 001:075, 811 KAR 001:080, 811 KAR 001:085, 811 KAR 001:90, 811 KAR 001:093, 811 KAR 001:095, 811 KAR 001:100, 811 KAR 001:105, 811 KAR 001:110, 811 KAR 001:115, 811 KAR 001:120, 811 KAR 001:130, 811 KAR 001:140, 811 KAR 001:150, 811 KAR 001:185, 811 KAR 001:215, 811 KAR 001:220, 811 KAR 001:225, 811 KAR 001:230, 811 KAR 001:260, 811 KAR 001:280, 811 KAR 001:285, 811 KAR 001:290, and 811 KAR 001:300. (Deferred from January)

Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing

811 KAR 002:301. Repeal of 811 KAR 002:015, 811 KAR 002:020, 811 KAR 002:030, 811 KAR 002:035, 811 KAR 002:040, 811 KAR 002:045, 811 KAR 002:050, 811 KAR 002:056, 811 KAR 002:065, 811 KAR 002:070, 811 KAR 002:075, 811 KAR 002:080, 811 KAR 002:085811 KAR 002:090, 811 KAR 002:093, 811 KAR 002:096, 811 KAR 002:100, 811 KAR 002:105, 811 KAR 002:110, 811 KAR 002:130, 811 KAR 002:140, 811 KAR 002:150, 811 KAR 002:170, 811 KAR 002:180, 811 KAR 002:185, 811 KAR 002:190, 811 KAR 002:200, and 811 KAR 002:300. (Deferred from January)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

Medicaid Services

907 KAR 001:560 & E. Medicaid hearings and appeals regarding eligibility. ("E" expires 5-31-2019) (Comments Received; SOC ext., due 02-15-2019)
907 KAR 001:563 & E. Medicaid covered services appeals and hearings unrelated to managed care. ("E" expires 5-31-2019) (Comments Received; SOC ext., due 02-15-2019)

Department for Community Based Services: Division of Family Support

K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 002:055 & E. Hearings and appeals. ("E" expires 5-31-2019) (Comments Received; SOC ext., due 02-15-2019)

ADMINISTRATIVE REGULATION REVIEW PROCEDURE - OVERVIEW
(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.

EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
32 KAR 1:050E

This emergency administrative regulation is being promulgated to revise and update the political committee registration form in response to changes to KRS Chapter 121 as a result of 2018 House Bill 157 (2018 Acts Chapter 4). The Kentucky Registry of Election Finance ("Registry") is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(g), and to adopt official forms to implement the provisions of KRS Chapter 121 under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of Kentucky. An ordinary administrative regulation would be insufficient because the current political committee registration form (KREF 010 Revised 06/2011) does not provide a means for registration of an executive committee or contributing organization. This administrative regulation defines "minor political party" and "executive committee" for purposes of administering the Campaign Finance Regulation (KRS Chapter 121). Finally, the revised KREF 010 provides a means for the registration of an executive committee or contributing organization, as these reporting entities are recognized by KRS 121.015, are subject to the contribution limits of KRS 121.150, and required to submit campaign finance reports under KRS 121.180. This emergency administrative regulation is identical to and shall be replaced by an ordinary administrative regulation.

MATT G. BEVIN, Governor
CRAIG C. DILGER, Registry Chairman

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Emergency Amendment)

32 KAR 1:050E. Political organization[~~committee~~] registration.

RELATES TO: KRS 121.015(3), (4), 121.170
STATUTORY AUTHORITY: KRS 121.015(3), (4), 121.120(1)(g), (4), 121.170(1)
EFFECTIVE: January 14, 2019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.015(3)(b)5. requires the Registry to determine by administrative regulation what constitutes a minor political party for purposes of committee registration. As defined in KRS 121.015(4), a "contributing organization" is subject to contribution limits and required to file periodic reports of campaign finances under KRS 121.180(6). This administrative regulation defines "minor political party" and "executive committee" for purposes of Kentucky's Campaign Finance Regulation (KRS Chapter 121), specifies the form to be used for registration by [~~political~~] committees and contributing organizations, and incorporates the form by reference.

Section 1. Definitions.
(1) "Executive committee" means an organizational unit or affiliate recognized within the document governing a political party, that raises and spends funds to promote political party nominees, and performs other activities commensurate with the day-to-day operation of a political party, including voter registration drives, assisting candidate fundraising efforts, holding state conventions or local meetings, and nominating candidates for local, state and federal office.
(2) "Minor political party" means an association, committee, organization, or group having constituted authority for its governance and regulation, which nominates or selects a candidate for election to any federal or statewide-elected state office in Kentucky, whose name appears on an election ballot as the candidate of the association, committee, organization, or group, and does not have a recognized caucus campaign committee within the Kentucky House or Senate, as defined in KRS 121.015(3)(b)1.-4.
(3) "Political organization" means any committee or contributing organization, as those terms are defined in KRS 121.015(3) and (4).

Section 2. Political Organization[~~Committee~~] Registration. The "Political Organization[Committee] Registration" form, KREF 010, revised 01/2019[~~06/2011,~~] shall be the official form to be used for the registration of campaign committees, caucus campaign committees, political issues committees, permanent committees,[and] inaugural committees, executive committees, and contributing organizations.

Section 3[2]. Incorporation by Reference.
(1) "Political Organization[Committee] Registration" form, KREF 010, revised 01/2019[~~06/2011~~], is incorporated by reference.
(2) This material may inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRAIG C. DILGER, Chairman
APPROVED BY AGENCY: January 8, 2019
FILED WITH LRC: January 14, 2019 at 4 p.m.
CONTACT PERSON: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email Emily.Dennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation amends and updates the current political committee registration form to include contributing organization and executive committee registrants. The administrative regulation also defines the terms "political organization," "minor political party," and "executive committee."
(b) The necessity of this administrative regulation: KRS 121.120(1)(g), KRS 121.120(4), KRS 121.170(1) and KRS 121.015(3)(b)(5) require the Registry to promulgate this administrative regulation. 2018 House Bill 157 amended KRS 121.015(3)(b) to permit a minor political party with a recognized state executive committee in Kentucky to form caucus campaign committees. This administrative regulation defines the term "minor political party" and "executive committee" to clarify the statutory definition of caucus campaign committee, as amended by 2018 House Bill 157. In addition, the revised registration form will provide a means for the registration of executive committees and contributing organizations.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121; KRS 121.120(4), as it prescribes a form for the registration of committees and contributing organization; and KRS 121.015(3)(b)5., as it sets forth how a minor political party may register a caucus campaign committee.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the reporting requirements under KRS 121.180, as it provides a means for the registration of committees and contributing organizations and defines terms necessary to determine how a minor political party may register a caucus campaign committee.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the latest version of the political committee registration form and defines terms in compliance with 2018 House Bill 157.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms. KRS 121.170(1) requires registration by committees, and KRS 121.180 requires election finance statements to be filed on a periodic basis by committees and contributing organizations. KRS 121.015(3)(b)5. defines caucus campaign committee to include subdivisions of the state executive committee of a minor political party, which serve the same function as Democratic and Republican caucus campaign committees in the House and the Senate, as determined by administrative regulations promulgated by the registry. Amendment to the administrative regulation is necessary to define the terms "executive committee" and "minor political party" and to provide a means for registration of executive committees and contributing organizations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121. The administrative regulation also conforms to KRS 121.120(4) by prescribing a necessary form for the registration of committees and contributing organizations and conforms to KRS 121.015(3)(b)5. by defining terms necessary to determine how a minor political party may register a caucus campaign committee.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the committee registration form into compliance with changes in KRS 121.015 due to the passage of 2018 House Bill 157 and will further assist in the effective administration of the reporting requirements specified in KRS 121.180 by providing a means for registration of executive committees and contributing organization.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All contributing organizations and committees required to register with the Registry will be affected by this administrative regulation. To the extent the public, media, and other interest groups depend on the Registry's disclosure function, they will also 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: No action will be required of the regulated entities. The Registry will provide the new form, both in hard copy format and electronically, to the regulated entities. All training materials will be updated to reflect the new form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated to be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change to the administrative regulation will provide a clear means for a minor political party to register a caucus campaign committee, as provided in 2018 House Bill 157, and provides a means for registration by executive committees and contributing organizations.

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

(a) Initially: Initial costs to implement the administrative regulation are estimated to be no more than $5,000.

(b) On a continuing basis: Ordinary printing costs are anticipated in the Registry's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget funding will be used for implementation and enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this administrative regulation apply equally to all contributing organizations and committees required to register and file reports with the Registry.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Commonwealth of Kentucky - General Government – Registry of Election Finance

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g) and (4), KRS 121.015(3) and (4), KRS 121.170, and KRS 121.210(4)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? An additional cost of less than $5,000 to the Registry of Election Finance is anticipated in year one, for the printing of revised forms and necessary revisions to guidebooks which will be made available in electronic format.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None.

Expenditures (+/-): + $5,000 in year one/ no additional costs in subsequent years.

Other Explanation: N/A

STATEMENT OF EMERGENCY
32 KAR 1:070E

This emergency administrative regulation is being promulgated to revise and update the waiver from filing candidate election finance statement form to allow for a slate of candidates to file a single form instead of two (2) forms and to update the administrative regulation's reference to a form incorporated by reference in 32 KAR 1:050 which will be renamed as of the filing of an emergency and ordinary amendment to 32 KAR 1:050. The Kentucky Registry of Election Finance ("Registry") is expressly required to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121 under KRS 121.120(1)(g), and to adopt official forms to implement the provisions of KRS Chapter 121 under KRS 121.120(4). Failure to enact this administrative regulation on an emergency basis would pose imminent threat to the public health, safety or welfare of

Kentucky. An ordinary administrative regulation would be insufficient because the current administrative regulation makes reference to a form rendered obsolete by the filing of a separate emergency administrative regulation. In addition, the revised KREF 011 provides a means for a slate of candidates to file a single waiver from filing candidate election finance statements instead of having to file separate waiver forms. This emergency administrative regulation is identical to and shall be replaced by an ordinary administrative regulation.

MATT G. BEVIN, Governor
CRAIG C. DILGER, Registry Chairman

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Emergency Amendment)

32 KAR 1:070E. Waiver from filing candidate election finance statement.

RELATES TO: KRS 121.180(9)
STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)
EFFECTIVE: January 14, 2019
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. This administrative regulation specifies the form to be used by a candidate or slate of candidates to request a waiver from filing election finance statements and incorporates the waiver form by reference.

Section 1. A candidate or slate of candidates[Candidates] shall use the "Political Organization[~~Committee~~] Registration" form, incorporated by reference in 32 KAR 1:050, to request a "Waiver from Filing Candidate Election Finance Statement". Upon filing a "Waiver from Filing Candidate Election Finance Statement", a candidate or slate of candidates shall be relieved of the duty personally to file election finance statements and keep records of receipts and expenditures, so long as the candidate or slate of candidates meets the conditions set forth in KRS 121.180(9).

Section 2. Incorporation by Reference. (1) "Waiver from Filing Candidate Election Finance Statement", KREF 011, revised 01/2019[~~05/2005~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRAIG C. DILGER, Chairman
APPROVED BY AGENCY: January 8, 2019
FILED WITH LRC: January 14, 2019 at 4 p.m.
CONTACT PERSON: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email Emily.Dennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation amends and updates the current waiver from filing candidate election finance statement form. The updated form is reformatted, includes lines on which the candidate can include an electronic mail address, and has signature lines for both the candidate for Governor and candidate for Lieutenant Governor in the event a gubernatorial slate chooses to register a campaign committee.
(b) The necessity of this administrative regulation: KRS 121.120(1)(g), 121.120(4), KRS 121.180(9) require the Registry to promulgate this administrative regulation. KRS 121.180(9) relieves a candidate or slate of candidates of the duty personally to file reports and keep records of receipts and expenditures if the candidate or slate of candidates states in writing that he or she agrees to certain conditions with respect to campaign funds received by the campaign of the candidate or slate. This regulation prescribes the form for a candidate to exercise the waiver from filing candidate election finance statements, as required by KRS 121.120(1)(g) and (4).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121, and KRS 121.120(4), as it prescribes a form for candidates and slates to file in order to be relieved personally of the duty to file reports and keep records of receipts and expenditures as set forth in KRS 121.180(9).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the reporting requirements under KRS 121.180, as it provides a means for a candidate or slate of candidates to request a waiver from filing candidate election finance statements, as provided by KRS 121.180(9).
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the latest version of the waiver from filing candidate election finance statement form. The amended form includes signature lines for both members of a gubernatorial slate and provides blanks for a candidate or slate of candidates to include an electronic mail address for contact purposes.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms. KRS 121.180(9) permits a candidate or slate of candidates to be relieved of the duty personally to file election finance statements and keep records of receipts and expenditures, provided that certain conditions are met as set forth in the statute. The candidate or slate must indicate in writing or on a form provided by the Registry that he, she, or they (in the case of a slate) will conform to certain conditions spelled out in KRS 121.180(9) in order to be personally exempt from the reporting and recordkeeping requirements of the campaign finance regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) as the Registry is authorized to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. The administrative regulation also conforms to KRS 121.120(4), by prescribing a necessary form for a candidate or slate of candidates to state in writing the intent to comply with the requirements of KRS 121.180(9). Finally, the regulation incorporates the terms of KRS 121.180(9), thereby providing a means for a candidate or slate of candidates to agree to the conditions of the statute permitting a candidate to be exempt from reporting and recordkeeping requirements so long as these conditions are met by the candidate or slate of candidates.
(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the waiver from filing candidate election finance statement form so that a slate of candidates only has to file one (1) waiver form instead of two (2) waiver forms. The amended form also provides a means for a candidate or slate of candidates to provide electronic mail address information so that the Registry may more quickly and efficiently contact the campaign regarding regulatory requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates and slate of candidates who authorize a campaign committee are required to complete this form to request a waiver from filing election finance statements as required by KRS 121.180(9).
(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required of the regulated entities. The Registry will provide the new form, both in hard copy format and electronically, to the regulated entities. All training materials will be updated to reflect the new form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated to be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change to the administrative regulation will provide a slate of candidates the means to file a single form to request a waiver from filing candidate election finance statement and allows candidates and slates of candidates a means to provide the Registry with an electronic mail address so the Registry may more efficiently contact candidates and slates.

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

(a) Initially: Initial costs to implement the administrative regulation are estimated to be no more than $5,000.

(b) On a continuing basis: Ordinary printing costs are anticipated in the Registry's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget funding will be used for implementation and enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amendment to an existing administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this administrative regulation apply equally to all candidates who choose to request a waiver from reporting and recordkeeping requirements under KRS 121.180(9).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Commonwealth of Kentucky - General Government – Registry of Election Finance

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g) and (4), and 121.180(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? No revenue will be generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? An additional cost of less than $5,000 to the Registry of Election Finance is anticipated in year one, for the printing of revised forms and necessary revisions to guidebooks which will be made available in electronic format.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None.

Expenditures (+/-): + $5,000 in year one/ no additional costs in subsequent years.

Other Explanation: N/A

STATEMENT OF EMERGENCY
200 KAR 3:020E

This emergency administrative regulation is being promulgated in order to provide clear guidance regarding public use of state-owned facilities and grounds. The administrative regulation aims to protect the health, safety, and welfare of visiting members of the public, as well as staff at state-owned facilities and grounds. An emergency administrative regulation is necessary, pending replacement by an ordinary administrative regulation, to provide clear and comprehensive guidelines in regard to items and activities that pose a threat to public health, safety, and welfare at state-owned facilities and grounds. Over the years, public interest in, and attendance of, the regular business of the Kentucky Legislature has steadily increased to the extent that concerns have arisen regarding the health, safety, and welfare of visiting members of the public and staff. With a regulation session of the Kentucky Legislature imminent, the provision of this administrative regulation should be given immediate effect. This emergency administrative regulation shall be replaced by an ordinary administrative regulation being filed with the Administrative Regulations Compiler contemporaneously with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
WILLIAM M. LANDRUM III, Secretary
ROBERT M. BURNSIDE, Commissioner

FINANCE AND ADMINISTRATION CABINET
Department for Facilities and Support Services
(New Emergency Administrative Regulation)

200 KAR 3:020E. Use of state-owned facilities and grounds.

RELATES TO: KRS 42.019, 42.425, 56.010, 56.463

STATUTORY AUTHORITY: KRS 42.019, 42.425, 56.010, 56.463

EFFECTIVE: January 4, 2019

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes uniform rules for the governance of state facilities and grounds. While all state facilities and grounds are owned by the people of the Commonwealth at large, it is sometimes detrimental to the effective carrying-out of the people's business for persons, or groups of persons, to disregard reasonable conditions established for use of state facilities and state grounds. The purpose of this administrative regulation is to balance the interests of the citizens of the Commonwealth at large with the interests of individual citizens, or groups of citizens, to use state facilities and grounds in a reasonable fashion in order to redress their grievances and coordinate various uses of public buildings and grounds, to preserve historic properties, to ensure the health and safety of the public and state employees while on state property, and to protect the public from unnecessary financial losses. KRS 42.019 directs that the Division of Historic Properties shall be responsible for management and preservation of state-owned historic properties. KRS 42.425 entrusts the Department for Facilities and Support Services with primary responsibility for developing and implementing policies applicable to all state agencies to ensure effective planning for and efficient operation of state office buildings. KRS 56.010 states that the Finance and

Administration Cabinet is empowered to institute civil proceedings in the name of the Commonwealth for any trespass or injury to state property under its control. KRS 56.463 authorizes the Finance and Administration Cabinet to adopt rules and promulgate administrative regulations as may be necessary to govern the acquisition, control, and disposition of the real property.

Section 1. Definitions.

(1) "Agency" means a "Budget unit," defined by KRS 48.010(9).

(2) "Agency Application" means a form created and maintained by a state agency that allows individuals, organizations, and entities to request the ability to conduct an event at a facility or on grounds assigned to that agency.

(3) "Applicant" means a visitor who has submitted an Application to Use Commonwealth Facilities and all visitors present at a state facility or on state grounds pursuant to an approved application.

(4) "Application" means an Application to Use Commonwealth Facilities form created and maintained by the Division of Historic Properties that allows individuals, organizations, and entities to request the ability to conduct an event at historic properties.

(5) "Cabinet" means the Finance and Administration Cabinet.

(6) "Commissioner" means the Commissioner of the Department for Facilities and Support Services.

(7) "Department" means the Department for Facilities and Support Services.

(8) "Division" means the Division of Historic Properties, established pursuant to KRS 45.425(1)(d)(4).

(9) "Event" means any performance, ceremony, presentation, meeting, or rally held in a state facility or on state grounds.

(10) "Guest" means an individual who has booked or paid for overnight accommodations at a state facility or on state grounds, or an individual who has been provided with living accommodations by the state in connection to his or her employment with the Commonwealth.

(11) "Historic Properties" means state-owned historic properties under the management and preservation authority of the Division of Historic Properties, pursuant to KRS 42.019.

(12) "Organization" means any group or association of individuals joined together to accomplish shared goals or to advance shared interests or values, inclusive of its employees, agents, invitees, or guests.

(13) "Public Meeting" means a "Meeting," as defined by KRS 61.805(1).

(14) "Normal Business Hours" means the hours in which a facility is declared or posted as open and accessible to individuals other than employees or agents of the Commonwealth.

(15) "Rally" means a gathering of four (4) or more visitors for the purpose of actively promoting a cause.

(16) "Solicit" and "Solicitation" are defined by KRS 367.650(4).

(17) "Spontaneous Event" means an event where four (4) or more visitors gather to exercise their First Amendment rights in facilities and on grounds open to the general public in response to a triggering event that has occurred within the preceding calendar week, or is currently occurring.

(18) "State Facilities" or "Facilities" means any building owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

(19) "State Grounds" or "Grounds" means any lands owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

(20) "Tenant" means an individual or organization, excepting Commonwealth agencies, occupying land or property rented from the Commonwealth; limited to the specific state facility or state grounds where the land or property is located.

(21) "Visitor" means any person, organization, or entity present at a state facility or on state grounds that is not employed or contracted to perform work there on behalf of the Commonwealth. A person or organization employed or contracted to perform work on behalf of the Commonwealth is a visitor if at a state facility or on state grounds for reasons other than performing work on behalf of the Commonwealth. The term "Visitor" includes those persons present at state facilities or state grounds by virtue of an approved application.

Section 2. Request to Use State Facilities or Grounds.

(1) Within all areas assigned to it, a state agency may specify an Agency Application and approval process for public use of its facilities, so long as:

(a) The specified process does not conflict with the requirements of this administrative regulation, or with other state or federal law; and

(b) The agency prominently posts the Agency Application and approval process on its website.

(2) Each visitor seeking to hold an event at a state historic property shall submit a completed "Application to Use Commonwealth Facilities" to the division at least ten (10) calendar days prior to the anticipated date of the event.

(a) Applications may not be submitted, and an event may not be scheduled, more than 365 calendar days prior to the date of an event.

(b) An applicant, or related visitors, organizations, or entities may only make one (1) application for one (1) event at a time.

(c) Applications shall be reviewed and approved on a first come, first served basis, except that state sponsored activities shall be given priority.

(d) The division may impose fees for the use of specific state facilities or grounds by visitors, as well as fees for the use of equipment at state facilities or on state grounds.

(e) The division may deny an application if:

1. The application is incomplete;

2. The proposed event requests space allocated for a state sponsored activity, a previously scheduled event, the normal operation of state business, or a legislative session;

3. The proposed event poses a safety or security risk;

4. Applicant, or related visitors, organizations, or entities has made material misrepresentations regarding the nature or scope of an event or solicitation, inclusive of misrepresentations contained in prior applications; or

5. Applicant, or related visitors, organizations, or entities has failed to pay costs or damages due for a prior event.

(f) If an application is approved, the division shall issue a written approval specifying:

1. The property or portion of property for which approval is granted;

2. The date and time period for which approval is granted;

3. Any fee or costs to be paid for use of state property or equipment;

4. The amount of any advance deposit required; and

5. Whether proof of liability insurance shall be required for the requested use.

(g) Any written approval to use Commonwealth facilities is non-transferable and the purpose, time, place, or other conditions specified for use may not be changed without the written consent of the division.

(h) The division may revoke prior approval to hold an event at a state historic property if the property is requested for a state sponsored activity. If the division revokes prior approval for an applicant to use a historic property, it shall either:

1. Provide a refund of any fee paid for the use of the state property, or

2. Provide alternate dates that the facility is available for use.

(3) Except for spontaneous events, visitors who make use of a state facility or state grounds without a permit:

(a) May be charged a fee equal to the amount normally charged for approved uses, and

(b) May be removed from a state facility or state grounds if their use interferes with a use approved by the division, or with a state sponsored activity.

Section 3. Conditions Governing Use of State Facilities and Grounds.

(1) General conditions governing all state facilities and grounds to which visitors, applicants, and other persons visiting under application agree to abide.

(a) Visitors shall agree to be, and are, responsible for any vandalism, damage, breakage, loss, or other destruction caused by that individual or organization. In regards to state historic properties, costs may include costs for the services of specialists in relevant historical restoration skills.

(b) An agency agrees to reimburse, and shall reimburse, the department for any damage caused to state facilities assigned to its use.

(c) This administrative regulation is not intended to waive or preclude recovery by an agency from visitors for damages caused by them.

(d) Visitors shall indemnify and hold harmless the Commonwealth of Kentucky, its departments, agents, employees, and contractors from and against any and all suits, damages, claims, or liabilities due to personal injury or death; damage to or loss of property; or for any other injury or damage arising out of or resulting from the use of state facilities or grounds, except as provided by in KRS Chapter 44.

(e) Visitors are prohibited from digging, excavating, or using metal detectors.

(f) Visitors are prohibited from posting or affixing signs, announcements, or other documents on any exterior or interior wall, ceiling, floor, door, window, or other surface not specifically designated for that purpose.

(g) Visitors must promptly remove items or materials owned or used by them after an exhibit, event, or visitation. Failure to do so may result in the department billing the individuals or organizations with the costs of disposal, inclusive of use of staff time, which the individuals or organizations agree to be responsible for as a condition of their use of state facilities.

(h) Smoking is not permitted in state facilities or on state grounds.

(i) Visitors may not wear masks or hoods which conceal the identity of the wearer, with the exception of religious dress of a generally recognized religion or minor children celebrating Halloween.

(j) Public use of state facilities by visitors shall not interfere with the conduct of normal public business, any legislative session, court proceedings, or any other public business.

(k) Use of state facilities and state grounds by visitors shall conform to any applicable limits or requirements contained in the Kentucky Building Code, the Kentucky Standards of Safety contained in 815 KAR 10:060, orders of the State Fire Marshall, and local fire codes, inclusive of any applicable occupancy limits.

(l) Visitors shall not be permitted to obstruct passageways in a manner that would impair the normal conduct of state business or the safe evacuation of people in the event of a fire or similar emergency.

(m) Use or parking of a motorized vehicle on lawns, sidewalks, or terraces shall be restricted to emergency, maintenance, construction, development, delivery, or authorized building access purposes as determined by the department.

(n) The operation of aircraft, other than at designated landing areas, is prohibited.

(o) The mass release of birds, butterflies, or other living creatures is prohibited.

(p) In addition to any use limitations imposed by this administrative regulation, within areas assigned to its use, an agency may impose such additional use restrictions as are necessary and proper to ensure:

1. Efficient operation and conduct of state business;
2. The safety of state employees and visitors;
3. The security of public assets and data; and
4. Restrictions necessary to conform to requirements of state and federal law.

(q) The following items are prohibited, unless owned or controlled by the state:

1. Hot-air balloons and similar lighter-than-air objects and aircraft;
2. Powered aircraft, drones, and remotely-operated aircraft;
3. Remotely controlled toys and vehicles;
4. Rockets and similar missiles; and
5. Fireworks and other explosive items.

(r) The following items are not permitted in any state facility or on any state grounds, unless such items are owned or controlled by the state:

1. Any equipment, apparatus, or machinery that fails to conform with local fire codes;
2. Skateboards, roller skates, rollerblades, bicycles, mopeds, motor bicycles, motorcycles, and hoverboards; exclusive of mobility devices used by a disabled individual; and
3. Any personal property that interferes with any electrical or mechanical system in a state facility.

(s) The terms of this administrative regulation shall not apply to:

1. Guests of the state;
2. Tenants of state facilities;
3. Inmates and other incarcerated persons; or
4. Other individuals in the care, custody, or control of the state.

(2) Operating hours and access requirements.

(a) The commissioner, in consultation with agencies using each facility, shall establish normal business hours to designate when state facilities and grounds are open for public access. The commissioner may delegate authority to set normal business hours for all state facilities and grounds or for specific state facilities and grounds.

(b) Normal business hours of operation shall be posted at public entrances of state facilities and prominently posted on state grounds.

(c) Public entrances, operating hours, and scope of access are subject to change due to maintenance, emergency, disaster, safety threats, and similar concerns as determined by the commissioner.

(d) For purposes of public security and safety, all packages, backpacks, purses, bags, briefcases, or other similar items brought into a state facility are subject to search.

(e) No visitor may enter or remain on state facilities or grounds after normal business hours of operation without express approval, except state employees, contract workers for the state, or members of the public who are:

1. Meeting with an agency or legislator in regard to a public matter;
2. Attending a scheduled public meeting; or
3. Escorted by a state employee for the purpose of conducting state business.

(f) For purposes of this administrative regulation, any time period during which a state facility hosts a legislative session, public meeting, or court session shall be considered normal business hours in addition to any regular posted hours of operation.

(g) Visitors present at a state facility or on state grounds may be given up to thirty (30) minutes after normal business hours have ended to vacate the state facility or state grounds before being subject to immediate removal.

(h) When an agency allows individuals to remain in a state facility after normal business hours, it may be found to be jointly liable for damage caused by unescorted visitors.

(i) Visitors may not camp or remain overnight in state facilities or on state grounds.

(j) As a condition to their use of, or presence on, state facilities and grounds, applicant and visitors agree that state and local law enforcement officers may physically remove them from state facilities and grounds if they remain longer than thirty (30) minutes after normal business hours have ended and waive any claim against said law enforcement officers and the Commonwealth unless undue force is used resulting in serious bodily injury.

(3) Commercial activity.

(a) The following commercial activity is prohibited in state facilities or on state grounds:

1. Selling, displaying, or vending commercial products;
2. Solicitation; and
3. Advertising.

(b) The above restrictions regarding commercial activity shall not apply to:

1. State agencies;
2. State-affiliated or approved charitable fund-raising campaigns;

3. Individuals or organizations who have contracted with the state to conduct commercial activity at state facilities or on state grounds;

4. Nominal employee activity, provided that it otherwise conforms with applicable employee ethics restrictions and does not interfere with state business; and

5. Notice boards specifically set-aside for public posting.

(4) Administration of usage conditions.

(a) In addition to any civil or criminal penalties provided for under Kentucky law, visitors who violate the restrictions contained in this administrative regulation, agree to be, and are subject to immediate removal from state grounds and gacilities as follows:

1. When a violation concerns damage to state facilities or grounds, or disruption of state business, the commissioner or agency head of the affected agency may request removal by officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers; or

2. When a violation concerns a safety concern or threat, removal may be done at the request of the commissioner or agency head of the affected agency, or upon exercise of independent discretion of the Kentucky State Police, contract security staff assigned to the state facility or grounds, or other state and local law enforcement offices.

(b) The commissioner, agency head of a tenant agency, officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers may place limitations on the area in which an event may be conducted, or may direct the clearing of an area or separation of groups, in order to ensure compliance with applicable health and safety standards, to maintain public order, and to ensure that normal public business may be conducted.

(c) Nothing in this administrative regulation shall be interpreted as:

1. Prohibiting the regular conduct of agency operations in a state facility or on state grounds after normal business hours regarding state facilities or grounds assigned to the agency's use.

2. Limiting the ability of an agency to make full and unencumbered use of state facilities or grounds assigned to them, subject to any specific conditions placed upon their use by the department.

Section 4. Additional Conditions Regarding Access and Use for Historic Properties.

(1) The Division of Historic Properties, established by KRS 42.425, may impose additional restrictions and use guidelines as are necessary and proper to ensure the responsible management, use, and preservation of state historic properties for the benefit of future generations.

(2) The Department of Parks and Kentucky Horse Park may advise and consult the division in regard to any restrictions or use guidelines relating to state shrines or museums.

(3) Any additional restrictions or use guidelines imposed by the Division of Historic Properties shall be prominently posted for public viewing on the Web site of the division, as well as being readily available to the public, in hardcopy form, at the main business office of the division.

Section 5. Enforcement.

(1) Authority to initiate civil proceedings in the name of the Commonwealth for any trespass or injury to state property under the cabinet's control shall be vested with the cabinet's Office of General Counsel.

(2) The cabinet's Office of General Counsel may delegate authority to initiate civil proceedings to counsel for an agency affected by a trespass or injury to state property, to another state agency or to outside counsel.

(3) Nothing in this administrative regulation is intended to waive or restrict in any way any normal criminal or civil remedies available under law that relates to improper trespass on, or misuse of, state facilities; disruption of public business; nuisance; or any other legal remedy otherwise available to the Commonwealth or its subdivisions.

(4) Nothing in this administrative regulation is intended to limit, waive, or otherwise alter the authority the rules for the operation and parking of motor vehicles on state grounds, as enumerated in 200 KAR 3:010.

Section 6: Documents Incorporated by Reference:

(1) "Application to Use Commonwealth Facilities"

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of General Counsel, Capital Annex Room 392, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ROBERT M. BURNSIDE, Commissioner
WILLIAM M. LANDRUM III, Secretary

APPROVED BY AGENCY:January 4, 2019

FILED WITH LRC: January 4, 2019 at 4 p.m.

CONTACT PERSON: Judy Piazza, Executive Director, Office of Legislative and Intergovernmental Affairs, Finance and Administration Cabinet, Capitol Annex Building Room 392, Frankfort, Kentucky 40601, phone (502) 564-4240, (502) 564-6785 fax, email Judith.Piazza@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Judy Piazza

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes uniform rules for the governance of state facilities and grounds.

(b) The necessity of this administrative regulation: Sets standards to ensure safety and security of state facilities and grounds, as well as staff and visitors. Provides uniform guidelines for visitors to prevent damage to state properties, as well as to ensure for the efficient operation of state business.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Finance and Administration Cabinet and its subdivisions are authorized by KRS 42.019, KRS 42.425, KRS 56.463, and KRS 56.010 to ensure the preservation and efficient operation of state facilities, as well as to seek redress for damage to state property. This regulation establishes uniform standards for the use of state-owned properties by the public, in furtherance of those goals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear notice, to agencies and visitors, of any standards and rules which exist in regard to the use of state facilities and grounds.

(2) If 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. Regulation is a new administrative regulation, rather than an amendment.

(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 statues: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Regulation offers clarity to state agencies and visitors to state properties regarding standards for use of Commonwealth facilities and grounds.

(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: State agencies, in cooperation with the Commissioner for Facilities and Support Services, must establish normal business hours. Visitors must comply with normal business hours at state properties, avoid actions which cause damage to state facilities and grounds, and observe reasonable safety and security requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The incorporated "Application to Use Commonwealth Facilities" contains fees for the use of state historic facilities. The application, and its included fees, has been in use by the Division of Historic Properties since 2007.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies and the Department for Facilities and Support Services will be provided clarity regarding standards and rules which allow for the public right of access to state facilities and grounds while preserving the ability to conduct regular public business, ensuring the safety of staff and visitors, and avoiding damage to state properties.

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

(a) Initially: No additional costs are expected. Current staff and funding will be utilized.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budgetary funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Application to Use Commonwealth Facilities, which is incorporated by reference, establishes fees for use and set-up services regarding state historic properties. Authorizes state agencies to create application process for facilities assigned to their use, which may include fees. Authorizes agencies to assess costs for damages done to state facilities and grounds.

(9) TIERING: Is tiering applied? Tiering is not applied. All state agencies follow identical requirements regarding the setting of normal business hours and their authority to establish an application process for public use of facilities assigned to them. Similarly, visitors to state facilities and grounds are uniformly subject to the conditions set forth in this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation impacts all state facilities and grounds owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463. Agencies occupying these state properties must observe the requirements of the regulation. State or local government agencies not occupying state facilities and grounds owned or managed by the Finance and Administration Cabinet will not be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 42.019, KRS 42.425, KRS 56.463, and KRS 56.010

3. Estimate the effect of this administrative regulation on the 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 estimated effect on the expenses or revenues of any state or local agency from this administrative regulation. The regulation does not require any new labor-intensive administrative tasks, which may require additional staff, it merely clarifies standards to be applied regarding public use of state facilities and grounds.

(a) How much 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 additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

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

Revenues (+/-): $0

Expenditures (+/-): $0

Other Explanation:

STATEMENT OF EMERGENCY
301 KAR 2:095E

This emergency administrative regulation establishes procedures for the importation and possession of cervid carcasses or carcass parts. Chronic Wasting Disease (CWD) has recently been detected in deer populations in several surrounding states. CWD may persist in the environment for years before clinical symptoms develop in cervids or the disease is discovered. An ordinary administrative regulation will not suffice because it is necessary to immediately prohibit cervid carcasses or certain carcass parts from entering Kentucky in order to protect the state's deer and elk herds. Thus, an emergency administrative regulation is necessary pursuant to KRS 13A.190(1)(a)(4). The Department of Fish and Wildlife Resources is extremely dependent upon the sale of hunting licenses and deer permits in order to operate. Deer hunting also contributes hundreds of millions to the state's economy. If CWD becomes established in Kentucky, then license and permit sales and the state's economy will be negatively impacted. An ordinary administrative regulation will not suffice because it is necessary to immediately prohibit cervid carcasses or certain carcass parts from entering Kentucky Thus, an emergency administrative regulation is necessary pursuant to KRS 13A.190(1)(a)(2). This emergency regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
FRANK JEMLEY III, Acting Commissioner

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Emergency Amendment)

301 KAR 2:095E. Importation of cervid carcasses and parts.

RELATES TO: KRS 150.180, 150.280, 150.290

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.720(2)

EFFECTIVE: December 17, 2018

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations governing the buying, selling, or transporting of wildlife. KRS 150.720(2) authorizes the department and the Department of Agriculture to hold a person responsible for all costs incurred in the investigation, response, and eradication of a disease if the person imports a diseased animal into the Commonwealth. This administrative regulation establishes procedures for the importation and possession of[~~whole~~] cervid carcasses or carcass parts[~~from states or Canadian provinces that have known cases of chronic wasting disease~~].

Section 1. Definitions.

(1) "Cervid" means a member of the family Cervidae.

(2)[~~"Chronic wasting disease" or "CWD" means a fatal disease affecting the brain of cervids which belongs to a group of diseases called transmissible spongiform encephalopathies.~~

~~(3)~~] "Clean" means having no meat matter or tissue attached to the carcass part.

(3)[~~(4)~~] "Import"[~~"Importation"~~] means to transport[~~the~~

~~transportation of~~] a cervid carcass or carcass part into Kentucky[~~the Commonwealth~~].[~~(5) "Infected area" means a state or Canadian province that has a known case of chronic wasting disease.~~

~~(6) "Whole" means the entire carcass whether eviscerated or not, prior to the carcass being processed.~~]

Section 2. Importation[~~and Possession~~].

(1) A person shall not import[~~or possess~~] a[~~whole~~] cervid carcass or carcass part that has[~~from an infected area without first converting the carcass or part, pursuant to subsection (2) and (3) of this section~~.

~~(2) A person may import a cervid carcass or a carcass part from an infected area if the carcass or carcass part does not have~~] any part of the spinal column or head[~~attached~~];

(2)[~~(3)~~] A person importing a legally taken cervid carcass or carcass part may possess the items listed in paragraphs (a) through (f) of this subsection.[~~following inedible parts of a legally taken cervid carcass from an infected area:~~]

(a) Antlers;

(b) Antlers that are attached to a clean skull plate;

(c) A clean skull;

(d) Clean upper canine teeth;

(e) A finished taxidermy product;[~~or~~]

(f) The hide; or

(g) Quartered or deboned meat.

(3)[~~(4)~~] A licensed taxidermist or deer processor who accepts[~~may accept~~] a cervid head with an intact skull, spinal column, or spinal column part originating from another state or country shall[~~an infected area if the taxidermist or deer processor~~]:

(a) Contact[~~Contacts~~] the law enforcement division of the department within forty-eight (48) hours after receiving the cervid head, spinal column, or spinal column part;

(b) Provide[~~Provides~~] to the department the hunter's:

1. Name; and

2. Address; and

(c) Transfer[~~Transfers~~] all spinal column parts and the skull with the intact brain to the department once the skull plate has been removed.

FRANK JEMLEY III, Acting Commissioner
REGINA STIVERS, Deputy Secretary
For DON PARKINSON, Secretary
APPROVED BY AGENCY: December 17, 2018
FILED WITH LRC: December 17, 2018 at 4 p.m.
CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures for the importation and possession of cervid carcasses or carcass parts from other states or countries.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prevent the importation of cervid parts most likely to be contaminated with the agent that causes Chronic Wasting Disease (CWD).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish the requirements for the transportation of wildlife. KRS 150.720(2) authorizes the department to hold individuals responsible for violating administrative regulations regarding the importation of diseased animals into the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by helping to protect the state's deer and elk herds from CWD.

(2) If 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 prohibits the importation of cervid carcasses and high-risk carcass parts from all states and countries.

(b) The necessity of the amendment to this administrative regulation: CWD may persist in the environment for years before clinical symptoms develop in cervids or the disease is discovered. By prohibiting the importation of cervid carcasses and high-risk carcass parts, the likelihood that infectious materials enter the state is greatly reduced.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All deer and elk hunters from Kentucky who transport legally taken deer and elk from other states or countries will be affected. The number of affected hunters is unknown. Currently deer processors are unlicensed by the department and the number of processors in Kentucky is also unknown. There are approximately 350 licensed taxidermists within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters who hunt in other states or countries will not be allowed to import a carcass or carcass parts from these areas unless the entire spinal column and head are removed prior to importation. A processor or taxidermist who accepts a whole carcass or carcass parts from another state or country must report this to the department within 48 hours, provide the department with the name and address of the hunter, and transfer possession of high-risk cervid parts to the department.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no direct benefits to the entities identified in question (3), only the secondary benefit of protecting the deer herd in Kentucky.

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

(a) Initially: There will be no initial cost to the agency to implement this regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all individuals, taxidermists, and deer processors are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be affected by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.720(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? No revenue will be generated for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no administrative costs 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
601 KAR 2:030E

This emergency administrative regulation establishes the guidelines and requirements for the implementation and use of ignition interlock devices. It is filed to address the risk to public safety associated with driving under the influence. This emergency administrative regulation replaces the current emergency administrative regulation that expires on January 9, 2019, and differs substantially by clarifying the defendant's payment of fees in Section 2(5), and further defining the requirements of a service provider in Section 7. This emergency administrative regulation will be replaced by an ordinary administrative regulation which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

MATTHEW G. BEVIN, Governor
GREG THOMAS, Secretary

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

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

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

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

EFFECTIVE: January 8, 2019

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

Section 1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) "Motor vehicle" is defined by KRS 186.010(4).

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

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

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

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

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

(21) "Service call" means an onsite remote service of an ignition interlock device, outside of a fixed facility, including for example:

(a) Diagnostic trouble shooting;

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

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

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

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

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

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

(26) "Violation" means:

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

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

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

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

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

Section 2. Ignition Interlock Device Applications.

(1) The requirements established in this administrative regulation shall not be applied retroactively to ignition interlock devices in use prior to the effective date of this administrative regulation.

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

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

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

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

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

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

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

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

(6)(a) Prior to application, a defendant shall be required to remit to the cabinet a non-refundable application fee in the amount of $105 pursuant to KRS 189A.420(6). Payment shall be made by cashier's check, certified check, or money order at one (1) of the cabinet's regional field offices or the central office in Frankfort.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) A defendant not participating in the ignition interlock program and with a license suspension or revocation period exceeding twelve (12) months shall be subject to retesting

requirements prior to the issuance of a new license pursuant to KRS 186.480.

Section 3. General Requirements for Ignition Interlock Device Providers.

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

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

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

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

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

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

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

(7) A device provider shall notify the cabinet within fifteen (15) days of a pending suspension, revocation, or disciplinary action taken against it by a jurisdiction outside the commonwealth. Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal.

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

Section 4. Certification of Ignition Interlock Devices and Device Providers.

(1) An ignition interlock device provider requesting certification of an ignition interlock device shall:

(a) Submit an affidavit that the ignition interlock device sought to be used complies with the applicable specifications and certification requirements contained in the RFQ; and

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

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

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

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

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

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

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

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

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

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

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

(3) Device providers shall notify the appropriate county attorney within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient of the following occurrences:

(a) Device tampering or circumvention violations; or

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

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

Section 5. Ignition Interlock Device Installation.

(1) A provider may charge a defendant for the commodities and services listed in the RFQ, including the following:

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

(b) Device rental on a monthly basis;

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

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

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

(f) Missed appointments without notice;

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

(h) Device removal.

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

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

(3) The defendant shall remit the fees directly to the device or service provider as directed by the device provider. A device provider shall not prohibit the pre-payment of fees for the device and services.

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

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

(6) A service provider and technician shall use the calibration units approved by NHTSA and appearing on its list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers.

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

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

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

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

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

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

(8) The cabinet shall:

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

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

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

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

Section 6. Installation, Operation, Calibration, and Removal of Devices.

(1) Prior to installing the device, the provider shall obtain and retain copies of the following from the defendant:

(a) Photo identification;

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

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

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

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

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

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

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

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

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

Section 7. Provider Suspension, Revocation, Voluntary Facility Closure, or Financial Insolvency.

(1) The department shall indefinitely suspend or revoke certification of an ignition interlock device provider for the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Providing notice to defendants; and

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

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

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

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

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

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

(d) The provider shall be solely responsible for notifying

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

Section 8. Surrender of Motor Vehicle Registration Plates.

(1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plates pursuant to KRS 189A.085.

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

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

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

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

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

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

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

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

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

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

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

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

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

(d) "Ignition Interlock Application", TC 94-175, August 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's Web site at http://drive.ky.gov.[~~Surrender of Motor Vehicle Registration Plates. (1) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~2. Dates of activity;~~

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

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

~~5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number, year and color.~~

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

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

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

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

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

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

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

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

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

GREG THOMAS, Secretary
MATTHEW D. HENDERSON, Commissioner
P. KEVIN MOORE, Office of Legal Services

APPROVED BY AGENCY: January 7, 2019

FILED WITH LRC: January 8, 2019 at 2 p.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. Kevin Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the ignition interlock program.

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

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

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

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

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in the amount of $105 pursuant to KRS 189A.420(6).

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

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

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

(b) On a continuing basis: $105 per defendant and up to approximately $525,000 annually.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? KYTC Department of Vehicle Regulation, Division of Driver Licensing, the Circuit Clerks, Administrative Office of the Courts, County Attorneys.

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

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

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

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

(c) How much will it cost to administer this program for the first year? Up to approximately $525,000.

(d) How much will it cost to administer this program for subsequent years? $105 per defendant and up to approximately $525,000 annually.

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

Revenues (+/-): No revenues will be generated by this program.

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

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

STATEMENT OF EMERGENCY
803 KAR 25:270E

This emergency administrative regulation must be placed in effect in order to meet the requirement placed on the Commissioner of the Department of Workers' Claims by HB 2. The Commissioner was required to develop or adopt a pharmaceutical formulary for medications prescribed for the cure of and relief from the effects of a work injury or occupational disease and promulgate administrative regulations to implement the developed or adopted pharmaceutical formulary on or before December 31, 2018. An ordinary administrative regulation is not sufficient because it will not be in effect within the time limit imposed by HB 2. This emergency administrative regulation will be replaced by an ordinary administrative regulation. This emergency administrative regulation is identical to the ordinary administrative regulation.

MATTHEW G. BEVIN, Governor
ROBERT L. SWISHER, Commissioner

LABOR CABINET
Department of Workers' Claims
(New Emergency Administrative Regulation)

803 KAR 25:270E. Pharmaceutical Formulary.

RELATES TO: KRS 342.0011(13), 342.020, 342.035.

STATUTORY AUTHORITY: 342.035, 342.260, 342.265, 342.270, 342.275.

EFFECTIVE: December 27, 2018

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 or KRS Chapter 13A. KRS 342.035 requires the commissioner to develop or adopt a pharmaceutical formulary and promulgate administrative regulations to implement the developed or adopted pharmaceutical formulary. This administrative regulation establishes the formulary and provides guidance to implement the adopted formulary.

Section 1. Definitions.

(1) "Carrier" or "Insurance Carrier" means any insurer authorized to insure the liability of employers arising under Chapter 342 of the Kentucky Revised Statutes, an employer authorized by the commissioner to pay directly the compensation provided in Chapter 42 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) "Compound/compounding" means the process of combining, mixing, or altering ingredients to create a medication that is tailored to meet the needs of an individual patient.

(4) "Department" or "Department of Workers' Claims" means the governmental agency whose responsibilities are provided in KRS 342.228.

(5) "Dispense" means to deliver a drug to an ultimate user pursuant to the lawful order of a medical provider, including the packaging, labeling, or compounding necessary to pre-pare the drug for delivery.

(6) "Drug" means a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or any supplement to them, which is intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man.

(7) "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.

(8) "Employer" means those persons constituting an employer as defined in KRS 342.630, the employer's insurance carrier, self-insured group or other payment obligor, third party administrator, other person acting on behalf of the employer in a workers' compensation matter, and the employer's legal counsel.

(9) "Formulary" or "Pharmaceutical Formulary" means the pharmaceutical formulary developed or adopted by the com-missioner pursuant to KRS 342.035(8)(b).

(10) "Medical Provider" means a natural person who has prescriptive authority for drugs under the professional licensing laws of Kentucky, another state, or federal law, unless that person's license has been revoked, suspended, restricted or probated.

(11) "N" or "N status" means the drug is a non-preferred drug.

(12) "Natural person" means a biological human being.

(13) "Non-prescription drug" or "over-the-counter-drug" means a drug that may be sold without a prescription.

(14) "Person" means an individual, corporation, government, or governmental subdivision or agency, business, estate, trust, partnership, association, or any other legal entity.

(15) "Pharmacist" means a natural person lawfully licensed to engage in the practice of the profession of pharmacy.

(16) "Preauthorization" means the process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(17) "Prescription" or "prescribed" means a written, electronic, or oral order for a drug, signed or given or authorized by a medical provider and intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man.

(18) "Prescription Drug" means:

(a) A substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(b) A drug that under federal law is required, before being

dispensed or delivered, to be labeled with the statement: "Caution: federal law prohibits dispensing without prescription"; "Rx only"; or another legend that complies with federal law; or

(c) A drug that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a medical provider only.

(19) "Refill" means a prescription for the same drug, at the same dose or strength, and in the same quantity and frequency, and with the same instructions as was initially prescribed.

(20) "Utilization Review" means utilization review as defined in 803 KAR 25:190 §1 (6).

(21) "Y" or "Y status" means the drug is a preferred drug.

Section 2. Purpose and Adoption.

(1) The purpose of the formulary is to facilitate the safe and appropriate use of prescription drugs in the treatment of work-related injury and occupational disease.

(2) The commissioner adopts the current edition and any future published updates of the ODG formulary currently published by MCG Health. The commissioner shall review the formulary not less than annually and update or amend this regulation, if necessary, to ensure that the formulary is consistent with the provisions of KRS 342.020 and KRS 342.035.

(3) The formulary shall be made available by the department. Subsequent updates shall be effective on the first day of the month following the update.

(4) To the extent this regulation or the formulary conflict with any state or federal statute or regulation limiting prescriptive authority, including KRS 218A.172, KRS 218A.020(3), KRS 314.011(8) and 201 KAR 9:260, the statute or administrative regulation limiting prescriptive authority shall apply.

Section 3. Application.

(1) An employer or its payment obligor is liable for payment of up to a seven (7)-day supply of a "Y" drug dispensed to or prescribed for an injured employee within seven (7) days of a work-related injury in treatment of that work-related injury even if the employer ultimately denies liability for the claim. Payment by the employer or its payment obligor pursuant to this subsection does not waive the employer's right to contest its liability for the claim or benefits to be provided.

(2) Unless the employer, in good faith, denies the claim as not compensable, drugs assigned "Y" status in the formulary on the date the prescription is issued shall be filled without the need for preauthorization and without delay if prescribed for and appropriate for the work injury or occupational disease. Utilization review shall not be required for a "Y" drug but may be conducted retrospectively to determine medical reasonable-ness and necessity. A denial of a "Y" drug based on retrospective utilization review shall apply only to refill prescriptions of that drug after the date of the utilization review.

(3) Unless the employer, in good faith, denies the claim as not compensable, drugs assigned "N" status in the formulary on the date the prescription is issued shall require preauthorization. A prescription for a drug with an "N" status issued with-out articulated sound medical reasoning does not constitute a request for preauthorization nor a request for payment. Within two (2) business days of presentation of a prescription for a drug with an "N" status without articulated sound medical reasoning, the insurance carrier shall notify the medical provider that preauthorization is required for the prescribed drug.

(4) Except as provided in subsection (1) of this Section, drugs dispensed for outpatient use by any person other than a pharmacist require preauthorization.

(5) Any prescription drug not listed in the formulary shall require preauthorization. Any non-prescription drug shall not require preauthorization.

(6) Compound medications require preauthorization even if all of the components of the compound are listed as "Y" drugs in the formulary.

(7) Medical providers are required to prescribe in accordance with the formulary unless the medical provider can sufficiently articulate sound medical reasoning for deviating from the formulary, which may include:

(a) Documentation that reasonable alternatives allowable in the formulary 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 the approved formulary options.

(8) Before an employer denies authorization for a drug that requires preauthorization, the employer must consider any sound medical reasoning furnished by the medical provider for prescribing that drug.

Section 4. Preauthorization.

(1) Requests for preauthorization shall be subject to utilization review unless the employer waives utilization review.

(2) Except as modified in this Section, 803 KAR 25:190 Sections 5, 7, and 8 apply to all prescriptions for which preauthorization is required under this administrative regulation. If the medical provider has provided sound medical reasoning for the prescription, the employer shall not deny a prescribed drug based solely on the status of the drug in the formulary.

(3) If as a result of utilization review the carrier denies a request for preauthorization, the medical provider may request reconsideration of the denial to include a peer-to-peer conference with a utilization review physician. The request for a peer-to-peer conference shall be made by electronic communication and shall provide:

(a) A telephone number for the reviewing physician to call;

(b) A date for the conference not less than two (2) business days after the date of the request; and

(c) A one (1) - hour period during which the requesting medical provider (or its designee) will be available to participate in the conference between the hours of 8:00 a.m. and 6:00 p.m. (Eastern Time), Monday through Friday.

(4) The peer-to-peer conference must be conducted by a physician of the same specialty as the medical provider re-questing reconsideration.

(5) Failure of the reviewing physician to participate in the peer-to-peer conference during the date and time specified shall result in the approval of the request for preauthorization and approval of the requested prescription. Failure of the re-questing 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 ten (10) 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 a prescribed drug 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 a prescribed drug 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) 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) For claims with a date of injury or last exposure on or after January 1, 2019, the formulary applies to all drugs that are prescribed or dispensed on or after July 1, 2019, for outpatient use;

(2) For claims with a date of injury or last exposure prior to January 1, 2019, the formulary applies as follows:

(a) For a prescription that is not a refill prescription, the formulary applies to all drugs prescribed or dispensed on or after July 1, 2019, for outpatient use;

(b) For a refill prescription of a drug initially prescribed prior to

July 1, 2019, the formulary applies to all drugs pre-scribed or dispensed on or after January 1, 2020, for outpatient use.

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: December 27, 2018
FILED WITH LRC: December 27, 2018 at 4 p.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 a pharmaceutical formulary for medications prescribed 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 promulgate an administrative regulation to implement the pharmaceutical formulary.
(c) How this administrative regulation conforms to the con-tent of the authorizing statutes: KRS 342.035 requires the com-missioner to adopt a pharmaceutical formulary for medications prescribed for the cure of and relief of a work injury or occupational disease and to promulgate an administrative regulation to implement that formulary.
(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 dis-ease 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 re-quires the commissioner to adopt a pharmaceutical formulary for medications prescribed 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 that pharmaceutical formulary.
(2) If 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 pharmaceutical formulary adopted by the commissioner. Employers and their payment obligors will apply the pharmaceutical formulary when 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 of completing the medical report cannot exceed $100. 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 prescription drugs and more likely to receive the appropriate prescription drugs in a more timely fashion. 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 the pharmaceutical formulary on the Cabinet's website.
(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 the pharmaceutical formulary on the Cabinet's website is nominal.
(d) How much will it cost to administer this program for subsequent years? Other than the cost to maintain the pharmaceutical formulary on the Cabinet's website, 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 pharmaceutical formulary will cause drug costs to stabilize or reduce, providing a reduction of costs to the workers' compensation system as a whole.

STATEMENT OF EMERGENCY
907 KAR 1:604E

This emergency administrative regulation is being promulgated to implement copayment requirements and to clarify how copayments should be charged for certain types of health care encounters. 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 be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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

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

907 KAR 1:604E. Recipient cost-sharing.

RELATES TO: KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.20, 447.21, 447.50, 447.52, [~~447.53,~~] 447.54, 447.55, 447.56, 447.57[~~447.59~~], 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396o, 1396r-6, 1396r-8, 1396u-1, 1397aa -1397jj, 2014 Ky. Acts ch. 117, Part I.G.3.b.(10)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6312(5), 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.50-447.90[~~447.82~~], 457.535, 457.560, 42 U.S.C. 1396r-6(b)(5)

EFFECTIVE: December 28, 2018

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. KRS 205.6312(5) requires the cabinet to promulgate administrative regulations that implement copayments for Medicaid recipients. This administrative regulation establishes the provisions relating to Medicaid Program copayments.

Section 1. Definitions.

(1) "Community spouse" means the individual who is married to an institutionalized spouse and who:

(a) Remains at home in the community; and

(b) Is not:

1. Living in a medical institution;

2. Living in a nursing facility; or

3. Participating in a 1915(c) home and community based services waiver program.

(2) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Dependent child" means a[~~couple's~~] child, including a child gained through adoption, who:

(a) Lives with the community spouse; and

(b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(5) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(6) "Drug" means a covered drug provided in accordance with 907 KAR 23:010 for which the Department for Medicaid Services provides reimbursement.

(7) "Enrollee" means a Medicaid recipient who is enrolled with a managed care organization.

(8) "Federal Poverty Level" or "FPL" means guidelines that are updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

(9) "KCHIP" means the Kentucky Children's Health Insurance Program.

(10) "KCHIP - Separate Program" means a health benefit program for individuals with eligibility determined in accordance with 907 KAR 4:030, Section 2.

(11) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(12) "Medicaid Works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 20:020; and

(e) Meets the resource standards established in 907 KAR 20:025.

(13) "Nonemergency" means a condition which does not require an emergency service pursuant to 42 C.F.R. 447.54[~~447.53~~].

(14) "Nonpreferred brand name drug" means a brand name drug that is not on the department's preferred drug list.

(15) "Preferred brand name drug" means a brand name drug:

(a) For which no generic equivalent exists which has a more favorable cost to the department; and

(b) Which prescribers are encouraged to prescribe, if medically appropriate.

(16) "Preventive service" means:

(a)1. All of the preventive services assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF); or

2. All approved adult vaccines, including their administration, recommended by the Advisory Committee on Immunization Practices;

(b) Preventive care and screening for infants, children, and adults recommended by the Health Resources and Services Administration Bright Futures Program Project; or

(c) Preventive services for women recommended by the Institute of Medicine.

(17) "Recipient" is defined in KRS 205.8451(9).

(18) "Transitional medical assistance" or "TMA" means an extension of Medicaid benefits in accordance with 907 KAR 20:005, Section 5(5).

Section 2. Copayments.

(1) The following table shall establish the:

(a) Copayment amounts that a recipient shall pay, unless the recipient is exempt from cost sharing pursuant to Section 3(1) of this administrative regulation; and

(b) Corresponding provider reimbursement deductions.

Benefit	Copayment Amount
Acute inpatient hospital admission	$50
Outpatient hospital or ambulatory surgical center visit	$4
[~~Generic prescription drug~~]	[~~$1~~]
[~~Preferred brand name drug~~]	[~~$4~~]
[~~Nonpreferred brand name drug~~]	[~~$8~~]
Emergency room for a nonemergency visit	$8
DMEPOS	$4
Podiatry office visit	$3
Chiropractic office visit	$3
Dental office visit	$3
Optometry office visit	$3
General ophthalmological office visit	$3

Physician office visit	$3
Office visit for care by a physician assistant, an advanced practice registered nurse, a certified pediatric and family nurse practitioner, or a nurse midwife	$3
Office visit for behavioral health care	$3
Office visit to a rural health clinic	$3
Office visit to a federally qualified health center or a federally qualified health center look-alike	$3
Office visit to a primary care center	$3
Physical therapy office visit	$3
Occupational therapy office visit	$3
Speech-language pathology services office visit	$3
Laboratory, diagnostic, or radiological service	$3
A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age.	$0
Brand name drug	$4
Generic drug	$1
Brand name drug preferred over generic drug	$1
Pharmacy product class: certain antipsychotic drug	$1
Pharmacy product class: contraceptives for family planning	$0
Pharmacy product class: tobacco cessation	$0
Pharmacy product class: diabetes supplies, blood glucose meters	$0
Pharmacy product class: Diabetes supplies, all other covered diabetic supplies	$4 for first fill, $0 for second fill and beyond, per day
Pharmacy patient attribute: pregnant	$0
Pharmacy patient attribute: long-term care resident	$0
Pharmacy patient attribute: under eighteen (18) years of age, and not a KCHIP beneficiary.	$0
KI-HIPP participant	$0
Kentucky HEALTH: Medically Frail	$0
Kentucky HEALTH: Former Foster Care Youth up to 26 years of age	$0
Kentucky HEALTH: enrollee current on premiums	$0

(2) The full amount of the copayment established in the table in subsection (1) of this section shall be deducted from the provider reimbursement.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

Section 3. Copayment General Provisions and Exemptions. (1) A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age shall be exempt from the copayment or cost-sharing requirements established pursuant to this administrative regulation.

(2)(a)[~~(a) Except for a foster care child, a recipient shall not be exempt from paying the eight (8) dollar copayment for a nonpreferred brand name drug prescription.~~

~~(b)~~] A copayment shall not be imposed for a service, prescription, item, supply, equipment, or any type of Medicaid benefit provided to a foster care child.

(b)[~~(c) Except for the mandatory copayment referenced in paragraph (a) of this subsection,~~] The department shall impose no cost sharing for an individual or recipient who is exempt pursuant to 42 C.F.R. 447.56.[~~the following:~~

~~1. A service furnished to an individual who has reached his or her 18th birthday, but has not turned nineteen (19), and who is required to be provided medical assistance under 42 U.S.C. 1396a(a)(10)(A)(i)(I), including services furnished to an individual with respect to whom aid or assistance is made available under Title IV, Part B (42 U.S.C. 620 to 629i) to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under Title IV, Part E (42 U.S.C. 670 to 679b), without regard to age;~~

~~2. A preventive service;~~

~~3. A service furnished to a pregnant woman;~~

~~4. A service furnished to a terminally ill individual who is receiving hospice care as defined in 42 U.S.C. 1396d(o);~~

~~5. A service furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for individuals with an intellectual disability, or other medical institution, if the individual is required, as a condition of receiving services in the institution under Kentucky's Medicaid Program, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;~~

~~6. An emergency service as defined by 42 C.F.R. 447.53;~~

~~7. A family planning service or supply as described in 42 U.S.C. 1396d (a)(4)(C); or~~

~~8. A service furnished to a woman who is receiving medical assistance via the application of 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa).~~

~~(2) The department has determined that any individual liable for a copayment shall:~~

~~(a) Be able to pay a required copayment; and~~

~~(b) Be responsible for a required copayment.~~]

(3) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined in 42 U.S.C. 1396r-8(k)(5), or a representative, employee, independent contractor or agent of a pharmaceutical manufacturer, shall not make a copayment for a recipient.

(4) A parent or guardian shall be responsible for a copayment imposed on a dependent child under the age of twenty-one (21).

(5) Any amount of uncollected copayment by a provider from a recipient shall be considered a debt to the provider.

(6)[~~(a)~~] A provider shall:

(a)[~~1.~~] Collect from a recipient the copayment as imposed by the department for a recipient in accordance with this administrative regulation;

(b)[~~2.~~] Not waive a copayment obligation as imposed by the department for a recipient; and

(c)[~~3.~~] Collect a copayment at the time a benefit is provided or at a later date.[~~(b) Regarding a service or item for an enrollee in which the managed care organization in which the enrollee is enrolled does not impose a copayment, the provider shall not collect a copayment from the enrollee.~~]

(6)[~~(7)~~] Cumulative cost sharing for copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.

(7)[~~(8)~~] In accordance with 42 C.F.R. 447.15 and 447.20[~~447.82~~], the department shall not increase its reimbursement to a provider to offset an uncollected copayment from a recipient.

Section 4. Premiums for Medicaid Works Individuals. (1)(a) A Medicaid Works individual shall pay a monthly premium that is:

1. Based on income used to determine eligibility for the program; and

2. Established in subsection (2) of this section.

(b) The monthly premium shall be:

1. Thirty-five (35) dollars for an individual whose income is greater than 100 percent but no more than 150 percent of the FPL;

2. Forty-five (45) dollars for an individual whose income is greater than 150 percent but no more than 200 percent of the FPL; and

3. Fifty-five (55) dollars for an individual whose income is greater than 200 percent but no more than 250 percent of the FPL.

(2) An individual whose family income is equal to or below 100 percent of the FPL shall not be required to pay a monthly premium.

(3) A Medicaid Works individual shall begin paying a premium with the first full month of benefits after the month of application.

(4) Benefits shall be effective with the date of application if the premium specified in subsection (1) of this section has been paid.

(5) Retroactive eligibility pursuant to 907 KAR 20:010, Section 1(3), shall not apply to a Medicaid Works individual.

(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(7) A Medicaid Works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.

(8) If twelve (12) months have elapsed since a missed premium, a Medicaid Works individual shall not be required to pay the missed premium before reenrolling.

Section 5. Provisions for Enrollees. A managed care organization shall[:

~~(1) Shall~~] not impose a copayment on an enrollee that exceeds a copayment established in this administrative regulation[~~; and~~

~~(2) May impose on an enrollee:~~

~~(a) A lower copayment than established in this administrative regulation; or~~

~~(b) No copayment~~].

Section 6. Freedom of Choice. (1) In accordance with 42 C.F.R. 431.51, a recipient who is not an enrollee may obtain services from any qualified provider who is willing to provide services to that particular recipient.

(2) A managed care organization may restrict an enrollee's choice of providers to the providers in the provider network of the managed care organization in which the enrollee is enrolled except as established in:

(a) 42 C.F.R. 438.52; or

(b) 42 C.F.R. 438.114(c).

Section 7. Appeal Rights. An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

Section 8. Applicability of Title 895 KAR. If eligible for Kentucky HEALTH, an individual subject to this administrative regulation shall also comply with any applicable requirements established pursuant to Title 895 KAR, including 895 KAR 1:010[~~Effective Date. The cost sharing provisions and requirements established in this administrative regulation shall be effective beginning January 1, 2014~~].

Section 9. Federal Approval and Federal Financial Participation. The department's copayment provisions and any coverage of services established in this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation; and

(2) Centers for Medicare and Medicaid Services' approval.

Section 10. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 13, 2014.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 20, 2018

FILED WITH LRC: December 28, 2018 at noon

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cost sharing requirements and provisions for the Kentucky Medicaid program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the cost sharing requirements and provisions for the Kentucky Medicaid 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 establishing the cost sharing requirements and provisions for the Kentucky Medicaid program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the cost sharing requirements and provisions for the Kentucky Medicaid program.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation synchronize co-pay exemptions with federal regulations, include additional co-pays and categories of co-pays, and prohibit MCOs from waiving or reducing Medicaid copays. The amendments also exempt certain Medicaid beneficiaries and KCHIP beneficiaries from paying copayments, and update the amount and types of copayments required for beneficiaries to pay. The amendments exempt various types of Kentucky HEALTH beneficiaries, including the medically frail, pregnant women, former foster youth, and individuals who are current on Kentucky HEALTH premiums.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to clarify Medicaid policy relating to copayments and to clarify how certain co-pays should be charged for certain types of visits at certain types of providers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a copayment requirement, synchronizing co-payment exemptions with the federal regulations, and updating certain copayments.

(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 instituting a clear policy on the use of copayments and updating certain copayments.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid recipients who are not exempt from cost sharing will be affected by the amendment as well as Medicaid providers for whose services cost sharing is applied.

(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. Enrollees and recipients will be required to remit a copayment when accessing a Medicaid service and that requirement cannot be waived or reduced by an MCO. Providers of services for which cost sharing is imposed will be required to impose cost sharing when providing the given service and recipients are responsible for paying cost sharing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Enrollees and recipients will have to pay copayments as listed in this administrative regulation. Providers may experience administrative costs resulting from a Medicaid recipient refusing to pay a copayment obligation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Enrollees and recipients will be able to fully access Medicaid benefits, and providers will be able to charge for services provided.

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

(a) Initially: The Department for Medicaid Services (DMS)

anticipates no additional costs as a result of the amendments to this administrative regulation.

(b) On a continuing basis: The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is applied in that some Medicaid recipients are exempt (by federal regulation or law) from most cost sharing obligations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(14), 42 U.S.C. 1396o, 42 C.F.R. 447.50 through 447.90, 42 C.F.R. 447.15 and 447.20, and 42 C.F.R. 438.108

2. State compliance standards. KRS 205.520(3) and 194A.050(1).

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(14) authorizes a state's Medicaid program to impose cost sharing only as allowed by 42 U.S.C. 1396o. 42 U.S.C. 1396o establishes categories of individuals for whom a state's Medicaid program may not impose cost sharing as well as cost sharing and premium limits. 2 C.F.R. 447.50 through 447.60 also establishes limits on cost sharing (based on income of the given Medicaid eligibility group); Medicaid populations exempt from cost sharing (children, pregnant women, institutionalized individuals for example); services exempt from cost sharing (emergency services, family planning services to child-bearing age individuals); prohibition against multiple cost sharing for one (1) service; and a requirement that managed care organizations' cost sharing must comply with the aforementioned federal regulations. 42 C.F.R. 438.108 establishes that a managed care organization's cost sharing must comply with the federal cost sharing requirements for Medicaid established in 42 C.F.R. 447.50 through 42 C.F.R. 447.90.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal regulations 42 C.F.R. 447.50 through 42 C.F.R. 447.90, 42 C.F.R. 447.15 and 447.20, and this administrative regulation authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation 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? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments to this administrative regulation.

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 2019 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 of 2018. 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, 2019. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to the emergency administrative regulation.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of 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 28, 2018

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)[~~(2)~~] "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)[~~(3)~~] "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)[~~(4)~~] "Department" means the Department for Community Based Services or its designee.

(6)[~~(5)~~] "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)[~~(6)~~] "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(9)[~~(7)~~] "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)[~~(8)~~] "Qualified mental health professional" is defined by KRS 202A.011(12).

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

(12)[~~(10) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Behavioral Health, Developmental and Intellectual Disabilities to employ a mental health professional who has specialized training in the care of a resident with mental illness or intellectual disability.~~

~~(11)~~] "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[~~11~~];

(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 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 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 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 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 is as follows:

(a) For a resident of a personal care home on or after January 1, 2019, $1,291[~~2018, $1,270~~];

(b) For a resident of a family care home on or after January 1, 2019, $943[2018, $922];

(c) For individuals who 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[2018, $812];

2. An eligible couple, both aged, blind, or having[have] a disability and one (1) requiring care on or after January 1, 2019, $1,218[2018, $1,186]; or

3. An eligible couple, both aged, blind, or having[have] a disability and both requiring care on or after January 1, 2019, $1,272[2018, $1,240]; or

(d) For an individual who resides in a private residence and has SMI on or after January 1, 2019, $1,291[2018, $1,270].

(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 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 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 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;[and]

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

4. Is marked appropriately for each resident to indicate the resident[Annotates the form, in order to maintain confidentiality, as follows with a]:

a.[Star indicating a resident] Has a mental illness[or intellectual disability] diagnosis;

b. Has an intellectual disability diagnosis[Check mark indicating a resident receives state supplementation]; or[and]

c. Receives state supplementation[Star and a check mark indicating the resident has a mental illness or intellectual disability diagnosis and is a recipient of 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) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall complete[~~attend~~] 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[~~attend~~] 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)[~~(e)~~] Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability; [~~and~~]

(h)[~~(f)~~] 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; and

(j) Adult learning principles.

(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[~~To assure that a~~] staff member who has received training [~~is always employed at the personal care home, a maximum of five (5) may be trained during a year~~].[~~(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.~~]

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

1. Has successfully completed certified medication technician 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[~~at the closest location~~].

(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)[~~Unless staff turnover occurs as specified in subsection (4)(a) of this section,~~] 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[~~the~~] maximum of five (5) staff per year.[~~(7) Attendance of the training workshop shall be optional for a specialized personal care home.~~]

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 Inspector General that the personal care home is ready for an inspection for eligibility.

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

(a) Observe and interview residents and staff; and

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

1.[~~Except for a specialized personal care home,~~] Certification is on file at the personal care home to verify staff's completion[~~attendance~~] 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[~~attendance~~] 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 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 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 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 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 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 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 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 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[~~01/13/14~~]; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/19[~~01/17~~].

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

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

APPROVED BY AGENCY: December 18, 2018

FILED WITH LRC: December 28, 2018 at noon

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Phone: (502) 564-3798, Email: Laura.Begin@ky.gov; and Chase Coffey

(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 amendment to this administrative regulation will increase the standard of need in the State Supplemental Program to reflect the cost of living adjustment (COLA) to be implemented in calendar year 2019 by the Social Security Administration for Supplemental Security Income (SSI) recipients. The Social Security Administration deemed the COLA to be an increase of 2.8%. In addition, the training requirement is being amended to add serious mental illness, activities of daily living, and adult learning principles to the topics included in the training and to require attendance once every two years rather than every year. The term "specialized personal care home" and references to it are being deleted because they are no longer necessary. The STS-3 and STS-4 forms are being amended for consistency with the regulatory amendment.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will increase the standard of need in the State Supplemental Program to reflect the COLA to be implemented in calendar year 2019 by the Social Security Administration for SSI recipients.

(c) How the amendment conforms to the content of the authorizing statutes: 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. This administrative regulation establishes the provisions of the supplementation program. The amendment to this administrative regulation will increase the standard of need in the State Supplemental Program to reflect the COLA to be implemented in calendar year 2019 by the Social Security Administration for SSI recipients.

(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 2019 2.8% COLA for the Supplemental Security Income benefit by modifying the standard of need for all levels of care for the State Supplementation Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In SFY 18, there were 3,085 individuals who received State Supplementation Program benefits. As of fall 2018, there are 23 personal care homes participating in the 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: There is no new action required of regulated entities.

(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 is no new or additional cost to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): A 2.8% increase in the COLA for SSI 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 COLA pass-through money.

(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 2019 SSI COLA. 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.
42 U.S.C. 1382 e-g, 20 C.F.R. Part 416

2. State compliance standards. KRS 194A.050(1), 205.245

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1382 e-g, 20 C.F.R. Part 416

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements than those required by federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, 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 194A.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? This administrative regulation will not generate additional revenue in the first year.

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

(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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student and Administrative Services
(As Amended at ARRS, January 9, 2019)

11 KAR 4:080. Student aid applications.

RELATES TO: KRS 164.518, 164.744(2), 164.748(4), (7), (8), 164.753(3), (4), (6), 164.7535, 164.769, 164.780, 164.785, 164.7890, 164.7894, 34 C.F.R. 654.1-654.5, 654.30-654.52, 20 U.S.C. 1070d-31 - 1070d-41

STATUTORY AUTHORITY: KRS 164.518(3), 164.746(6), 164.748(4), 164.753(3), (6), 164.7535, 164.769(5), (6)(f), 164.7894(6), 34 C.F.R. 654.30, 654.41, 20 U.S.C. 1070d-37, 1070d-38

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) authorizes the Authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.7891. KRS 164.7894(6) requires the Authority to promulgate administrative regulations as may be needed for the administration of the Kentucky Coal County College Completion Program. This administrative regulation designates and incorporates the applications to be utilized under the grant, scholarship, and work-study programs administered by KHEAA.

Section 1. Applications. In order to participate in a specified grant, scholarship, or work-study program administered by the Kentucky Higher Education Assistance Authority, the following application forms shall be completed for the appropriate academic year in which an award is sought in accordance with their instructions:

(1) For the KHEAA Grant Program ***established*** ~~***[as set forth]***~~ in 11 KAR 5:130, the Free Application for Federal Student Aid (FAFSA);

(2) For the KHEAA Work-Study Program ***established*** ~~***[as set forth]***~~ in 11 KAR 6:010, the KHEAA Work-Study Program Student Application;

(3) For the Teacher Scholarship Program ***established*** ~~***[as set forth]***~~ in 11 KAR 8:030, the Teacher Scholarship Application;

(4) For the Early Childhood Development Scholarship Program ***established*** ~~***[as set forth]***~~ in 11 KAR 16:010:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Early Childhood Development Scholarship Application;

(5) For the Robert C. Byrd Honors Scholarship Program ***established*** ~~***[as set forth]***~~ in 11 KAR 18:010:

(a) For high school and home school students, the Robert C. Byrd Honors Scholarship Program; and

(b) For GED recipients, the Robert C. Byrd Honors Scholarship Program GED Recipients;

(6) For the Go Higher Grant Program ***established*** ~~***[as set forth]***~~ in 11 KAR 5:200;

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Go Higher Grant Program Application;

(7) For the Coal County Scholarship Program for Pharmacy Students ***established*** ~~***[as set forth]***~~ in 11 KAR 19:010, the Coal County Scholarship Program for Pharmacy Students Application; and

(8) For the Kentucky Coal County College Completion Scholarship Program ***established*** ~~***[as set forth]***~~ in 11 KAR 20:020:

(a) The Free Application for Federal Student Aid (FAFSA); and

(b) The Kentucky Coal County College Completion Scholarship Application.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Free Application for Federal Student Aid July 1, 2019 - June 30, 2020~~[July 1, 2017 – June 30, 2018]~~" (FAFSA), October 2018~~[October 2016]~~;

(b) The "Free Application for Federal Student Aid July 1, 2018 - June 30, 2019" (FAFSA), October 2017;

(c) The "KHEAA Work-Study Program Student Application", July 2001;

(d) The "Teacher Scholarship Application", June 2006;

(e) The "Early Childhood Development Scholarship Application", April 2006;

(f) The "Robert C. Byrd Honors Scholarship Program", June 2009;

(g) The "Robert C. Byrd Honors Scholarship Program-GED Recipients", June 2009;

(h) The "Go Higher Grant Program Application", January 2008;

(i) The "Coal County Scholarship Program for Pharmacy Students Application", February 2011; and

(j) The "Kentucky Coal County College Completion Scholarship Application", October 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Higher Education Assistance Authority, 100 Airport Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material may also be obtained at www.kheaa.com.

STEPHEN L. ZEITZ, Chair

APPROVED BY AGENCY: October 24, 2018

FILED WITH LRC: November 13, 2018 at 11 a.m.

CONTACT PERSON: Ms. Diana L. Barber, General Counsel, Kentucky Higher Education Assistance Authority, P.O. Box 798, Frankfort, Kentucky 40602-0798, phone (502) 696-7298, fax (502) 696-7293. email dbarber@kheaa.com.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, January 9, 2019)

16 KAR 2:100. Junior Reserve Officers Training Corps~~[and Junior Guard certification]~~.

RELATES TO: KRS 160.380(5), 161.010, 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028(1) authorizes the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a teaching certificate and for programs of preparation for teachers and other professional school personnel, and KRS 161.030(1) requires all certificates issued under KRS 161.010 to 161.126~~[161.1266]~~ to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the Kentucky certification for instructor of the Junior Reserve Officers Training Corps.

Section 1. (1) The certificate for senior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant if the applicant has submitted a Form CA-8 and the following:

(a) A bachelor's degree from a standard college or university as defined by KRS 161.010;

(b) An official recommendation by the appropriate branch of military service;

(c) A contract for this employment by a local school district;

(d) A recommendation for certification by the local school superintendent; and

(e)~~[A national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application; and~~

~~(f)~~] A DD214 documenting honorable service.

(2) The certificate for senior instructor, Junior Reserve Officers Training Corp, may be renewed for a five (5) year period upon recommendation by the local school superintendent and upon completion of nine (9) semester hours to include:

(a) Human growth and development and learning theory;

(b) Foundations of education; and

(c) Career development and vocational planning.

(3) Each five (5) year renewal thereafter shall require the completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.

Section 2. (1) The certificate for junior instructor, Junior Reserve Officers Training Corps, shall be issued initially for a two (2) year period to an applicant if the applicant has:

(a) Graduated high school, or its equivalence as determined by a minimum passing standard on the General Education Development Test;

(b) Submitted an official recommendation by the appropriate branch of military service;

(c) Submitted a contract for this employment by a local school district;

(d) Submitted a recommendation for certification by the local school superintendent; and

(e)[~~Submitted a national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application; and~~

~~(f)~~] Submitted a DD214 documenting honorable service.

(2) Initial Renewal. The certificate for junior instructor, Junior Reserve Officers Training Corps, may be initially renewed for a two (2) year period upon application to the board. The applicant shall complete and submit Form CA-2, incorporated by reference in 16 KAR 4:060, and submit verification:

(a) By the local school superintendent of two (2) years' experience as a Junior Reserve Officer Training Corps Instructor at a local school district; and

(b)[~~Of successful completion of the "New-to-Kentucky Teacher" Module and the "Substitute Teacher Orientation" Module found on www.kyeducators.org. The junior ROTC instructor shall make reasonable efforts to complete the modules within the first ninety (90) days of employment with the local school district; and~~

~~(c)~~]Of successful completion of:

1. A minimum of twenty-four (24) clock hours of district-approved professional development, annually; or

2. Six (6) semester hours from a standard college or university as defined by KRS 161.010 to include:

a. Human growth and development and learning theory;

b. Foundations of education; and

c. Career development and vocational planning.

(3) Each subsequent two (2) year renewal thereafter shall require completion by September 1 of the year of expiration of:

(a) Six (6) semester hours selected from an associate degree program from a standard college or university as defined by KRS 161.010; or

(b) Twenty-four (24) clock hours of district-approved professional development, annually.

(4) Upon completion of the associate degree with at least a 2.5 grade point standing, the certificate for junior instructor, Junior Reserve Officers Training Corps, shall be renewed for a five (5) year period. Each five (5) year renewal thereafter shall require completion of two (2) years of experience teaching in the Junior Reserve Officers Training Corps.

(5) A junior instructor who renews the certificate for junior instructor, Junior Reserve Officers Training Corps, by completing the twenty-four (24) hours of professional development annually shall not be eligible to receive the five (5) year certificate as established in subsection (4) of this section, but shall be granted a certificate of two (2) years in duration. [~~Section 3. (1) The certificate for a senior instructor of the Junior Guard shall be issued initially for a two (2) year period if the applicant:~~

~~(a) Is a current member of the United States Military or has retired from the United States Military within a two (2) year period;~~

~~(b) Has a bachelor's degree from an accredited college or university as defined by KRS 161.010;~~

~~(c) Has submitted a national and state criminal background check performed in accordance with KRS 160.380(5) within twelve (12) months prior to the date of application;~~

~~(d) Has submitted a DD214 documenting honorable service;~~

~~(e) Has submitted an official letter of recommendation from the National Guard;~~

~~(f) Has submitted a contract for employment with a local school district; and~~

~~(g) Has submitted a recommendation for certification by the local school superintendent or designee.~~

~~(2) The certificate for the Senior Instructor of the Junior Guard may be renewed for a five (5) year period upon recommendation by the local school superintendent and upon completion of six (6) semester hours to include:~~

~~(a) Human growth and development; and~~

~~(b) Foundations of education.~~

~~(3) Each five (5) year renewal thereafter shall require the completion of two (2) years of experience teaching in the Junior Guard.~~]

Section 3. Incorporation by Reference. (1) "Form CA-8, 10/18", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH BURNETT, Board Chair

APPROVED BY AGENCY: October 8, 2018

FILED WITH LRC: November 15, 2018 at noon

CONTACT PERSON: Cassie Trueblood, Policy Advisor and Special Counsel, Office of Educator Licensure and Effectiveness, 300 Sower Blvd, Fifth Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email cassie.trueblood@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, January 9, 2019)

16 KAR 2:210. Provisional and professional certificate for orientation and mobility specialist.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(1) vests the Education Professional Standards Board with the authority to certify all teachers and other professional school personnel in public schools. KRS 161.030(2) requires the Education Professional Standards Board to establish standards and requirements for obtaining and maintaining a certificate. KRS 161.030(1) requires all certificates to be issued in accordance with the administrative regulations of the board. This administrative regulation establishes the standards for the issuance of a certificate for the position of orientation and mobility specialist.

Section 1. Requirements for the Provisional Certificate for Orientation and Mobility Specialist. (1) The provisional certificate for orientation and mobility specialist shall be issued to an applicant who has:

(a) A bachelor's degree or higher from a regionally accredited institution with:

1.A cumulative minimum grade point average of 2.75 on a 4.0 scale; or

2. A minimum grade point average of 3.0 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework.

(b) Completed coursework towards an approved preparation program from a regionally accredited institution for orientation and mobility specialists;

(c) A valid Academy of Certification of Vision Rehabilitation and

Educational Professional (ACVREP) certification in orientation and mobility; and

(d) An offer of employment from a Kentucky school district or accredited nonpublic school as an orientation and mobility specialist.

(2) To apply for the provisional certificate for orientation and mobility specialist, the applicant shall submit a completed Form CA-1 to the Education Professional Standards Board.

(3) The provisional certificate for orientation and mobility specialist shall be issued for a validity period of one (1) year.

(4) The provisional certificate for orientation and mobility specialist shall be valid for providing orientation and mobility services for all grade levels.

(5) To renew the provisional certificate for orientation and mobility specialist, the applicant shall:

(a) Submit a completed Form CA-2 to the Education Professional Standards Board;

(b) Maintain current ACVREP certification;

(c) Have an offer of employment from a Kentucky school district or accredited nonpublic school as an orientation and mobility specialist; and

(d) Provide proof of completion of one-half of the requirements of Section 2(1)(c) ***of this administrative regulation***.

Section 2. Requirements for the Professional Certificate for Orientation and Mobility Specialist. (1) The professional certificate for orientation and mobility specialist shall be issued to an applicant who has:

(a) A bachelor's degree or higher from a regionally accredited institution with:

1. A cumulative minimum grade point average of 2.75 on a 4.0 scale; or

2. A minimum grade point average of 3.0 on a 4.0 scale on the last thirty (30) hours of credit completed, including undergraduate and graduate coursework;

(b) Completed an approved preparation program from a regionally accredited institution for orientation and mobility specialists;

(c) Successfully completed:

1. A minimum of 150 hours of an internship working with children under the supervision of an ACVREP certified orientation and mobility specialist; or

2. A minimum of 150 hours work experience as an orientation and mobility specialist providing services to children; and

(d) A valid ACVREP certification in orientation and mobility.

(2) To apply for the professional certificate for orientation and mobility specialist, the applicant shall submit a completed Form CA-1 to the Education Professional Standards Board.

(3) The professional certificate for orientation and mobility specialist shall be issued for a validity period of five (5) years.

(4) The professional certificate for orientation and mobility specialist shall be valid for providing orientation and mobility services for all grade levels.

(5) To renew the professional certificate for orientation and mobility specialist, the applicant shall:

(a) Submit a completed Form CA-2 to the Education Professional Standards Board; and

(b) Maintain current ACVREP certification.

Section 3. Requirements for an Approved Program of Preparation. (1) The approved program of preparation shall be based upon the orientation and mobility curricular standards defined by the Association of the Education and Rehabilitation of the Blind and Visually Impaired (AER).

(2) The program of preparation shall be submitted to the Education Professional Standards Board for approval pursuant to the requirements established in 16 KAR 5:010.

(3) The program of preparation shall be submitted through the educator preparation provider.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form CA-1, 10/18;

(b) Form CA-2, 10/18; and

(c) O&M Curricular Standards of the Association of the Education and Rehabilitation of the Blind and Visually Impaired, 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH BURNETT, Board Chair

APPROVED BY AGENCY: October 8, 2018

FILED WITH LRC: November 15, 2018 at noon

CONTACT PERSON: Cassie Trueblood, Policy Advisor and Special Counsel, Office of Educator Licensure and Effectiveness, 300 Sower Blvd, Fifth Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email cassie.trueblood@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, January 9, 2019)

16 KAR 9:040. Part-time adjunct instructor certificate.

RELATES TO: KRS 160.380(5)(c), 161.020, 161.028(1)(a), (c), 161.030, 161.046, 161.048(5), 161.120

STATUTORY AUTHORITY: KRS 161.028(1)(a), (c), 161.030, 161.046(2), 161.048(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.046 and 161.048(5) authorize the position of adjunct instructor and require the Education Professional Standards Board to promulgate administrative regulations to establish certification requirements. This administrative regulation establishes the minimum requirements for an adjunct instructor certificate.

Section 1. Definition. "Exceptional life or work experience candidate" means a person with recognized superiority as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally-accepted standards in the area in which certification is sought.

Section 2. Candidate Eligibility Requirements. (1) An adjunct instructor shall meet the requirements for good moral character as required in KRS 161.120 and the following requirements relating to educational and occupational experience:

(a) An adjunct instructor employed in middle school or secondary school shall hold:

1. A bachelor's degree from a regionally accredited institution with:

a.(i) A cumulative minimum grade point average of at least 2.75[~~2.50~~] on a 4.00 scale; or

(ii) A minimum grade point average of at least 3.0 on a 4.0 scale on the last thirty (30)[~~sixty (60)~~] hours of credit completed, including undergraduate and graduate coursework; and

b. A major, minor, or area of concentration in the specialty subject to be taught; or

2. A master's degree in the specialty subject to be taught from a regionally-accredited institution with the minimum grade point average established in subparagraph 1.a. of this paragraph;

(b) An adjunct instructor in elementary school or early childhood education program shall hold:

1. A bachelor's degree from a regionally-accredited institution with:

a.(i) A cumulative minimum grade point average of at least 2.75[~~2.50~~] on a 4.0 scale; or

(ii) A minimum grade point average of at least 3.0 on a 4.0 scale on the last thirty (30)[~~sixty (60)~~] hours of credit completed, including undergraduate and graduate coursework; and

b. A major, minor, or area of concentration in a planned program of child development or a related area; or

2. A master's degree in a planned program of child development or a related area from a regionally accredited

institution with the minimum grade point average established in subparagraph 1.a. of this paragraph; and

(c) An adjunct instructor for occupation-based career and technical education shall:

1. Be a high school graduate;

2. Have at least four (4) years of appropriate occupational experience for the specialty to be taught; and

3.a. Complete the specialty area examination prerequisite as established in 16 KAR 6:020; or

b. Hold either an associate degree or technical diploma in a related area.

(2)(a) An applicant for adjunct instructor certification who does not meet the minimum academic preparation requirements established in subsection (1) of this section may apply for this certificate as an exceptional life or work experience candidate.

(b) An exceptional life or work experience candidate shall be recommended by the employing school district and complete the application process established in subsection (3) of this section.

(c) An exceptional life or work experience candidate shall include the following information as verification of exceptional qualifications in the field of endeavor to be taught or service to be practiced:

1. Sufficient documentation that demonstrates to the local school district and the Education Professional Standards Board that an applicant is an exceptional life or work experience candidate as defined in Section 1 of this administrative regulation and has talents and abilities commensurate with the Kentucky Teacher Standards for Preparation and Certification established in 16 KAR 1:010;

2. Documentation of achievement that may include academic and nonacademic preparation, distinguished employment, evidence of related study or experience, publications, professional achievement, or recognition attained for contributions to an applicant's field or endeavor; and

3. Recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations shall support exceptional life or work experience in this field.

(3) Form CA-25 signed by the local district superintendent and approved by the local board of education shall be submitted to the Education Professional Standards Board for each adjunct instructor.

(a) The application shall be accompanied by official transcripts of all college credits earned by the prospective adjunct instructor along with documentation of any exceptional competencies or experiences submitted in support of the application.

(b) Upon receipt of the application and appropriate documentation, a candidate meeting all of the requirements shall be issued a one (1) year adjunct instructor certificate.

Section 3. Orientation Program. Each local board of education shall provide for an orientation program for the adjunct instructors employed within the district.

(1)[(a)][~~(1)~~] A detailed description of the orientation program shall be a part of the certificate application form.

(2)[(b)][~~(2)~~] The orientation program shall include an emphasis on student safety, district policies and procedures, and pedagogical assistance commensurate with the Kentucky Teacher Standards for Preparation and Certification established in 16 KAR 1:010.

Section 4.[~~An applicant for a part-time adjunct instructor who is not currently certified as an educator in Kentucky shall submit a national and state criminal background check performed in accordance with KRS 160.380(5)(c) within twelve (12) months prior to the date of application.~~

~~Section 5.~~] Incorporation by Reference. (1) "Form CA-25", 10/18[~~08/15~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Education Professional Standards Board, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH BURNETT, Board Chair

APPROVED BY AGENCY: October 8, 2018

FILED WITH LRC: November 15, 2018 at noon

CONTACT PERSON: Cassie Trueblood, Policy Advisor and Special Counsel, Office of Educator Licensure and Effectiveness, 300 Sower Blvd, Fifth Floor, Frankfort, Kentucky 40601, phone (502) 564-4606, fax (502) 564-7080, email cassie.trueblood@ky.gov.

GENERAL GOVERNMENT CABINET
Kentucky Board of Cosmetology
(As Amended at ARRS, January 9, 2019)

201 KAR 12:030. Licensing, permits, and examinations.

RELATES TO: KRS 317A.020, 317A.050, 317A.060

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing licenses in cosmetology, esthetic practices, and nail technology, including the operation of schools and salons of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes procedures for examinations and licensing.

Section 1. Fees. License and permit fees are set forth in 201 KAR 12:260.

Section 2. Prior Felony Convictions. An applicant for any license, permit, or examination issued or conducted by the board convicted of a prior felony shall include with his or her application:

(1) A signed letter of explanation from the applicant;

(2) A certified copy of the judgment and sentence from the issuing court; and

(3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

Section 3. Reciprocal Licensing.

(1) A license issued by another state shall be considered comparable if the laws of that state require at a minimum:

(a) 1,500 hours of curriculum for cosmetology;

(b) 450 hours of curriculum for nail technology;

(c) 750 hours of curriculum for esthetics; or

(d) 750 hours of curriculum for instructors.

(2) An applicant licensed in another state may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:

(a) Digital certification showing proof of a passing score on a board-approved nationally recognized theory and practical exam~~;~~

(b) Current digital certification of the out of state license from the issuing state board;

(c) Diploma or certified testing documents proving 12th grade equivalency education;

(d) Payment of the applicable license and endorsement fees required by 201 KAR 12:260;

(e) A copy of the applicant's government-issued photo identification; and

(f) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(3) An applicant from a state whose licensing requirements fail to meet subsection (1) of this section shall apply for a reciprocal license by submitting:

(a) Documentation required by subsection (2)(a) through (f) of this section; and

(b) Payment of the applicable examination fees established in 201 KAR 12:260.

(4) Active duty military and family members shall apply for a reciprocal license by submitting:

(a) All documents required by subsection 2(a) through (f) of this section;

(b) The Military Transfer Application;

(c) A copy of the sponsor's active-duty orders listing the

applicant as sponsor or an accompanying family member; and

(d) Payment of a twenty-five (25) dollar license fee.

(5) All requests for certification of hours or a license shall use the Certification Request Form accompanied by a copy of the applicant's government-issued photo identification, and payment of the fee as set forth in 201 KAR 12:260. Certifications shall be transmitted digitally to the reciprocal state agency.

Section 4. Permits.

(1) Any person who engages in the practice of threading, makeup artistry, or ***eyelash artistry[~~lash extensions~~]*** 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 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 board- approved national certification program, if applying for ***an eyelash artistry[~~a lash extension~~]*** 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[~~shampoo and style~~]*** 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.

(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 who fails to apply for a license within one (1) year of passing the examination shall retake the examination and pay the appropriate examination fee set forth in 201 KAR 12:260.~~]***

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.

(b) Following the supplemental course, the examinee may attempt the test two (2) additional times. If the examinee fails both attempts the examinee shall be prohibited from taking the examination within three (3) years from the date of the final failed attempt.[~~If, after three (3) additional failed attempts, the examinee does not receive a passing score then the individual shall be required to take an eighty (80) hour brush-up course in theory studies at a school licensed by the board.~~]

(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***[be]***:

(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;***[and]***

(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 and license fees set forth in 201 KAR 12:260 and the following:

(a) For an expired individual license or permit, a copy of a government-issued photo identification;

(b) For an expired salon license or limited facility permit, a new Salon Application or Limited Facility Permit Application; or

(c) For an expired school license, a new School Application.

Section 12. Salon and Facility Applications.

(1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or limited facility shall submit the Salon Application or Limited Facility Permit Application with required copies of state identification and driver's licenses, pay the applicable fee set forth in 201 KAR 12:260, and be inspected by the board inspector a minimum of five (5) business days prior to opening for business.

(2) A new or relocating salon or facility shall comply with all applicable city, county, state zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a nursing home or assisted living facility if the salon or facility meets all requirements of this section.

(4) Any salon or facility located in a residence shall have a separate outside entrance for business purposes only. This subsection shall not apply to a nursing home or assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or facility shall not open for business prior to issuance of its license or permit.

(6)***[A change in the ownership, management, or location of a licensed salon or facility shall require 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.***

(7)] Each salon shall maintain a board licensed manager properly licensed in the services the salon provides at all times.

(7)[(8)] Salon and limited ***beauty salon[Facility]*** licenses ***and facility permits*** shall be mailed to the Kentucky mailing address on the application.

Section 13. ***Change in Salon Ownership or Transfer of Interest.***

(1) The owners, firm, or corporation operating a licensed salon shall submit to the board a new Salon Application, Limited Facility Permit Application, or Manager Change Form and payment of the license or change fee as set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership or changing managers.

(2) No transfer of ownership interest in a salon shall take effect while the salon license to be transferred is the subject of ongoing disciplinary action pursuant to KRS 317A.145.

Section 14. School Licenses.

(1) Each person, firm, or corporation applying for a license to operate a school shall submit a School Application and the applicable fee set forth in 201 KAR 12:260.

(2) The School Application shall be accompanied by:

(a) A proposed student contract listing all financial charges to enrolling students;

(b) A proposed floor plan drawn to scale by a draftsman or architect; and

(c) Proof of five (5) years of residency in the Commonwealth.

(3) Each school shall comply with city, county, and state zoning, building, and plumbing laws, administrative regulations and codes.

(4) Prior to license issuance and following the receipt of a completed application with all accompanying materials, the board inspector and board administrator 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[14]***. Change in School Ownership or Management.

(1) The owners, firm, or corporation operating a licensed school shall submit to the board a new School Application or a Manager Change Form and payment of the applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership or changing school managers.

(2) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A and 201 KAR Chapter 12, and obtain approval of the board prior to assuming operation of the school.

Section ***16[15]***. 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[16]***. 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[17]***. 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[18]***. 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[19]***. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Out of State Transfer Application", October[March] 2018;

(b) "Military Transfer Application", October[March] 2018;

(c) "Certification Request Form" October[~~March~~] 2018;
(d) "Permit Application", ***January 2019[~~October~~]***[~~March~~] ***[~~2018~~]***;
(e) "Application for Examination", ***January 2019[~~October~~]*** [~~March~~]***[~~2018~~]***;
(f) "Out of State Application for Examination", October[~~March~~] 2018;
(g) "Duplicate License Application", ***January 2019[~~October~~]*** [~~March~~]***[~~2018~~]***;
(h) "Renewal Application", ***January 2019[~~October~~]***[~~March~~] ***[~~2018~~]***;
(i) "Restoration Application", ***January 2019[~~October~~]***[~~March~~] ***[~~2018~~]***;
(j) "Salon Application", October [~~March~~] 2018;
(k) "Limited Facility Permit Application", ***January 2019 [~~October~~]***[~~March~~]***[~~2018~~]***;
(l) "Manager Change Form", October[~~March~~] 2018;
(m) "School Application", October[~~March~~] 2018;and
(n) "Demonstration Permit Application", October[~~February~~] 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.

R. KAY SWANNER, Board Chair
APPROVED BY AGENCY: November 14, 2018
FILED WITH LRC: November 14, 2018 at noon
CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, email julie.campbell@ky.gov; fax (502) 564-0481.

GENERAL GOVERNMENT
Kentucky Board of Cosmetology
(As Amended at ARRS, January 9, 2019)

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.***[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)[~~eight (8)~~] 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.[An apprentice instructor may complete the required 300 hours of theory curriculum through an approved digital platform if enrolled and tracked by a licensed Kentucky school of cosmetology, esthetic practices, or nail technology.]***

Section 11[~~10~~]. 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[~~11~~]. Schools may enroll persons for a special supplemental[~~brush-up~~] course in any subject.

Section 13[~~12~~]. 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[~~13~~]. 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[~~Shampoo and Style~~]*** License Subject Areas. The regular courses of instruction for ***blow drying services[~~shampoo and style~~]*** 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[~~Shampoo and Style~~]*** License Hours Required.
(1) A ***blow drying services[~~shampoo and style~~]*** 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[~~shampoo and style~~]*** 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[~~14~~]. 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[~~15~~]. Student Records. Each school shall:

(1) Maintain a daily attendance record for all full-time students, part-time students, and apprentice instructors;

(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[~~16~~]. 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[~~17~~]. No Additional Fees. Schools shall not charge students additional fees beyond the contracted amount.

Section 21[~~18~~]. 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[~~19~~]. 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[~~20~~]. 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[~~21~~]. 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[~~20~~] 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[~~22~~]. 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[~~23~~]. 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[~~24~~]. Refund Policy. A school shall include the school's refund policy in school-student contracts.

Section 28[~~25~~]. 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[~~26~~]. 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[~~27~~]. 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[~~28~~]. 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[~~shampoo and style~~]*** 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[~~29~~]. Incorporation by Reference. The following material is incorporated by reference:

(1)(a) "Certification of Student Extracurricular Event Hours", October[~~February~~] 2018;[~~and~~]

(b) "Enrollment Correction Application", October[~~March~~] 2018; and

(c) "Program Transfer Form", ***January 2019[~~October 2018~~]***.

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R. KAY SWANNER, Board Chair

APPROVED BY AGENCY: November 14, 2018

FILED WITH LRC: November 14, 2018 at noon

CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, email julie.campbell@ky.gov, fax (502) 564-0481.

GENERAL GOVERNMENT
Kentucky Board of Cosmetology
(As Amended at ARRS, January 9, 2019)

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[~~Shampoo and Style~~]*** - fifty (50) dollars;

(5)[~~(4)~~] Cosmetology instructor - fifty (50) dollars;

(6)[~~(5)~~] Esthetic instructor - fifty (50) dollars;

(7)[~~(6)~~] Nail Technology instructor - fifty (50) dollars;

(8)[~~(7)~~] Beauty salon - $100;

(9)[~~(8)~~] Nail salon - $100;

(10)[~~(9)~~] Esthetic salon - $100;

(11)[~~(10)~~] School - $1,500;

(12)[~~(11)~~] School transfer of ownership - $1,500;

(13)[~~(12)~~] Salon transfer of ownership - $100;

(14)[~~(13)~~] Limited facility permit for a ***limited beauty salon[~~style bar~~]***, threading facility, ***eyelash artistry[~~lash extension~~]*** facility, and makeup facility - $100;

(15)[~~(14)~~] Threading permit - fifty (50) dollars;

(16)[~~(15)~~] ***Eyelash Artistry[~~Lash Extension~~]*** Permit - fifty (50) dollars; and

(17)[~~(16)~~] 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[~~Shampoo and Style~~]*** - fifty (50) dollars;

(5)[~~(4)~~] Cosmetology instructor - fifty (50) dollars;

(6)[~~(5)~~] Esthetic instructor - fifty (50) dollars;

(7)[~~(6)~~] Nail Technology instructor - fifty (50) dollars;

(8)[~~(7)~~] Beauty salon - $100;

(9)[~~(8)~~] Nail salon - $100;

(10)[~~(9)~~] Esthetic salon - $100;

(11)[~~(10)~~] School - $250;

(12)[~~(11)~~] Limited facility permit for a ***limited beauty salon[~~style bar~~]***, threading facility, ***eyelash artistry[~~lash extension~~]*** facility, and makeup facility - $100;

(13)[~~(12)~~] Threading permit - fifty (50) dollars;

(14)[~~(13)~~] ***Eyelash Artistry[~~Lash Extension~~]*** Permit - fifty (50) dollars; and

(15)[~~(14)~~] 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;[~~and~~]

(4) ***Blow drying services[~~Shampoo and Style~~]*** - seventy-five (75) dollars; and

(5)[~~(4)~~] Instructor - seventy-five (75) dollars.

Section 4. Miscellaneous fees shall be as follows:

(1) Demonstration permit - fifty (50) dollars;

(2) Certification of a license or school hours - twenty-five (25)[~~twenty (20)~~] dollars;

(3) Duplicate license - twenty-five (25) dollars;

(4) Salon manager change - fifty (50) dollars;

(5) School manager change - $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[~~style bar~~]***, threading facility, ***eyelash artistry[~~lash extension~~]*** facility, and makeup

facility - $100; and
(12) School license restoration fee - $500.

R. KAY SWANNER, Board Chair
APPROVED BY AGENCY: November 14, 2018
FILED WITH LRC: November 14, 2018 at noon
CONTACT PERSON: Julie M. Campbell, Board Administrator, 111 St. James Ct. Ste A. Frankfort, Kentucky 40601, phone (502) 564-4262, email julie.campbell@ky.gov, fax (502) 564-0481.

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of the Commissioner
(As Amended at ARRS, January 9, 2019)

302 KAR 77:011. Repeal of 302 KAR 77:010 and 302 KAR 77:030.

RELATES TO: KRS Chapter 247
STATUTORY AUTHORITY: KRS 247.430, 247.391
NECESSITY, FUNCTION, AND CONFORMITY: KRS 247.430 and KRS 247.391 ***authorize[~~authorizes~~]*** the commissioner to establish certain ***administrative regulations[~~rules~~]*** for tobacco auctions. This administrative regulation repeals ***302 KAR 77:010 and 302 KAR 77:030[~~KRS 247.430 and KRS 247.391~~]*** because changes in tobacco marketing have dramatically reduced auction use, making this administrative regulation not needed.

Section 1. The following administrative regulations hereby repealed:
(1) 302 KAR 77:010***, Tobacco sales commission fees***; and
(2) 302 KAR 77:030***, Height and weight of baskets of tobacco***.

RYAN F. QUARLES, Commissioner
APPROVED BY AGENCY: November 14, 2018
FILED WITH LRC: November 14, 2018 at 1 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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 9, 2019)

701 KAR 5:150. Nontraditional instruction program.

RELATES TO: KRS 158.070
STATUTORY AUTHORITY: KRS 156.029, 156.070, 156.160, 158.070
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) ***requires[~~states that the primary function of~~]*** the Kentucky Board of Education (KBE)***[~~is~~]*** to adopt policies and administrative regulations by which the Kentucky Department of Education (department) shall be governed in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education (Commissioner), to establish policy or act on all programs, services, and other matters which are within the administrative responsibility of the department. KRS 158.070 requires the KBE to promulgate an administrative regulation to prescribe the conditions and procedures for local education agencies (districts) to be approved for the nontraditional instruction program. This administrative regulation establishes the requirements and approval process for districts to be approved for the nontraditional instruction program.

Section 1. Definitions. (1) "Certified employee" means an employee of a local school district who is required to have a certification for his position pursuant to KRS 161.020.
(2) "Instructional delivery method" means the delivery system and instructional techniques to be used in meeting the learning needs of students.
(3) "Minimum school term" or "school term" is defined in KRS 158.070(1)(b).
(4) "Nontraditional instruction day" means a day during the school term that a local school district is closed for health or safety reasons that is approved by the commissioner, pursuant to KRS 158.070(9), to be the equivalent to a student attendance day.
(5) "Nontraditional instruction plan" means the strategy approved by the commissioner and implemented by a local school district to ensure instruction on nontraditional instruction days is a continuation of learning that is occurring on regular student attendance days as required by KRS 158.070(9).
(6) "Professional learning plan" means the strategy implemented to ensure staff in a local school district acquire, enhance, and refine the knowledge, skills, practices, and dispositions necessary to create and support high levels of learning for all students.
(7) "Student attendance day" is defined in KRS 158.070(1)(e).

Section 2. Initial Application Process. (1) Using the Nontraditional Instruction Program Initial Application, a district submitting a nontraditional instruction plan to be approved by the commissioner shall include:
(a) A description of the instructional delivery methods, including the use of technology, to be used on nontraditional instruction days;
(b) A description of how the district will provide access to online resources, if used, and equitable instructional materials for students who do not have access to the internet and for students needing to access information differently;
(c) A description of how the district shall ensure a continuation of learning from regular student attendance days will occur on nontraditional instruction days;
(d) A description of how the district will ensure implementation of Individual Education Programs for students with disabilities, including how an Admissions and Release Committee will be involved in planning for and making decisions related to the participation and needs of students with disabilities, on nontraditional instruction days;
(e) A description of how the district will ensure implementation of other student-specific educational plans, including Program Service Plans for English Learners, 504 Plans, and Gifted Student Service Plans for students identified as gifted and talented, on nontraditional instruction days;
(f) A description of how student participation will be measured and how evidence of student learning will be gathered on nontraditional instruction days;
(g) A description of how each job category within the district will fulfill contractual obligations on nontraditional instruction days and how employee participation will be verified on nontraditional instruction days;
(h) An explanation of the professional learning plan the district will implement to ensure certified employees have the knowledge and capacity to provide instruction on nontraditional instruction days;
(i) A description of education agencies that are external to the district but have students of the district in attendance on a part-time or full-time basis and the considerations on nontraditional instruction days that will need to be agreed upon between the district and those external education agencies;
(j) A description of stakeholder involvement in developing and implementing nontraditional instruction days;
(k) A description of how the district will relay information about nontraditional instruction days to students and families; and
(l) Other evidence deemed necessary by the department to effectively review and approve or deny a district's nontraditional instruction plan.
(2) The department shall provide technical assistance, upon request, to districts prior to submission of the Nontraditional Instruction Program Initial Application.

(3) A district shall submit an application at least 120 days prior to the beginning of a school term to have the application considered for implementation at the beginning of the upcoming school term.

(4) A committee designated by the commissioner shall review and recommend the commissioner approve or deny a completed Nontraditional Instruction Program Initial Application within forty-five (45) days from receipt of the completed application.

(5) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (4) of this section, the commissioner shall approve or deny a completed Nontraditional Instruction Program Initial Application. The Commissioner may initially approve a district to participate in the NONTRADITIONAL instruction program for up to two (2) years.

(6)(a) A district approved to participate in the nontraditional instruction program may amend its Nontraditional Instruction Program Initial Application as needed at any time by submitting a written amendment request to the department.

(b) The amendment request shall contain a description of the amendment, proposed timeline for implementation, and justification for the request.

(c) A committee designated pursuant to subsection (4) of this section shall review the amended Nontraditional Instruction Program Initial Application and recommend the commissioner approve or deny such within forty-five (45) days of the amendment submission.

(d) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (4) of this section, the commissioner shall approve or deny an amended Nontraditional Instruction Program Initial Application. An amended Nontraditional Instruction Program Initial Application approved by the commissioner shall be in effect for the remainder of the initial period of approval pursuant to subsection (5) of this section.

Section 3. Renewal Application Process. (1) At the end of the term of approval, a district that has used at least one (1) nontraditional instruction day during the term of approval shall be eligible to complete the renewal application process. A district not eligible to complete the renewal application process shall be eligible to apply using the Nontraditional Instruction Program Initial Application and in compliance with Section 2 of this administrative regulation.

(2) Using the Nontraditional Instruction Program Renewal Application, a returning district submitting a nontraditional instruction plan to be approved for renewal by the commissioner shall include:

(a) A description of the nontraditional instruction program that includes:

1. Revisions to the district's nontraditional instruction program that are being proposed for the program to grow in rigor and efficacy;

2. Program adjustments that are being proposed to improve the program for stakeholders; and

3. Any changes being proposed related to how the district handles food service staff and costs on nontraditional instruction days.

(b) Other evidence deemed necessary by the department to effectively review and approve or deny a district's nontraditional instruction plan.

(3) The department shall provide technical assistance, upon request, to districts prior to submission of the Nontraditional Instruction Program Renewal Application.

(4) A district shall submit an application at least 120 days prior to the beginning of a school term to have the application considered for implementation at the beginning of the upcoming school term.

(5) A committee designated by the commissioner shall review and recommend the commissioner approve or deny a completed Nontraditional Instruction Program Renewal Application within forty-five (45) days from receipt of the completed application.

(6) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (5) of this section, the commissioner shall approve or deny a completed Nontraditional Instruction Program Renewal Application. At renewal, the commissioner may approve a district to participate in the nontraditional instruction program for up to four (4) years.

(7) (a) A district approved to participate in the nontraditional instruction program may amend its Nontraditional Instruction Program Renewal Application as needed at any time by submitting a written amendment request to the department.

(b) The amendment request shall contain a description of the amendment, proposed timeline for implementation, and justification for the request.

(c) A committee designated pursuant to subsection (5) of this section shall review the amended Nontraditional Instruction Program Renewal Application and recommend the commissioner approve or deny such within forty-five (45) days of the amendment submission.

(d) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (4) of this section, the commissioner shall approve or deny an amended Nontraditional Instruction Program Renewal Application. An amended Nontraditional Instruction Program Renewal Application approved by the commissioner shall be in effect for the remainder of the renewal period of approval pursuant to subsection (6) of this section.

Section 4. Use of Nontraditional Instruction Days. (1) Once the commissioner has approved a district to participate in the nontraditional instruction program, the district may apply for and the commissioner may approve the use of nontraditional instruction days on days when the district is closed for health or safety reasons.

(2) Pursuant to KRS 158.070, the district may apply for and the commissioner may approve up to the equivalent of ten (10) student attendance days per school year in nontraditional instruction days for the district.

(3) The district shall seek approval from the commissioner to use one (1) or more nontraditional instruction days by submitting a request and appropriate supplemental documentation, as required by the department, to the department within thirty (30) days following the day(s) the district was closed for health or safety reasons.

(4) The commissioner shall approve or deny a district's use of one or more nontraditional instruction days within thirty (30) days from receipt of the district's request and appropriate supplemental documentation, as required by the department. A request to use (1) one or more nontraditional instruction days shall be denied by the commissioner if the district fails to supply clear evidence demonstrating a continuation of learning from regular student attendance days occurs on nontraditional instruction days. Clear evidence may include:

(a)[~~1.~~] Examples of student work;

(b)[~~2.~~] Lesson plans; or

(c)[~~3.~~] Curriculum maps.

Section 5. Monitoring and Revocation of Nontraditional Instruction Programs. (1) At the conclusion of the first school term of implementation of the approved Nontraditional Instruction Program Application and at the end of each school term thereafter for the entirety of the approval status, a district approved by the commissioner to participate in the nontraditional instruction program may receive an annual site visit from a review team selected and trained by the department. The purpose of the site visit is to monitor the district's progress in implementing the approved Nontraditional Instruction Program Application.

(2) If a site visit is conducted by the department, the site visit shall:

(a) Be made following adequate advanced notice to the district; and

(b) Include the gathering of information through the examination of records related to the district's implementation of the approved Nontraditional Instruction Program Application, including renewals and amendments if applicable, and through interviews with district leadership, staff, and students as well as other stakeholders.

(3) In addition to any site visit that may be conducted pursuant to subsections (1) and (2) of this section of this administrative regulation, a district approved by the commissioner to participate in the nontraditional instruction program shall, upon request, make the following available for inspection by the department:

(a) Documentation of the instructional delivery methods used on nontraditional instruction days;

(b) Evidence demonstrating the district provides access on nontraditional instruction days to online resources, if used, and equitable instructional materials for students who do not have access to the internet and for students needing to access information differently;

(c) Clear evidence demonstrating a continuation of learning from regular student attendance days occurs on nontraditional instruction days. Clear evidence may include:

1. Examples of student work;
2. Lesson plans; or
3. Curriculum maps.

(d) Evidence demonstrating the district ensures implementation of Individual Education Programs for students with disabilities, including the involvement Admissions and Release Committee in planning for and making decisions related to the participation and needs of students with disabilities, on nontraditional instruction days;

(e) Evidence demonstrating the district ensures implementation of other student-specific educational plans, including Program Service Plans for English Learners and Gifted Student Service Plans for students identified as gifted and talented, on nontraditional instruction days;

(f) Data demonstrating student participation and student learning on nontraditional instruction days;

(g) Evidence demonstrating how each job category within the district fulfills contractual obligations on nontraditional instruction days and data, including teacher work logs, demonstrating employee participation on nontraditional instruction days;

(h) The professional learning plan implemented by the district to ensure certified staff have the knowledge and capacity to provide instruction on nontraditional instruction days and evidence demonstrating implementation;

(i) Where appropriate, agreements about nontraditional instruction days between the district and educational agencies that are external to the district but have students of the district in attendance on a part-time or full-time basis;

(j) Evidence demonstrating stakeholder involvement in developing and implementing nontraditional instruction days;

(k) Methods used by the district to relay information about nontraditional instruction days to students and families; and

(l) Other evidence deemed necessary by the department to effectively monitor the implementation of the approved Nontraditional Instruction Program Application, including renewals and amendments if applicable.

(4) At the conclusion of each term of implementation of the approved Nontraditional Instruction Program Application for the entirety of the approval status, the department may revoke approval of a district's nontraditional instruction program as a result of evidence collected pursuant to this section of this administrative regulation.

(5) Prior to having approval of its nontraditional instruction program revoked, a district shall receive a site visit from a review team selected and trained by the department. The purpose of the visit shall be to monitor the district's progress in implementing the nontraditional instruction program, collect qualitative data on the effectiveness of the nontraditional instruction program, and verify the district's compliance with all applicable laws. A site visit shall be made following adequate advance notice to the district and may include the gathering of information through:

(a) Direct observation;

(b) Interviews with staff and students; or

(c) Examination of records.

(6) Any district that has had approval of its nontraditional instruction program revoked by the department shall wait a minimum of one (1) calendar year before submitting a new Nontraditional Instruction Program Application.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Nontraditional Instruction Program Initial Application," October 2018; and

(b) "Nontraditional Instruction Program Renewal Application," October 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, JR., Ph.D. Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018
FILED WITH LRC: October 15, 2018 at 11 a.m.

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 9, 2019)

704 KAR 3:292. Education of migratory children[~~Chapter 1, ESSIA migrant education requirements~~].

RELATES TO: KRS 156.010, 156.035, 156.070, 20 U.S.C. 6391-6399

STATUTORY AUTHORITY: KRS ***156.035, 156.070[~~156.070, 156.035~~]***, 20 U.S.C. 6391-6399

NECESSITY, FUNCTION, AND CONFORMITY: Section 1306 of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act requires migratory education programs receiving funding under Title I, Part C to ensure the unique educational needs of migratory children are identified and addressed. This administrative regulation establishes, in accordance with Kentucky's consolidated State plan under ESEA, how the Kentucky Department of Education (department) and its local operating agencies comply with ESEA Section 1306[~~In accordance with Section 435 of the General Education Provisions Act and sections 1201, 1202, and 1203 of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, the Department of Education, when applying to the U.S. Department of Education for participation in programs for migrant children under Chapter 1 of the Education Consolidation and Improvement Act of 1981, must submit an approvable plan and satisfactory assurances that all requirements of the law will be met. This administrative regulation implements the State Board for Elementary and Secondary Education's duties to develop education policy, to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper apportionment and disbursement of federal migratory children funds in accordance with the state's current plan~~].

Section 1. Definitions.

(1) "Comprehensive needs assessment" means a systematic set of procedures that are used to determine needs, examine their nature and causes, and set priorities for future action.

(2) "Migrant staff" means any individual that is fully or partially paid using migrant funds.

(3) "Migratory child" or "migratory student" is defined in 20 U.S.C. 6399(3).

(4) "Out-of-school youth" means an individual who:

(a) Has not attained the age of twenty-one (21) years old;

(b) Has not completed high school or the equivalent thereof; and***[;]***

(c) Is not currently enrolled in an elementary or secondary school.

(5) "Qualifying move" is defined in 20 U.S.C. 6399(5).

(6) "Service delivery plan" means a set of principles, standards, polices, and constraints to be used to guide the designs, development, deployment, operation, and retirement of services.

Section 2[~~1~~]. Program Development and Implementation.

(1) The department[~~Department of Education~~] shall implement services to migratory children in accordance with Kentucky's consolidated State plan under ESEA using a service delivery plan responsive to a comprehensive needs assessment[~~by making grants to local school districts which have concentrations of eligible migrant children~~].

(2) In the planning and operation of migratory education programs not less than one (1) school year in duration, the department and its local operating agencies shall consult with parents of migratory children and shall ensure such programs:

(a) Comply with the parental involvement requirements in 20 U.S.C. 6318, unless doing so would be impractical; and

(b) Are understandable, in both format and language, to parents[~~Participating school districts shall submit an annual application for funds to provide services to eligible children~~].

(3) The department shall work closely with programs at the state, regional, and local levels to identify and meet the needs of all migratory children, including preschool migratory students and migratory children that have dropped out of school. Pursuant to 20 U.S.C. 6394(d), priority shall be given to migratory children who have made a qualifying move within the previous one (1) year period and who are failing, or most at risk of failing, or have dropped out of school[~~The application shall be authorized by the local board of education and be approved by the Department of Education~~].

(4) The department shall identify and recruit migratory children and may do so using:

(a) Statewide recruitment and training;

(b) Regionally-based recruitment and training; or

(c) Locally-based recruitment and training[~~Participating school districts shall perform an annual assessment of the needs of eligible migrant children~~].

(5) After a child is identified as migratory, the child shall be enrolled in all applicable programs and provided access to other resources that address the child's specific educational needs. The department may directly provide services to the child if the child's needs are not being met by other available programs and resources[~~Participating school districts shall coordinate the migrant program with other federal, state and local programs and agencies as appropriate~~].

(6) Migrant staff shall attend annual training as approved by the department.

Section 3[~~2~~]. Program Evaluation.

(1) The department and its local operating agencies shall establish objectives and evaluate outcomes for migratory education programs in the following areas:

(a) Reading and writing;

(b) Math;

(c) High school dropout and prevention;

(d) School readiness; and

(e) Out-of-school youth[~~Persons coordinating the provision of services for eligible migrant children shall be required to hold certification as a teacher, counselor or social worker~~].

(2) Information to be used by the department and its local operating agencies in evaluating migratory education program outcomes may include:

(a) Data on student eligibility and enrollment as well as provided services;

(b) Assessment data which may include the record of state performance targets and outcomes for statewide assessments, kindergarten readiness screener results, end of course results, graduation rates, or local assessment results;

(c) Information on attendance, grades, and teachers of records;

(d) Parent surveys;

(e) Data from regionally-based recruitment and training programs; or

(f) Annual program monitoring results[~~Summer extended academic services shall be required of all local migrant projects for a duration of four (4) to six (6) weeks and no less than three (3) times per week for eligible students who are the most academically in need~~].

Section 4[~~3~~]. Coordination of Services.

(1) Pursuant to 20 U.S.C. 6394(c)(1)(B), the department and its local operating agencies shall jointly plan migratory education programs with similar programs within the state and in other states as well as with other federal programs as appropriate [~~Participating school districts shall involve migrant parents in the education of their children~~].

(2) Pursuant to 20 U.S.C. 6394(b)(3), the department and its local operating agencies shall facilitate educational continuity through the timely transfer of student records when children move from one school to another[~~Each participating school district shall be required to form a local migrant parent advisory council and to convene the council a minimum of three (3) times per year~~].

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, JR., Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 9, 2019)

704 KAR 3:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1)(a), (d), 158.142, 158.645, 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (d), 158.142

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3)(b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky[~~core~~] academic standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter 8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

Section 1. Definitions. (1) **[~~"Academic readiness" and "career readiness" shall have the same meaning as described in 703 KAR 5:270~~.**

~~(2)~~][~~(1)~~] "Early graduation" means meeting the competency-based criteria ***established[~~outlined~~]*** in this administrative regulation***[~~and doing so~~]*** in three (3) academic years or less.

(2)[(3)] [(2)] "Early Graduation Certificate" means a certificate, awarded by the district and signed by the principal and superintendent, that shall make the recipient eligible for a scholarship award equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level, to be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools.

(3)[(4)] "Essential workplace ***ethics[skills]***" as described in KRS 158.1413.

(4) "Graduation prerequisite" means the requirements which will demonstrate basic competence in reading and mathematics.

(5) "Graduation qualifier" means a criterion which students have to meet in order to qualify for high school graduation.

(6)[(5)] "Individual Education Program" or "IEP" ***is defined[shall have the same meaning as set forth]*** in 707 KAR 1:002.

(7)[(6)] "Individual Learning Plan" or "ILP" ***is defined[shall have the same meaning as set forth]*** in 704 KAR 19:002.

Section 2. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address **the content as provided in the Kentucky academic standards for career studies *established in[set forth at]* 704 KAR 3:303 and 704 KAR Chapter 8.[Vocational Studies Academic Expectations 2.36-2.38 as established in Academic expectations, 703 KAR 4:060.] The individual learning plan shall not be a substitute for the statement of transition service needs for students with disabilities as provided in 707 KAR 1:320.**

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent receives information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6)**[Beginning with the graduating class of 2013,]** The development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.[Section 2. Each student in a common school shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the content standards as provided in the Kentucky core academic standards, incorporated by reference in 704 KAR 3:303. Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content. The required credits and demonstrated competencies shall include the following minimum requirements:

(1) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky core academic standards for English and language arts and comply with the following:

(a) Language arts shall be taken each year of high school; and

(b) If a student does not meet the college readiness benchmarks for English and language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(2) Social studies - three (3) credits to include the content contained in the Kentucky core academic standards for social studies;

(3) Mathematics - three (3) credits to include the content contained in the Kentucky core academic standards for mathematics and include the following minimum requirements:

(a) Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky core academic standards, incorporated by reference in 704 KAR 3:303;

(b) A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce;

(c) Any mathematics course other than Algebra I, Geometry, or Algebra II shall be counted as an elective; and

(d) If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(4) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky core academic standards for science;

(5) Health - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for health;

(6) Physical education - one-half (1/2) credit to include the content contained in the Kentucky core academic standards for physical education;

(7) History and appreciation of visual and performing arts (or another arts course which incorporates this content) - one (1) credit to include the content contained in the Kentucky core academic standards for arts and humanities or a standards-based specialized arts course based on the student's individual learning plan;

(8) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and

(9) Demonstrated performance-based competency in technology.]

Section 3. (1) For students entering grade nine (9) on or before the first day of the 2018-2019 academic year, each student in a public school shall have a total of at least twenty-two (22) credits for high school graduation.

(2) Those credits shall include the content standards as provided in the Kentucky academic standards, ***established in[set forth at]*** 704 KAR 3:303 and KAR Chapter 8.

(3) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

(4) The required credits and demonstrated competencies shall include the following minimum requirements:

(a) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky academic standards for this content area and comply with the following:

1. Language arts shall be taken each year of high school; and

2. If a student does not meet the college readiness benchmarks for English and language arts as established by the

Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(b) Social studies - three (3) credits to include the content contained in the Kentucky academic standards for this content area;

(c) Mathematics - three (3) credits to include the content contained in the Kentucky academic standards for this content area and include the following minimum requirements:

1. Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky academic standards, ***established in***~~***[set forth at]***~~ 704 KAR 3:303 and 704 Chapter 8;

2. A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce;

3. Any mathematics course other than Algebra I, Geometry, or Algebra II shall be counted as an elective; and

4. If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(d) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;

(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan;

(h) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and

(i) Demonstrated performance-based competency in technology.[~~Section 3. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060.~~

~~(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.~~]

Section 4. (1) Beginning with students who enter grade nine (9) on or after the first day of the 2019-2020 academic year, in order to receive a high school diploma, each student in a public school shall:

(a) Complete one or more of the following graduation qualifiers:

1. Satisfy precollege curriculum as established by the Council on Postsecondary Education in 13 KAR 2:020;

2. Achieve benchmark score as established by the Council on Postsecondary Education in 13 KAR 2:020 in one (1) section of a college admissions or placement examination;

3. Complete three (3) postsecondary credit hours or more of a Kentucky Department of Education approved dual credit course with a grade of C or higher;

4. Complete one (1) course and corresponding assessment meeting the following criteria:

a. Advanced placement (AP) with a score of three (3) or higher;~~***[or]***~~

b. Cambridge Advanced International (CAI) with a score at E or higher; or

c. International baccalaureate (IB) with a score of five (5) or higher;

5. Obtain an industry certification as approved by the Kentucky Workforce Innovation Board;

6. Complete four (4) credits from valid courses within a single Kentucky Department of Education approved career pathway;

7. Complete a Kentucky Department of Education approved process to verify 500 hours of exceptional work experience, or alternative requirements as determined by a student's Admissions and Release Committee and specified in the student's IEP;

8. Complete two (2) years in an approved Kentucky Department of Education or Kentucky Labor Cabinet pre-apprenticeship or apprenticeship program; and[~~**(a) Demonstrate academic readiness or career readiness; and**~~]

(b) Earn a total of at least twenty-two (22) credits for high school graduation.

(2) Beginning with students who enter grade nine (9) on or after the first day of the 2020-2021 academic year, in order to receive a high school diploma, each student in a public school shall:

(a) Complete one (1) or more of the following graduation qualifiers:

1. Satisfy precollege curriculum as established by the Council on Postsecondary Education in 13 KAR 2:020;

2. Achieve benchmark score as established by the Council on Postsecondary Education in 13 KAR 2:020 in one (1) section of a college admissions or placement examination;

3. Complete three (3) postsecondary credit hours or more of a Kentucky Department of Education approved dual credit course with a grade of C or higher;

4. Complete one (1) course and corresponding assessment meeting the following criteria:

a. Advanced placement (AP) with a score of three (3) or higher;~~***[or]***~~

b. Cambridge Advanced International (CAI) with a score of E or higher; or

c. International baccalaureate (IB) with a score of five (5) or higher;

5. Obtain an industry certification as approved by the Kentucky Workforce Innovation Board;

6. Complete four (4) credits from valid courses within a single Kentucky Department of Education approved career pathway;

7. Complete a Kentucky Department of Education approved process to verify 500 hours of exceptional work experience, or alternative requirements as determined by a student's Admissions and Release Committee and specified in the student's IEP;

8. Complete two (2) years in an approved Kentucky Department of Education or Kentucky Labor Cabinet pre-apprenticeship or apprenticeship program; and

[~~**(a) Demonstrate academic readiness or career readiness;**~~**]**

(b) Meet **one (1) of the following graduation prerequisites for reading and one (1) of the following graduation prerequisites for mathematics:**

1. Score at or above the minimum criteria on the tenth grade state-required assessments in reading or mathematics;

a.[~~**1.**~~**]** The minimum criteria shall include earning a scale score **in the apprentice student performance level or higher as** approved by the Kentucky Board of Education**[**~~**as passing**~~**]**.

b.[~~**2.**~~**]** Students who do not meet the minimum criteria on one or both **of the reading or mathematics** assessments may retake the assessments twice annually in the **eleventh and twelfth grades [**~~**third and fourth years**~~**]** of high school enrollment.

c.[3.] The student's first completion of the assessments in grade ten (10) shall contribute to the school's accountability rating; **or [and]**

2. Score proficient or higher for reading or mathematics on the eighth grade state required assessment; or

3.A student collection of evidence submitted by the principal to the superintendent or designee for review and approval, or in the case of a public charter school submitted by the principal to the Commissioner of Education or designee. The collection of evidence shall include the following:

a. The student's ILP that includes student transcript;

b. If applicable, for students with IEPs, evidence that the student has achieved progress on measurable annual IEP goals as determined by the Admissions and Release Committee;

c. Performance on the tenth grade state-required assessments in reading or mathematics;

d. Appropriate interventions, targeted to the student's needs, provided to the student to ensure support was provided toward meeting the requirements outlined in this administrative regulation;

e. Student work demonstrating the students' competency in reading or mathematics; and

f. The student's post-graduation plans.

(c)[(c)] Earn a total of at least twenty-two (22) credits for high school graduation.

(3) The required credits shall include the content standards as provided in the Kentucky academic standards, ***established in[set forth at]*** 704 KAR 3:303 and 704 KAR Chapter 8.

(4) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

(5) Each student shall be required to complete the following foundational credits and demonstrated competencies, consisting of ten (10) credits:

(a) English/language arts - two (2) credits (English I and II) to include the content contained in the Kentucky academic standards for this content area;

(b) Social studies - two (2) credits to include the content contained in the Kentucky academic standards for this content area;

(c) Mathematics - two (2) credits (Algebra I and Geometry) to include the content contained in the Kentucky academic standards for this content area;

(d) Science - two (2) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;

(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area; and

(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan.

(6) In addition to the foundational requirements ***established in subsection (5) of this Section[outlined in Section 4 (5) of this administrative regulation]***, every student shall earn a minimum of twelve (12) personalized credits in order to receive a high school diploma. These twelve (12) personalized credits shall include:

(a) Two (2) additional English/Language Arts credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;

(b) Two (2) additional mathematics credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;

(c) One (1) additional science credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan;

(d) One (1) additional social studies credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan;

(e) Academic and career interest standards-based learning experiences - six (6) credits including four (4) standards-based learning experiences based on the student's individual learning plan;

(f) Demonstrate performance-based competency in technology **as approved by the Kentucky Department of Education**[using the process for awarding performance-based credit outlined in Section 7 of this administrative regulation];

(g) Pass a civics test as required by KRS 158.141; and

(h) Beginning with students entering grade nine (9) on or after the first day of the 2020-2021, successfully complete one (1) or more courses or programs that meet the financial literacy **requirements pursuant to KRS 158.1411 and** standards as established by the Kentucky Board of Education.

(7) **Districts shall report individual student data regarding the completion of each graduation qualifier and each graduation prerequisite to the Kentucky Department of Education which may be included in aggregate public reporting.[(7)(a) Districts shall develop an appeals process for students who are on track to meet all graduation requirements except the minimum criteria on the reading and mathematics assessments.**

(b) The appeals process shall be available to students who have at least one (1) unsuccessful attempt to meet the minimum criteria on the reading and/or mathematics assessments.

(c) The appeals process shall consist of two (2) options.

1. A student portfolio to include evidence of the following:

a. The student's ILP that includes student transcript;

b. If applicable, the student's IEP, that includes evidence that the student has received specially designed instruction and related services in reading and mathematics;

c. Performance on the required state assessments;

d. Appropriate interventions, targeted to the student's needs, provided to the student to ensure support was provided toward meeting the requirements outlined in this administrative regulation;

e. Student work demonstrating the students' competency in reading and mathematics; and

f. The student's college or career plans; or

2. The student's eighth grade assessment rating of proficient or higher for reading or mathematics or both reading and mathematics, if applicable.

(d) Results of the appeals process will not impact the school or district's accountability rating.

(e) The appeals process shall require the principal to submit the appeal and evidence to the superintendent or designee for review and approval.]

(8) The provisions of ***subsections (3) through (7)of this Section[Section 4(3) through (7)]*** shall apply to all students referenced in ***subsections (1) and (2) of this Section[Section 4 (1) and (2)]***.[Section 4. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address Vocational Studies Academic Expectations 2.36-2.38 as established in Academic expectations, 703 KAR 4:060.

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent receives information and advising regarding the relationship between

~~education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.~~

~~(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.~~

~~(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.~~

~~(6) Beginning with the graduating class of 2013, the development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.~~]

Section 5. (1) Only students who meet the criteria ***established~~[outlined]~~*** in this section shall be eligible for early graduation.

(a) Those students who meet the criteria for early graduation shall receive from the school district a diploma and an Early Graduation Certificate.

(b) Students wishing to graduate early shall indicate that intent to the school principal at the beginning of grade 9 or as soon as the intent is known, but within the first thirty (30) school days of the academic year in which they wish to graduate.

(c) A student's intent to graduate early shall be entered into the student information system by the school district by October 1 of the year in which the student makes the declaration.

(d) Students working toward early graduation and receipt of a corresponding Early Graduation Certificate shall be supported by development and monitoring of an individual learning plan to support their efforts.

(2) To graduate early and earn an Early Graduation Certificate, a student shall:

(a) Score proficient **or higher** on the **state-required assessments~~[end of course exams]~~** required by the Kentucky Board of Education in 703 KAR 5:200; and

(b) Meet the college readiness exam benchmarks ***established~~[as set]~~*** by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation.

(3) A student who has indicated an intent to graduate early may participate in the student's state administration of the college readiness exam prior to the junior year, if needed.[~~Section 5. (1) A board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky core academic standards, incorporated by reference in 704 KAR 3:303, and a rigorous performance standards policy established by the board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.~~

~~(2) A board of education shall award credit toward high school graduation based on:~~

~~(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one (1) subject; or~~

~~(b) A standards-based performance-based credit, regardless of the number of instructional hours in one (1) subject.~~

~~(3) A local board of education which has chosen to award standards-based performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7, or 8 if:~~

~~(a) The content of the course is the same that is established in the Kentucky core academic standards, incorporated by reference in 704 KAR 3:303; and~~

~~(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.~~

~~(4) A board of education which has chosen to award standards-based performance-based credit shall establish a policy for a performance-based credit system that includes:~~

~~(a) The procedures for developing performance-based credit systems and for amending the system;~~

~~(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;~~

~~(c) Objective grading and reporting procedures;~~

~~(d) Content standards as addressed in 704 KAR 3:303, Required core academic standards, and 703 KAR 4:060, Academic expectations;~~

~~(e) The extent to which state-provided assessments will be used in the local performance-based credit system;~~

~~(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and~~

~~(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:~~

~~1. Designed to further student progress towards the individual learning plan;~~

~~2. Supervised by qualified instructors; and~~

~~3. Aligned with state and local content and performance standards.~~

~~(5) A board of education may award standards-based, performance-based credit toward high school graduation for:~~

~~(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Section 1 of this administrative regulation;~~

~~(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;~~

~~(c) Standards-based portfolios, senior year, or capstone projects;~~

~~(d) Standards-based online or other technology mediated courses;~~

~~(e) Standards-based dual credit or other equivalency courses; or~~

~~(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school or the community.~~

~~(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060.~~]

Section 6. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content.

(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.[~~Section 6. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education or meets the requirements for early graduation as outlined in Section 9 of this administrative regulation shall be awarded a graduation diploma.~~

~~(2) The local board of education shall award the diploma.~~]

Section 7. (1) A local board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky academic standards, ***established in~~[set forth at]~~*** 704 KAR 3:303 and 704 KAR Chapter 8, and a rigorous performance standards policy established by the local board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

(2) A local board of education shall award credit toward high

school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one (1) subject; or

(b) A performance-based credit based on standards, regardless of the number of instructional hours in one (1) subject.

(3) A local board of education which has chosen to award performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7, or 8 if:

(a) The content of the course is the same ***as that described[~~that is established~~]*** in the Kentucky academic standards, ***established[~~set forth~~]*** in 704 KAR 3:303 and 704 KAR Chapter 8; and

(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

(4) A local board of education which has chosen to award performance-based credit shall establish a policy for a performance-based credit system that includes:

(a) The procedures for developing performance-based credit systems and for amending the system;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards ***established in[~~set forth at~~]*** 704 KAR 3:303 and 704 KAR Chapter 8;

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:

1. Designed to further student progress towards the individual learning plan;

2. Supervised by qualified instructors; and

3. Aligned with state and local content and performance standards.

(5) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Sections 3 and 4 of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, senior year, or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; or

(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school or the community.

(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060.[~~Section 7. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal, or teacher from awarding special recognition to a student.~~]

Section 8. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education or meets the requirements for early graduation ***established[~~as outlined~~]*** in Section 5 of this administrative regulation shall be awarded a graduation diploma.

(2) The local board of education shall award the diploma.[~~Section 8. Beginning with the graduating class of 2013, if the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Section 1 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered. (1) This course of study shall be based upon student needs and the provisions specified in 704 KAR 3:303, Required core academic standards, and shall be reviewed at least annually.~~

~~(2) A student who completes this course of study shall receive an alternative high school diploma to be awarded by the local board of education consistent with the graduation practices for all students.~~

~~(3) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.~~]

Section 9. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal, or teacher from awarding special recognition to a student.[~~Section 9. (1) Beginning in the 2014 - 2015 academic year, only students who meet the criteria outlined in this section shall be eligible for early graduation. Those students who meet the criteria for early graduation shall receive from the school district a diploma and an Early Graduation Certificate. Students wishing to graduate early shall indicate that intent to the school principal at the beginning of grade 9 or as soon as the intent is known, but within the first thirty (30) school days of the academic year in which they wish to graduate.~~

~~(a) A student's intent to graduate early shall be entered into the student information system by the school district by October 1 of the year in which the student makes the declaration.~~

~~(b) Students working toward early graduation and receipt of a corresponding Early Graduation Certificate shall be supported by development and monitoring of an individual learning plan to support their efforts.~~

~~(2) To graduate early and earn an Early Graduation Certificate, a student shall:~~

~~(a) Score proficient on the end of course exams required by the Kentucky Board of Education in 703 KAR 5:200; and~~

~~(b) Meet the college readiness exam benchmarks as set by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation.~~

~~(3) A student who has indicated an intent to graduate early may participate in the student's state administration of the college readiness exam prior to the junior year, if needed.~~]

Section 10. (1) If the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Sections 3 and 4 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered.

(2) This course of study shall be based upon student needs and the provisions ***established[~~specified~~]*** in 704 KAR 3:303 and 704 KAR Chapter 8, and shall be reviewed at least annually.

(3) A student who completes this course of study shall receive an alternative high school diploma to be awarded by the local board of education consistent with the graduation practices for all students.

(4) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.

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).

DR. WAYNE D. LEWIS, Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: December 12, 2018
FILED WITH LRC: December 13, 2018 at 9 a.m.

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 9, 2019)

704 KAR 3:365. Complaint procedures for programs under the Elementary and Secondary Education Act of 1965[~~Chapter 1 complaint procedures~~].

RELATES TO: KRS 156.010,[~~156.031,~~] 156.035,[~~34 C.F.R. 200.73, 201.47,~~] 20 U.S.C. 6320, 20 U.S.C. 7844, 20 U.S.C. 7883

STATUTORY AUTHORITY: KRS[~~156.031,~~] 156.035, 156.070, 20 U.S.C. 6320, 7844, 7883

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes complaint procedures pursuant to Sections 1117, 8304, and 8503 of ***the*** Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act. Section 8304 of ESEA requires the Kentucky Department of Education (department) to adopt written procedures for the receipt and resolution of complaints alleging violations of law in the administration of programs under ESEA.***[Further,]*** Sections 1117 and 8503 of ESEA require the department to resolve complaints related to equitable services to nonpublic school children[~~KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 156.010, 156.031, and 156.035 provide the state statutory framework for complying with federal funding programs and for receiving and allocating federal education funds; and 34 C.F.R. 200.73 and 34 C.F.R. 201.47 require the Department of Education, when applying for participation in programs for disadvantaged children under Chapter 1 of Public Law 100-297 (the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, 20 U.S.C. 2701 to 2901), to show written evidence of complaint procedures particular to disadvantaged and migrant children under Chapter 1. This administrative regulation establishes such complaint procedures~~].

Section 1. Complaints Against a Local Education Agency[~~LEA Procedures~~]. (1) Complaints related to equitable services to nonpublic school children shall be governed by Section 3 of this administrative regulation.

(2) Complaints originating at the local level alleging a violation by a local education agency (LEA) of a federal statute or regulation that applies to a program under ESEA[~~relative to disadvantaged and migrant children under federal Chapter 1 programs~~] shall be decided [~~entertained~~] by the department[~~Department of Education~~] only after such complaints have been filed and heard at the local level in accordance with local education agency policy.[~~Such complaints shall be in written form. Persons making written complaints shall register such complaints with the Director, Division of Compensatory Education, Kentucky Department of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.~~

~~(2) Written complaints requiring a formal hearing shall be referred to a complaint committee. Members of this committee shall include, as a minimum, the chief state school officer (or designee); Director, Division of Compensatory Education; unit director; and the program consultant serving the affected LEA. The committee shall conduct a hearing within thirty (30) days following the receipt of complaints requesting a formal hearing.~~]

(3) A complaint not resolved at the local level may be submitted to the department by mail at the following address: Kentucky Department of Education, c/o ESEA Complaints, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.

(4) Complaints mailed to the department shall be in the form of a written, signed statement that includes:

(a) A statement that a requirement that applies to an ESEA program has been violated by the LEA;

(b) The facts on which the statement is based, a description of the nature of the problem, and the specific requirement(s) allegedly violated by the LEA;

(c) A signature and contact information for the complainant; and

(d) A potential resolution of the problem to the extent it is known and available to the complainant at the time of the filing.

(5) Upon receipt of a complaint, the department shall carry out an investigation***[,]*** if necessary. During the investigation period:

(a) The complainant and the LEA shall each have an opportunity to submit additional information about any allegation in the complaint;

(b) The LEA shall have an opportunity to respond to the complaint, including making a proposal to resolve such amicably; and

(c) Any on-site investigation, if deemed necessary by the department, shall be made following adequate advance notice to the parties involved and may include the gathering of information through:

1. Direct observation;
2. Interviews; or
3. Examination of records.

(6) Within forty-five (45) days of receiving a complaint, the department shall issue a written decision for each allegation in the complaint. If exceptional circumstances exist with respect to a particular complaint, an extension of the time limit may be granted by the department.

(7) The complainant or LEA shall have a right to request the Commissioner, or his designee, reconsider the written decision in subsection (6). To initiate reconsideration, the complainant or LEA shall send, by certified mail to the department, a written request within fifteen (15) days of the issuance of the department's decision in subsection (6).

(8) Following the receipt of a request pursuant to subsection (7), the Commissioner, or his designee, shall reconsider the department's decision in subsection (6) and shall issue a final written decision for each allegation in the complaint within thirty (30) days.

(9) Following the final determination on a complaint, the LEA shall take any required corrective action. To ensure compliance, the department may use one (1) or more of the following methods:

(a) A corrective action plan for the LEA;

(b) Follow-up visits by department staff to determine whether the LEA is taking the required corrective action;

(c) Repayment of previously dispersed funds or withholding of future funds; or

(d) To the extent permissible under ESEA and other applicable laws and regulations, any corrective action necessary to ensure compliance.

Section 2. Complaints Against the State Education Agency. (1) Appeals relating to the department's accountability classification of a school or district shall be governed by 703 KAR 5:240 and not by this administrative regulation.

(2) Complaints related to equitable services to nonpublic school children shall be governed by Section 3 of this administrative regulation.

(3) All other complaints originating at the state level alleging a violation by the state education agency (SEA) of a federal statute or regulation that applies to a program under ESEA shall be submitted to the department by mail at the following address: Kentucky Department of Education, c/o ESEA Complaints, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.

(4) Complaints mailed to the department shall be in the form of a written, signed statement that includes:

(a) A statement that a requirement that applies to an ESEA program has been violated by the SEA;

(b) The facts on which the statement is based, a description of the nature of the problem, and the specific requirement allegedly violated by the department;

(c) A signature and contact information for the complainant; and

(d) A potential resolution of the problem to the extent it is known and available to the complainant at the time of the filing.

(5) Upon receipt of a complaint, the department shall follow the same procedures outlined in Section 1 of this administrative regulation to the extent practicable[~~Upon receipt of the request for a formal hearing, the Department of Education shall make the~~

~~necessary on-site investigation of the complaint. Such on-site investigation shall:~~

~~(1) Be made following adequate advance notice to the parties involved;~~

~~(2) Include the gathering of information through interviews and examination of records, considering each allegation of the complaint; and~~

~~(3) Provide appropriate opportunities for the complainant(s) and the LEA to present evidence concerning the allegations~~].

Section 3. Complaints Related to Equitable Services to Nonpublic School Children. (1) Complaints related to equitable services to nonpublic school children shall be submitted to the nonpublic school ombudsman by mail at the following address: Kentucky Department of Education, c/o Nonpublic School Ombudsman, 300 Sower Boulevard – 5th Floor, Frankfort, Kentucky 40601.

(2) Complaints mailed to the nonpublic school ombudsman shall be in the form of a written, signed statement that includes:

(a) A statement that 20 U.S.C. 7881 has been violated by the SEA, an LEA, an education service agency, a consortium of those agencies, or ***other*** entity;

(b) The facts on which the statement is based and a description of the nature of the problem;

(c) A signature and contact information for the complainant; and

(d) A potential resolution of the problem to the extent it is known and available to the complainant at the time of the filing.

(3) Upon receipt of a complaint, the nonpublic school ombudsman shall carry out an investigation***[,]*** if necessary. During the investigation period:

(a) The complainant and the SEA, LEA, education service agency, consortium of those agencies, or ***other*** entity shall each have an opportunity to submit additional information about any allegation in the complaint;

(b) The SEA, LEA, education service agency, consortium of agencies, or other entity shall have an opportunity to respond to the complaint, including making a proposal to resolve such amicably; and

(c) Any on-site investigation, if deemed necessary by the department, shall be made following adequate advance notice to the parties involved and may include the gathering of information through:

1. Direct observation;
2. Interviews; or
3. Examination of records.

(4) Within forty-five (45) days of receiving a complaint, the nonpublic school ombudsman shall issue a final written decision for each allegation in the complaint.[~~Opportunity shall be provided for the complainant or the complainant's representative, or both, and the LEA involved to submit evidence, including the opportunity to question parties to the dispute or any of their witnesses. All investigations and the solutions of complaints shall be completed within sixty (60) days unless the complainant(s) is notified, in writing, to the contrary. If exceptional circumstances exist with respect to a particular complaint, an extension of the time limit shall be granted by the Department of Education~~].

Section 4. Appeals to the United States Secretary of Education. An involved party may appeal the final written decision of the department under Sections 1, 2**,** or 3 of this administrative regulation to the United States Secretary of Education (Secretary) to the extent permissible under ESEA and in accordance with written procedures developed and implemented by the Secretary[~~An involved party may appeal the final Department of Education resolution to the United States Secretary of Education if notice of such appeal is filed with the secretary within thirty (30) days of the receipt of the Department of Education's written decision.~~

~~Section 5. If the LEA fails to take corrective action following a final determination of a formal complaint, the Department of Education shall use one (1) or more of the following methods to assure such action:~~

~~(1) Follow-up visits by Department of Education staff to determine whether the agency is taking the required corrective action;~~

~~(2) Compliance agreement; and~~

~~(3) Withholding of funds.~~

~~Section 6. SEA Procedures. Complaints by an outside organization or individual may be filed through a written signed complaint concerning any alleged state (SEA) violation of a federal statute or regulation that applies to Chapter 1 LEA programs. The complaint shall include the facts on which the statement is based. Complainants shall register such complaints with the chief state school officer. The same procedures outlined in Sections 1, 2, 3, and 4 of this administrative regulation shall be followed insofar as practicable.~~

~~Section 7. Dissemination, free of charge, of information concerning these procedures shall be made to all interested parties including district and school advisory councils~~].

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, JR., Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018
FILED WITH LRC: October 15, 2018 at 11 a.m.
CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(New Administrative Regulation)

704 KAR 8:020. Required academic standards for reading and writing.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 158.6453(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 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. KRS 158.6453(2) requires the Kentucky Department of Education to implement a comprehensive process for the review of academic standards and assessment with the advice of a standards and assessments review and development committee. This administrative regulation incorporates by reference the Kentucky Academic Standards for Reading and Writing, which contain the general courses of study and academic content standards of reading and writing, for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Academic Standards for Reading and Writing.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Reading and Writing", October 2018, is

incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Kentucky Department of Education
(As Amended at ARRS, January 9, 2019)

Compiler's Note: This administrative regulation was technically amended at the January 9, 2019, ARRS meeting to insert a comma in the Necessity, Function, and Conformity paragraph after "goals, outcomes".

704 KAR 8:020. Required academic standards for reading and writing.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 158.6453(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 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. KRS 158.6453(2) requires the Kentucky Department of Education to implement a comprehensive process for the review of academic standards and assessment with the advice of a standards and assessments review and development committee. This administrative regulation incorporates by reference the Kentucky Academic Standards for Reading and Writing, which contain the general courses of study and academic content standards of reading and writing, for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Academic Standards for Reading and Writing.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Reading and Writing", October 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D, Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

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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
Kentucky Department of Education
(As Amended at ARRS, January 9, 2019)

Compiler's Note: This administrative regulation was technically amended at the January 9, 2019, ARRS meeting to insert a comma in the Necessity, Function, and Conformity paragraph after "goals, outcomes".

704 KAR 8:040. Required Academic Standards for Mathematics.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 158.6453(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 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. KRS 158.6453(2) requires the Kentucky Department of Education to implement a comprehensive process for the review of academic standards and assessment with the advice of a standards and assessments review and development committee assigned to focus on mathematics. This administrative regulation incorporates by reference the Kentucky Academic Standards for Mathematics, which contain the general courses of study and academic content standards for mathematics for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Academic Standards for Mathematics.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Mathematics", October 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

WAYNE D. LEWIS, Ph.D., Commissioner
HAL HEINER, Chairperson

APPROVED BY AGENCY: October 11, 2018

FILED WITH LRC: October 15, 2018 at 11 a.m.

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, January 9, 2019)

804 KAR 1:070. Product development and marketing samples[~~Samples~~].

RELATES TO: KRS 243.130, 243.150, 243.170, 243.180, 243.340, 244.240, 244.590
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 244.240 and 244.590 prohibit manufacturers, distributors and wholesalers from making any gift or rendering any kind of service to any retail licensee which may tend to influence the retailer to purchase the manufacturers', distributors', or wholesalers' product to the exclusion of a product sold or offered for sale by other persons. This administrative regulation establishes requirements for alcoholic product development and marketing samples[~~As in any other business, it is necessary that the distillers and wholesalers of alcoholic beverages be allowed to provide samples of their products to their retailers. This administrative regulation is promulgated for that purpose and provides the permissible terms under which samples can be distributed~~].

Section 1. (1) Product Samples to Retailers. Manufacturers, distributors, and wholesalers may provide free alcoholic beverage product samples to retailers under the following conditions:
(a) Samples shall be provided by an employee or agent of the manufacturer, distributor, or wholesaler. An employee or agent of a distiller, rectifier, winery, or wholesaler ***shall[~~must~~]*** hold a Kentucky special agent's or solicitor's license;
(b) Samples shall be limited to alcoholic beverage products sold or produced by the manufacturer, distributor, or wholesaler;
(c) Drink samples may be provided to a retailer's agents and employees at the retailer's premises by the employee or agent in person; and
(d) Package samples, not exceeding the following quantity limits, may be shipped to the retailer's licensed premises through a common carrier holding a Kentucky transporter's license:
1. 384 ounces of malt beverages per year;
2. Nine (9) liters of wine per year; and
3. Nine (9) liters of distilled spirits per year.[~~Any bottle of distilled spirits or wine used as a sample shall be so marked by affixing across the label a sticker, not readily removable, stating, "Sample - Not for Sale, (distiller's, rectifier's, winery's or wholesaler's name).~~"]
(2) Any alcoholic beverage container used for drink or package samples shall be so marked by affixing across the label a sticker, not readily removable, stating, "Sample - Not for Sale, (manufacturer's, distributor's, or wholesaler's name)."[~~No representative of a distiller, rectifier, winery, or wholesaler shall have in his possession more than thirty-two (32) ounces of any brand, or more than a total of three (3) wine gallons of distilled spirits and wine of all brands at any time.~~]
(3) Package samples received by a retailer shall not be resold by the retailer and ***shall[~~must~~]*** be destroyed when the retailer completes its sampling of the product.[~~A distiller's, rectifier's, winery's or importer's representative shall obtain all samples from a wholesaler who has been designated.~~]

Section 2. Educational Sampling Events for Retailers. A manufacturer, distributor, or wholesaler may conduct an educational meeting and provide free samples of alcoholic beverages for the purpose of introducing new products or packaging under the following conditions:
(1) Educational meetings shall be held on licensed premises;
(2) Guests invited to attend educational meetings shall be limited to retail licensees, their employees, and agents;
(3) Only free hors d'oeuvres and drinks shall be served to invited guests;
(4) Free samples of alcoholic beverages served to invited guests shall be limited to products sold by the manufacturer, distributor, or wholesaler;
(5) Invited guests shall not take or keep any gift, favor, or alcoholic beverage packages from the premises where the educational meeting is conducted;
(6) A manufacturer, distributor, or wholesaler may conduct tours of its licensed premises as part of an educational meeting held there; and
(7) A manufacturer, distributor, or wholesaler conducting the event, and the licensee of the premise where the event is held, shall be jointly and severally liable for ***violations[~~violation(s)~~]*** of the alcoholic beverage laws occurring during the event;

CHRISTINE TROUT VAN TATENHOVE, Commissioner
K. GAIL RUSSELL, Acting Secretary
APPROVED BY AGENCY: November 14, 2018
FILED WITH LRC: November 14, 2018 at 3 p.m.
CONTACT PERSON: Stephen Lee Walters, Legal Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email Lee.Walters@ky.gov.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, January 9, 2019)

804 KAR 1:110. Consumer sampling events[~~Distilled spirits and wine tastings~~].

RELATES TO: KRS 243.0307, 243.036, 243.260 [~~244.050~~], 244.240, 244.590
STATUTORY AUTHORITY: KRS 241.060
NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060(1) authorizes the board to promulgate administrative regulations regarding matters over which the board has jurisdiction. KRS 244.240 and 244.590 prohibit[~~prohibits a~~] manufacturers, distributors, and wholesalers[~~distiller, rectifier, winery, or wholesaler~~] from making any gift or rendering any kind of service to any retail licensee that[~~under KRS 243.030 which in the sound judgment of the board~~] may tend to influence the retailer[~~licensee~~] to purchase the manufacturers', distributors', or wholesalers' product to the exclusion of a competitor's product[~~of the distiller, rectifier, winery, or wholesaler~~]. This administrative regulation permits manufacturers, distributors, and wholesalers[~~distiller, rectifier, winery, or wholesaler of distilled spirits or wine~~] to participate in certain events where samples are provided to consumers without violating KRS 244.240 and KRS 244.590[~~conduct educational meetings with a retailer of distilled spirits or wine consistent with modern marketing practices and three (3)-tier law~~].

Section 1.[~~A distiller, rectifier, winery, or wholesaler of distilled spirits or wine licensed under KRS 243.030 may conduct an educational meeting for the purpose of introducing new product or packaging, if:~~
~~(1) The meeting is held at a premises licensed to sell alcoholic beverages at retail;~~
~~(2) Each attendee holds or is employed by the holder of a license to sell distilled spirits or wine at retail;~~
~~(3) No minor possesses an alcoholic beverage;~~
~~(4) Only distilled spirits, wine, and hors d'oeuvres are served;~~
~~(5) No attendee carries an alcoholic beverage away from the licensed premises at which the educational meeting takes place;~~
~~(6) No attendee keeps any gift or favor received in connection with the educational meeting;~~
~~(7) The distiller, rectifier, winery, or wholesaler gives the Department of Alcoholic Beverage Control at least ten (10) days advance written notice of the time and place of the educational meeting, details of the planned activities, and the estimated cost per attendee; and~~
~~(8) The educational meeting does not include a distillery or winery tour.~~

~~Section 2.~~] Charity and Non-Profit Events. (1) Manufacturers, distributors, and wholesalers[~~A distiller, winery, rectifier, or wholesaler of distilled spirits or wine~~] may participate in charity or non-profit events[~~a private party or fundraiser conducted by a bona fide charitable organization, church, or civic group~~] at which alcoholic beverages are[~~distilled spirits or wine is~~] served, under the following conditions[~~, if~~]:

(a) The event is held on licensed premises[~~private party or fundraiser takes place at a premise licensed or temporarily licensed to sell distilled spirits or wine by the drink at retail~~];

(b) The charity or non-profit[~~bona fide charitable~~] organization obtains the alcoholic beverages to be served at the event by:

1. Purchase under a special temporary drink license or special temporary alcoholic beverage auction license;

2. Purchase from a retail licensee where the event is held; or

3. Donations under a special temporary alcoholic beverage auction license; and[~~church, or civic group purchases all distilled spirits and wine for the private party or fundraiser from the retail licensee at whose premises it takes place; and~~]

(c) The participation of manufacturers, distributors, and wholesalers[~~a distiller, winery, rectifier, or wholesaler of distilled spirits or wine~~] is limited to addressing the attendees, distributing literature, and pouring and serving alcoholic beverage products of the manufacturer, distributor**,** and wholesaler[~~distilled spirits or wine~~].

(2) Manufacturers, distributors, and wholesalers participating in charity and non-profit events[~~The distiller, rectifier, winery, or wholesaler that is conducting the event and retail licensee~~] shall be jointly and severally liable with licensed charities, non-profits, or retailers for[~~any~~] violations[~~violation~~] of the alcoholic beverage control laws occurring during[~~related to~~] the event.

Section 2. Sampling License Events.[~~Section 3.~~] (1) Manufacturers or wholesalers[~~A distiller, winery, small farm winery, or wholesaler~~] of distilled spirits or wine may participate in[~~a~~] retailer sampling licensed events[~~event~~] under the following conditions[~~, if~~]:

(a) The events occur[~~The sampling event strictly complies with KRS 244.050(3), and takes place~~] at[~~a~~] retail licensed premises where[~~a~~] sampling licenses[~~license~~] authorized by KRS 243.0307 are[~~KRS 244.050(2) is~~] held;

(b) Manufacturers and wholesalers may provide their distilled spirits or wine products for sampling license events without cost to retailers holding sampling licenses in an amount not to exceed the wholesale cost of $500 per retail licensee per annum;[~~The retail license holder at whose premises the sampling event takes place purchases the samples from a licensed wholesaler of distilled spirits or wine before selling them at retail; and~~]

(c) Retail licensees holding sampling licenses shall purchase all distilled spirits or wine for events from licensed wholesalers if not provided under the conditions established in subsection (1)(b) ***of this section***; and[~~The participation of a distiller, winery, small farm winery, or wholesaler of distilled spirits or wine is limited to addressing the customers, distributing literature, and pouring and serving distilled spirits or wine.~~]

(d) The participation of manufacturers and wholesalers in sampling license events is limited to addressing the customers, distributing literature, and pouring and serving samples of their distilled spirits or wine products.

(2) Participating manufacturers or wholesalers[~~The distiller, winery, small farm winery, rectifier, or wholesaler that is conducting the event~~] and retail licensees[~~licensee~~] holding sampling licenses shall be jointly and severally liable for[~~any~~] ***violations[violation(s)]*** of alcoholic beverage control law[~~laws~~] occurring during[~~related to the~~] sampling license events[~~event~~].

CHRISTINE TROUT VAN TATENHOVE, Commissioner
K. GAIL RUSSELL, Acting Secretary
APPROVED BY AGENCY: November 14, 2018
FILED WITH LRC: November 14, 2018 at 3 p.m.
CONTACT PERSON: Stephen Lee Walters, Legal Counsel, Department of Alcoholic Beverage Control, 1003 Twilight Trail, Frankfort, Kentucky 40601, phone (502) 564-4850, fax (502) 564-7479, email lee.walters@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, January 9, 2019)

907 KAR 8:040. Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities.

RELATES TO: KRS 205.520, 205.622, 369.101-369.120, 42 C.F.R. 431.17, 440.130, 45 C.F.R. Part 164, 42 U.S.C. 1396a(a)(30)
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3),[~~42 C.F.R. 440.130,~~] 42 U.S.C. 1396a(a)(30)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the Medicaid Program coverage provisions and requirements regarding occupational therapy services, physical therapy services, and speech-language pathology services provided by adult day health care programs, rehabilitation agencies, special health clinics, mobile health services, multi-therapy agencies, and comprehensive outpatient rehabilitation facilities to Medicaid recipients.

Section 1. Provider Participation. To be eligible to provide and be reimbursed for services covered under this administrative regulation, a provider shall be:
(1) Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672;
(2) Currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671; and
(3)(a) An adult day health care program;
(b) A multi-therapy agency;
(c) A comprehensive outpatient rehabilitation facility;
(d) A mobile health service;
(e) A special health clinic; or
(f) A rehabilitation agency.

Section 2. Coverage of Services.
(1) The services covered under this administrative regulation shall include:
(a) Physical therapy;
(b) Occupational therapy; or
(c) Speech-language pathology services.
(2) To be covered under this administrative regulation, a service shall be:
(a) Provided to a recipient;
(b) Provided by:
1. An occupational therapist who renders services on behalf of a provider listed in Section 1(3) of this administrative regulation;
2. A physical therapist who renders services on behalf of a provider listed in Section 1(3) of this administrative regulation;
3. A speech-language pathologist who renders services on behalf of a provider listed in Section 1(3) of this administrative regulation;
4. An occupational therapy assistant who renders services:
a. Under supervision in accordance with 201 KAR 28:130; and
b. On behalf of a provider listed in Section 1(3) of this administrative regulation; ***or***
5. A physical therapist assistant who renders services:
a. Under supervision in accordance with 201 KAR 22:053; and
b. On behalf of a provider listed in Section 1(3) of this administrative regulation;***[or***
6. A speech-language pathology clinical fellow who renders services:
a. Under the supervision of a speech-language pathologist; and
b. On behalf of a provider listed in Section 1(3) of this administrative regulation;]

(c) Ordered by:

1. A physician currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

2. An advanced practice registered nurse currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

3. A physician assistant currently participating in the Medicaid Program in accordance with 907 KAR 1:671; or

4. A psychiatrist currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(d) Consistent with a plan of care that shall:

1. Be developed:

a. By:

(i) An occupational therapist currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(ii) A physical therapist currently participating in the Medicaid Program in accordance with 907 KAR 1:671; or

(iii) A speech-language pathologist currently participating in the Medicaid Program in accordance with 907 KAR 1:671; and

b. In collaboration with:

(i) A physician currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(ii) An advanced practice registered nurse currently participating in the Medicaid Program in accordance with 907 KAR 1:671;

(iii) A physician assistant currently participating in the Medicaid Program in accordance with 907 KAR 1:671; or

(iv) A psychiatrist currently participating in the Medicaid Program in accordance with 907 KAR 1:671; and

2. Identify a specific amount and duration;

(e) For the:

1. Maximum reduction of the effects of a physical or intellectual disability; or

2. Restoration of a recipient to the recipient's best possible functioning level; and

(f) Medically necessary.

(3)(a) There shall be an annual limit of twenty (20) ***rehabilitative*** visits ***and an annual limit of twenty (20) habilitative visits*** for each of the following:

1. Occupational therapy service visits per recipient per calendar year except as established in paragraph (c) of this subsection;

2. Physical therapy service visits per recipient per calendar year except as established in paragraph (c) of this subsection; and

3. Speech-language pathology service visits per recipient per calendar year except as established in paragraph (c) of this subsection.

(b) For example, a recipient may receive twenty (20) ***rehabilitative*** occupational therapy visits, twenty (20) ***rehabilitative*** physical therapy visits, and twenty (20) ***rehabilitative*** speech-language pathology service visits per calendar year ***and in the same calendar year, a recipient may receive twenty (20) habilitative occupational therapy visits, twenty (20) habilitative physical therapy visits, and twenty (20) habilitative speech-language pathology service visits***.

(c) The limit established in paragraph (a) of this subsection may be exceeded if services in excess of the limits are determined to be medically necessary by the:

1. Department, if the recipient is not enrolled with a managed care organization; or

2. Managed care organization in which the enrollee is enrolled, if the recipient is an enrollee.

(d) Medical necessity shall be determined on an individual basis per recipient based on the given recipient's needs.

(e) Prior authorization by the department shall be required for visits above the limit established in paragraph (a) of this subsection for a recipient who is not enrolled with a managed care organization.

Section 3. Documentation, Records Maintenance, Protection, and Security.

(1) A provider shall maintain a current health record for each recipient.

(2) A health record shall:

(a) Document the provider's initial assessment of the recipient and any subsequent assessments;

(b) Document each service provided to the recipient; and

(c) Include detailed staff notes that state:

1. Progress made toward outcomes identified according to the provider's assessment and in the plan of care developed pursuant to Section 2(2)(d) of this administrative regulation;

2. The date of each service;

3. The beginning and ending time of each service; and

4. The signature and title of the individual providing each service.

(3) The individual who provides a service shall date and sign the health record within forty-eight (48) hours of[~~on~~] the date that the individual provides the service.

(4)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least six (6) years from the date of the service or until any audit dispute or issue is resolved beyond six (6) years.

(b) If the secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this subsection, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(5) A provider shall comply with 45 C.F.R. Part 164.

Section 4. Medicaid Program Participation Compliance.

(1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672;[~~and~~]

(c) KAR Title 895; and

(d) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department in accordance with 907 KAR 1:671.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this subsection may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

Section 5. No Duplication of Service.

(1) The department shall not reimburse for an occupational therapy service, physical therapy service, or speech-language pathology service provided to a recipient by more than one (1) provider of any Medicaid program in which the respective service is covered during the same time period.

(2) For example, if a recipient is receiving an occupational therapy service from a multi-therapy agency enrolled with the Medicaid Program, the department shall not reimburse for the same occupational therapy service provided to the same recipient during the same time period via the home health program.

Section 6. Third Party Liability. A provider shall comply with KRS 205.622.

Section 7. Out-of-State Providers. The department shall cover a service under this administrative regulation that is provided by an out-of-state provider if the:

(1) Service meets the coverage requirements of this administrative regulation; and

(2) Provider:

(a) Complies with the requirements of this administrative regulation; and

(b) Is:

1.a. Licensed as an adult day health care program in the state in which it is located;

b. A comprehensive outpatient rehabilitation facility licensed in the state in which it is located;

c. Licensed as a mobile health service in the state in which it is located;

d. A special health clinic licensed in the state in which it is located;

e. A rehabilitation agency licensed in the state in which it is located;

f. An occupational therapist or occupational therapist group;
g. A physical therapist or physical therapist group;
h. A speech-language pathologist or speech-language pathologist group; or
i. A multi-therapy agency;
2. Currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and
3. Currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.

Section 8. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.
(2) A provider that chooses to use electronic signatures shall:
(a) Develop and implement a written security policy that shall:
1. Be adhered to by each of the provider's employees, officers, agents, or contractors;
2. Identify each electronic signature for which an individual has access; and
3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;
(b) Develop a consent form that shall:
1. Be completed and executed by each individual using an electronic signature;
2. Attest to the signature's authenticity; and
3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and
(c) Provide the department, immediately upon request, with:
1. A copy of the provider's electronic signature policy;
2. The signed consent form; and
3. The original filed signature.

Section 9. Auditing Authority. The department shall have the authority to audit any claim, medical record, or documentation associated with any claim or medical record.

Section 10. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:
(1) Receipt of federal financial participation for the coverage; and
(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 11. Appeals.
(1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.
(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: October 5, 2018
FILED WITH LRC: October 8, 2018 at 3 p.m.
CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone: 502-564-6746, fax: 502-564-7091, email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, January 9, 2019)

922 KAR 1:010. Independent non-relative adoptions.

RELATES TO: KRS 199.011, 199.470-[199.472,] 199.473, **199.474(1)(b),** 199.480, 199.490(3), 199.492, 199.493, 199.500, 199.510, 199.520, 199.540, 199.570, 199.572, 199.590, 199.990, 615.030, Chapter 625[,]
STATUTORY AUTHORITY: KRS 194A.050(1)[194.A050(1)], 199.472, 199.473(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.472 requires the cabinet to promulgate administrative regulations that establish criteria to be followed for adoption of children. KRS 199.473(3) requires a home study to be made in accordance with administrative regulations promulgated by cabinet. This administrative regulation establishes the procedure for[in] an independent non-relative adoption.

Section 1. Definitions. (1) "Adoption worker" is defined by KRS 199.011(1)[(8)].
(2)**["Assessment" means completion of the DPP-199, Independent Non-Relative Adoption Assessment.**
(3)[(2)] "Child" is defined by KRS 199.011(4).
(3)[(4)][(3)] "Child-placing agency" is defined by KRS 199.011(6)[(7)].[(4) "Foster family home" is defined by KRS 199.011(9).]
(4)[(5)] "[Interstate]Compact administrator" means the individual appointed pursuant to the terms of the Interstate Compact on the Placement of Children (ICPC) who is responsible for the administration and management of the ICPC within the Commonwealth of Kentucky[is defined by KRS 615.030, Article VII].
(5) "Home study" is defined by KRS 199.474(1)(b).
(6) "Independent non-relative adoption" means an adoption that is not exempted from secretary approval by KRS 199.470(4)["Placement services" is defined by KRS 199.011(13)].
(7) "Prospective adoptive parent" is defined by 922 KAR 1:100(1)["Voluntary and informed consent" is defined by KRS 199.011(14)].

Section 2. Eligibility. (1) An attorney, child-placing agency, or prospective adoptive parent shall determine if a prospective adoptive parent qualifies for the cabinet to complete the **home study[assessment]**, in accordance with KRS 199.473(3).
(2) If the prospective adoptive family is over the income limit to qualify for the cabinet to complete the family's **home study[assessment]** in accordance with KRS 199.473(3) **and Section 6 of this administrative regulation, a home study[, an assessment]** shall be:
(a) Completed by a child-placing agency; and
(b) Forwarded to the cabinet along with documentation required in accordance with Section 3 of this administrative regulation.
(3) The cabinet shall:
(a)[(1)] Process an application for an independent non-relative adoption in accordance with Section 3 of this administrative regulation; and
(b) Cause **a home study[an assessment]**to be completed in accordance with Section 6 of this administrative regulation[(2) Assure a home study is conducted according to federal poverty level guidelines in accordance with KRS 199.473(3)].

Section 3. Application for Permission to Proceed with an Independent Non-Relative Adoption[Place or Receive a Child]. (1) To apply for permission to proceed with the filing of a petition[place or receive a child] for an independent non-relative adoption, an applicant shall complete and file the["]DPP-187, Independent Non-Relative Adoption Application,["] in accordance with subsections (2) through (8) of this section.
(2) The DPP-187 shall be:
(a) Signed by:
1. Each prospective[The proposed] adoptive parent[or parents] wishing to receive a child;

2. Each[The] parent[or parents] wishing to place a child; or

3. Both parties involved;

(b) Filed[in duplicate and] in writing with the secretary, in care of the[Commissioner of the] Department for Community Based Services, attention: Adoption Services Branch, 275 E. Main Street, 3C-E, Frankfort, Kentucky 40621;

(c)[Filed by means of certified or registered mail;

(d)] Accompanied by the forms and information listed in subsection (3) of this section; and

(d)[(e)] Accompanied by a nonrefundable fee of $200, required by KRS 199.473(13), which shall be:

1. Sent per submission and not per child;

2. In the form of a certified or cashier's check; and

3.[2.]Payable to the Kentucky State Treasurer.

(3) The following forms and documents shall be filed with the completed DPP-187:

(a) The ["]DPP-105, Medical Information on Child's Birth["],**[or]** a copy of the child's hospital newborn medical record**, or[;**

(b)] The DPP-108A, Health Information Required for Prospective Adoptive Parent(s) regarding Dependent Children;

(b)[(c)] A copy of the custody order showing that[(b) If] the child's custody has been awarded to the prospective[proposed] adoptive parent[:

1. A copy of the custody order; and

2. Copies of background checks conducted in accordance with KRS 199.473(8)];

(c)[(d)][(c)] The ["]DPP-190, Information to be Obtained from Prospective[Proposed] Adoptive Parent(s)["];[(d) The "DPP-190A, Supplemental Information to be Obtained from the Proposed Adoptive Parent(s)";]

(d)[(e)] Verification of current marriage, prior divorce, or death of a prior spouse of the prospective[proposed] adoptive parent;

(e)[(f)] Most recent tax return or written verification of income from the income source for each prospective[the proposed] adoptive parent;

(f)[(g)] The ["]DPP-108A, Health Information Required for Prospective[Proposed] Adoptive Parent(s) Regarding Dependent Children["] for each child residing in a prospective adoptive parent's home; and

(g)[(h)] Documentation[The "DPP-107 Health Information Required for Resource Home or Adult Household Members", incorporated by reference] in accordance with 922 KAR 1:350, Section 2(8), completed by each prospective[the proposed] adoptive parent and all adult household members.

(4)[The DPP-187 may be obtained at:

(a) Local Department for Community Based Services offices;[or]

(b) The central office in Frankfort, Kentucky.

(5)] The DPP-187 shall be considered officially filed:

(a) When received by the Adoption Services Branch[in the office of the Commissioner] of the Department for Community Based Services; and

(b) If it meets the requirements of this section.

(5)[(6) The DPP-187 shall not be processed if, prior to the receipt of the application, the child was committed to the cabinet by order of the district or circuit court.

(7)] The cabinet shall return to sender an application that does not meet the requirements of this section[:(a) An incomplete application; or

(b) An application for an unborn child submitted more than thirty (30) days in advance of the child's expected due date.

(8) The returned receipt of certified or registered mail shall be proof of the filing of the application].

Section 4. Limitations to Filing. (1) In the case of twins who are available and suitable for adoption, the DPP-187 shall not be accepted unless the prospective[proposed] adoptive parent applies to receive both children.

(2) If the DPP-187 for a child has been filed, subsequent applications for the same child shall not be accepted unless the previous DPP-187 has been withdrawn by a written request to the cabinet by one (1) of the parties involved.

(3) If one or both of the placing parents reside outside of Kentucky, the DPP-187 shall not be accepted unless an interstate compact adoption packet is received from the state placing the child in Kentucky.

(4) The DPP-187 shall not be processed if, prior to the receipt of the application, the child was **in the temporary custody of or** committed to the cabinet by order of the district or circuit court.

Section 5.[Interstate Adoptions. (1) An interstate adoption shall be in accordance with KRS 199.473(12).

(2) A prospective adoptive parent who resides in a state other than Kentucky shall:

(a) Meet application requirements of Section 3 of this administrative regulation; and

(b) Submit the DPP-187, but may substitute other forms required in Section 3 of this administrative regulation with comparable forms from the prospective adoptive parent's state of residence.

Section 6.] Preadoptive Placement. (1)(a) The child shall not be in the physical care, control, or custody of a prospective[the proposed] adoptive parent, unless a circuit court grants temporary custody in accordance with KRS 199.473(7) and (8).

(b) If the child is found in the physical care of a prospective[the proposed] adoptive parent without a circuit court order of temporary custody, the cabinet shall take action in accordance with KRS 199.473(11) until the written approval of the secretary or designee is received by a prospective[the proposed] adoptive parent.

(2)(a) If either the child's custodial parent or a prospective[the proposed] adoptive parent reside out-of-state, the written approval of the[interstate] compact administrator shall be given before the child's preadoptive placement with a prospective[the proposed] adoptive parent can occur.

(b) If the child's custodial parent resides out-of-state and the child is found in Kentucky without the approval of the[interstate] compact administrator, the child shall be removed from Kentucky and a neutral setting arrangement made within the state of the custodial parent's residence.

(3) If the disposition of the DPP-187 is pending, the cabinet may cooperate with the custodial parent of the child in finding suitable temporary placement for the child.

(4)(a) During the time between filing the DPP-187 and the decision of the cabinet granting or denying the application, the responsibility for providing for the care of the child shall not rest with the cabinet unless a court has placed the child with the cabinet, with the agreement of the cabinet, after the filing of the DPP-187.

(b) The responsibility shall remain with the custodial parent of the child during this time.

Section 6[7]. **Home Study[Assessment]**[Home Study] Requirements. (1) If[When] the DPP-187 has been filed with the[Commissioner of the] Department for Community-Based Services, the department shall cause **a home study[an assessment]** [a home study] of the prospective[proposed] adoptive home to be completed, in accordance with the provisions of KRS 199.473(2), (3), and (4) for applicants who meet the requirements of Section 2(1) of this administrative regulation.

(2)[The home study for an out-of-state proposed adoptive home shall be accepted if conducted by the:

(a) Out-of-state public agency; or

(b) Licensed child-placing agency in the respective receiving state if the public agency is unable or unwilling to provide the service.

(3)]

(a) Prior to filing a DPP-187, a prospective[the proposed] adoptive parent may contract with a licensed child-placing agency to complete a home study and background checks of each prospective[the proposed] adoptive parent and household.

(b)The **home study[assessment]**[home study] of a prospective[proposed] adoptive parent shall include:

1. A minimum of three (3) personal references, including one (1) from a relative of a prospective[the proposed] adoptive parent;

2. A minimum of two (2) financial references;

3. Criminal background check conducted in accordance with[~~:~~ ~~a.~~] KRS 199.473(2);[~~ or~~

~~b. The policy and laws of the receiving state's child welfare agency, if the proposed adoptive parent resides in a state other than Kentucky; and~~]

4. A Child abuse and neglect check conducted[~~:~~ ~~a.~~]in accordance with 922 KAR 1:490;[~~or~~

~~b. Conducted by the receiving state's child welfare agency, if one is available and the proposed adoptive parent resides in a state other than Kentucky;~~]

5. Documentation by the adoption worker of:

a. A minimum of one (1) home visit and face-to-face interview with each prospective[~~proposed~~] adoptive parent and members of the parent's household; and

b. Contact with the prospective[~~proposed~~] adoptive parent's adult child on the [~~"~~]DPP-197, Adult Child Interview[~~"~~], if the cabinet is able to locate the adult child; and

6.a. Sections I, II, III & V of the [~~"~~]DPP-199, Independent Non-Relative Adoption **Home Study[~~Assessment~~]**[~~Home Study Outline"~~], completed by the adoption worker in regard to the prospective[~~proposed~~] adoptive parent's home and family background;[~~and~~]

b. Section IV of the DPP-199 if the same agency is completing the birth parent interviews; and

c. A determination by the adoption worker of the prospective[~~proposed~~] adoptive parent's suitability to proceed with an independent adoption.

(3)[~~(4)~~] If an adoption worker for a licensed child-placing agency determines, at the completion of background checks in accordance with KRS 199.473(8), that a prospective[~~the proposed~~] adoptive parent does not appear suitable to proceed with an independent non-relative adoption, the worker shall provide written notification to the Department for Community-Based Services, Adoption Services Branch[~~Section~~], 275 East Main Street, 3C-E, Frankfort, Kentucky 40621.

(4)[~~(5)~~] The adoption worker shall discuss the child's background and potential[~~proposed~~] placement with each prospective[~~the proposed~~] adoptive parent and make a determination of each prospective[~~the proposed~~] adoptive parent's ability to meet the needs of the specific child and provide the child with a suitable home.

(5)[~~(6)~~] The adoption worker shall complete the DPP-199 for review and:

(a) Processing with the Interstate Compact, if applicable; and

(b) Consideration in the secretary's or designee's[~~Commissioner's~~] decision about the application for an independent adoption.

Section 7[~~8~~]. Interviewing the Biological Parents. (1) Any party to the court case may request a search of the putative father registry in accordance with KRS 199.505 and 922 KAR 1:560.

(2) If the biological or placing parents, legal father, or putative father reside in Kentucky, the adoption worker shall make a diligent effort to interview the custodial biological or each placing parent of the child to be placed and the non-custodial biological parent, legal father, or putative father to:

(a) Determine whether[~~or not~~] the biological parents are aware and accepting of the ethnic and religious background of each prospective adoptive parent[~~the receiving parents~~];

(b) Determine whether[~~or not~~] they agree to the placement of the child with each prospective adoptive parent[~~the proposed receiving parents~~];

(c) Obtain health history and sociological information on the child's family with a [~~"~~]DPP-191, Information to be Obtained From the Placing Parent[~~"~~];

(d) Document the placing parent's knowledge of the independent adoption with the [~~"~~]DPP-191A, Information to be Obtained from the Placing Parent for Independent Adoptions[~~"~~];and

(e) Determine the biological parents' feelings about possible future contact with the adopted person on a [~~"~~]DPP-192, Biological Parent Consent Form[~~"~~], in accordance with KRS 199.572.

(3)[~~(2)~~] If a[~~the~~] child's placing parent refuses to be interviewed by the cabinet representative or the appropriate Kentucky or out-of-state adoption worker, the cabinet may deny the application.

(4)[~~(3)~~](a) If a child's placing parent lives[~~parents live~~] out-of-state, efforts shall be made to have the biological or placing parents, and legal~~,~~ or putative father, if different than the biological father, interviewed for the purposes specified in subsection (2)[~~(1)~~] of this section.

(b) The interviews with out-of-state biological or placing parents or[~~,~~] legal[~~,~~] or putative father shall be accepted if conducted by a[~~:~~

~~1. An out-of-state public agency; or~~

~~2. A~~] licensed private adoption agency in the respective state[~~, if the public agency is unable or unwilling to provide the service~~].

(5)[~~(4)~~] If after diligent efforts of the out-of-state public or private agency, the biological or placing parents, legal[~~,~~] or putative father, or legal custodian of the child cannot be interviewed, or if the information and material cannot be obtained, the secretary or designee may approve the placement provided the other conditions of KRS 615.030, the Interstate Compact on the Placement of Children, have been met.

Section 8[~~9~~]. Final Decision Regarding Prospective Adoptive Home. (1) Upon completion of the **home study[assessment]** [~~home study of the proposed adoptive home~~], each prospective[~~proposed~~] adoptive parent shall be notified by[~~registered or~~] certified mail of the decision of the secretary or designee, either granting or denying permission for the placement or receiving of the child.

(2) The petition for adoption may be filed in accordance with Section 9[~~child shall be placed in the home of the proposed adoptive parent immediately,~~] if[~~:~~ ~~(a)~~] the cabinet grants permission for the child's placement[~~; and~~ ~~(b) The child is available for placement~~].

(3) If the permission is denied, a prospective[~~the proposed~~] adoptive parent[~~or parents~~] or a[~~the~~] placing parent[~~or parents~~] may appeal the decision. If appealing, a prospective[~~the proposed~~] adoptive[~~parent or parents~~] or a placing parent[~~or parents~~] shall, within ten (10) days after notice of denial, appeal the decision to the circuit court of the county in which the adoption is proposed in accordance with KRS 199.473(9).

Section 9[~~10~~]. Filing of the Petition to Adopt. (1) If a child has been placed in a prospective[~~proposed~~] adoptive home with the permission of the secretary or designee, a prospective[~~the proposed~~] adoptive parent[~~or parents~~] may file the petition for adoption in the circuit court in the county of their residence with the secretary's or designee's written approval in accordance with KRS 199.470(3) and 199.473.

(2) Subsequent to the filing of a petition in Kentucky to finalize an independent non-relative adoption made with the written approval of the secretary, the agency that[~~which~~] completed the **home study[assessment]**.[~~independent adoption placement home study~~] shall prepare the confidential report to the court in accordance with KRS 199.510(2) and KRS 199.590(6).

Section 10[~~11. Service Appeals. A person aggrieved by a cabinet action with regard to an independent adoption may request an administrative hearing in accordance with 922 KAR 1:320. Section 12~~]. Incorporation by Reference. (1)The following material is incorporated by reference:

(a) "DPP-105, Medical Information on Child's Birth", [~~edition~~] 11/05[~~"~~];

(b) "DPP-108A, Health Information Required for Prospective[~~Proposed~~] Adoptive Parent(s) Regarding Dependent Children", 1/19[~~edition 11/05"~~];

(c) "DPP-187, Independent Non-Relative Adoption Application", 1/19[~~edition 3/15"~~];

(d) "DPP-190, Information to be Obtained from Prospective[~~Proposed~~] Adoptive Parent(s)", 1/19[~~edition 11/05"~~];

(e)[~~"DPP-190A, Supplemental Information to be Obtained from the Proposed Adoptive Parent(s), edition 11/05";~~

~~(f)~~] "DPP-191, Information to be Obtained from the Placing Parent", [~~edition~~]11/05[~~"~~];

(f)[(g)] "DPP-191A, Information to be Obtained from the Placing Parent for Independent Adoptions", [edition]11/05["];

(g)[(h)] "DPP-192, Biological Parent Consent Form", [edition]11/05["];

(h)[(i)] "DPP-197, Adult Child Interview", [edition]11/05["]; and

(i)[(j)] "DPP-199, Independent Non-Relative Adoption **Home Study[Assessment]"** [Home Study Outline], **2[1]**/19[edition 11/05"].

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

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

APPROVED BY AGENCY: December 10, 2018

FILED WITH LRC: December 13, 2018 at 4 p.m.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(As Amended at ARRS, January 9, 2019)

922 KAR 1:100. Public agency adoptions.

RELATES TO: KRS 194A.060(1), 199.011(4), (10)[(9)], 199.430(3), 199.520, 199.525,[199.565,] 199.570, 199.572, 199.575, 202B.010(12), 600.020 (30), (52), (63)[(26), (47), (56)], 605.090, 615.030, 620.050, 620.360, 625.045, 625.108, Chapter 625, 45 C.F.R. 1355-1357, 25 U.S.C. 1901-1911, 42 U.S.C. 620-620b, 622(b)(9), 629-629i, 670-679b, 1996, 1996b

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to establish policies and operate programs to protect, develop, and maintain the welfare of the citizens of the Commonwealth. KRS 199.472 requires the cabinet to establish criteria for the public agency adoption of children in the custody of the cabinet. This administrative regulation establishes the procedures for public agency adoptions.

Section 1. Definitions. (1) "Approved adoptive parent" means a family approved in accordance with:

(a) 922 KAR 1:310;

(b) 922 KAR 1:350; or

(c) Section 6 of this administrative regulation.

(2) "Child-focused recruitment model" or "C.F.R.M" means a program for the recruitment of an adoptive family in accordance with Section 2 of this administrative regulation by cabinet staff for a child in the custody of the cabinet whose adoptive placement has not been identified.

(3) "**Fictive kin" is defined by KRS 199.011(9).**

(4) "Foster family home" is defined by KRS 199.011(10)[(9)] and 600.020(30)[(26)].

(5)[(4)][(3)] "Home study" means an evaluation conducted in accordance with the requirements of the state where the home is located, to determine the preparation and suitability of a prospective[proposed] adoptive parent, including the home environment, to receive a child for the purpose of adoption.

(6)[(5)][(4)] "Open adoption" means an agreement between an adoptive parent and an adopted child's biological or legal parent regarding communication or contact with the child.

(7)[(6)][(5)] "Pre-adoptive placement" means a home, approved by the cabinet, where a child legally free for adoption is placed prior to adoption finalization.

(8)[(7)][(6)] "Pre-placement conference" means a meeting conducted by cabinet staff with a prospective adoptive parent that fulfills requirements specified in Section 4 of this administrative regulation.

(9)[(8)][(7)] "Prospective adoptive parent" means an individual who has applied with a Kentucky or an out-of-state public or licensed private child welfare agency to be approved as an adoptive parent.

(10)[(9)][(8)] "Qualified mental health professional" or "QMHP" is defined by KRS 600.020(52)[(48)].

(11)[(10)] "Qualified professional in the area of intellectual disabilities" [(9) "Qualified mental retardation professional" or "QMRP"] is defined by KRS 202B.010(12).

(12)[(11)][(10)] "Social service worker":

(a) Is defined by KRS 600.020(63)[(56)]; or

(b) Means a social or human service worker with an out-of-state public or licensed private child welfare agency who meets the requirements of that state to conduct a home study.

[(11) "Special Needs Adoption Program" or "SNAP" means a program for the recruitment of an adoptive family by cabinet staff for a child in the custody of the cabinet whose adoptive placement has not been identified within thirty (30) days following the termination of parental rights, in accordance with KRS Chapter 625.]

Section 2. Eligibility and Referral to the Child-Focused Recruitment Model. A child may be referred to C.F.R.M if the child:

(1) Is determined eligible, as special needs, in accordance with 42 U.S.C. sec. 673;

(2) Has a goal of planned permanent living arrangement or long-term foster care;

(3) Is on extended commitment and has had parental rights terminated; or

(4) Has adoption as the child's case plan goal and does not have an adoptive resource identified.

Section 3[2]. Preparation of the Child for Adoptive Placement. (1) A child prepared for adoptive placement by cabinet staff shall receive information regarding the following, with consideration given to the child's maturity and developmental stage:

(a) Relationship to the biological or legal parent;

(b) Entitlement to a parent;

(c) If applicable, relationship with the foster family home;

(d) Reason the foster placement may not become the adoptive placement;

(e) Role of the social service worker, other pertinent cabinet staff, and the child in the placement planning process;

(f) Meaning of adoption;

(g) Process of recruitment of a parent and how the child may be involved;

(h) Impending placement;

(i) Visitation process;

(j) Placement decision; and

(k) Cabinet staff responsible for the placement decision.

(2) Cabinet staff shall:

(a) Request the biological or legal parent to either consent or refuse to consent to the inspection of the adoption records by the adult adopted person when the child reaches twenty-one (21) years of age; and

(b) File with the circuit or family court in the county where the adoption was finalized the consent or refusal to consent to the inspection of the adoption records by the adult adopted person.

(3) If a child's permanency goal includes adoption and reunification with a sibling separated during foster care, the cabinet shall plan for the transition[reunion] and coordinate increased visitation between siblings.

(4) If cabinet staff agree by consensus during a planning conference, a sibling may be separated from another sibling in adoption upon consideration of:

(a) If age appropriate, each sibling's understanding of the facts of the relationship, feelings, wishes, and ideas regarding options for placement;

(b) The perception of the relationship of each child with the sibling; and

(c) The recommendation of a:

1. QMHP; or

2. If applicable, a qualified professional in the area of intellectual disabilities[~~QMRP~~].

(5) A planning committee shall convene annually for siblings who remain separated in out-of-home care to:

(a) Determine if reunification is possible; and

(b) Develop a plan for maintaining sibling connections.

(6) A QMHP, qualified professional in the area of intellectual disabilities[~~QMRP~~], relative, social service worker, other pertinent cabinet staff, nonadoptive foster parent, or another individual approved by cabinet staff may assist with preparing the child for adoption.

(7)[~~(6)~~] If the child's goal is changed to adoption, a child in the custody of the cabinet may be placed with an approved adoptive parent prior to the termination of parental rights to the child.

(8)[~~(7)~~] If a prospective adoptive parent has not been identified for a child after the child's permanency goal has been changed to adoption in accordance with 922 KAR 1:140, the cabinet:

(a) Shall convene an adoption review committee[~~comply with the Swift adoption procedures in accordance with KRS 199.565~~] to meet and discuss child-specific recruitment and the potential strengths and barriers of placement with an identified[~~a~~] prospective adoptive parent;

(b) May invite an individual specified in subsection (6)[~~(5)~~] of this section to a meeting in which the child's permanency plan is discussed;[~~and~~]

(c) Shall refer the child to the C.F.R.M in accordance with Section 2 of this administrative regulation; and

(d)[~~(c)~~] Shall refer[~~register~~] the child to the Adoption Services Branch[~~with SNAP~~] in accordance with Section 7(1)[~~6(1)~~] of this administrative regulation.

Section 4[~~3~~]. Selection of an Adoptive Family. (1) Priority consideration for an adoptive placement shall be given to:

(a) A relative **or fictive kin**; or

(b) The current foster family home.

(2) The process of recruiting a prospective adoptive parent shall begin if:

(a) Parental rights of the child are terminated;

(b) A relative **or fictive kin** has not made a commitment to adopt the child;

(c) The child's foster family home has not made a commitment to adopt through a statement of intent;

(d) Both biological or legal parents of the child are deceased***[,]*** and the[~~designated~~] cabinet has[~~staff have~~] been granted custody through the court; or

(e) The child's pre-adoptive placement is disrupted.

(3) Prior to placement, cabinet staff shall consider the prospective adoptive parent's acceptance of the child's behavior and characteristics.

(4) (a) The cabinet shall take the following into consideration regarding the number of children to be placed in an adoptive home:

1. The prospective adoptive parent's parental capacity and resources to meet the needs of all children in the home; and

2. The impact of all children involved, including the potential adoptive child.

(b) A prospective adoptive parent may request review of a denial based upon the number of children in the home in accordance with 922 KAR 1:350, Section 8(2).[~~Unless an exception has been approved as described in 922 KAR 1:350, Section 2(2), or by the completion of the DPP-112C, Adoption Placement Exception Request, the following requirements shall apply to a prospective adoptive parent:~~

~~(a) No more than five (5) children, including prospective adoptive parent's own children, shall live in the prospective adoptive parent's home; and~~

~~(b) No More than two (2) children under age two (2), including the prospective adoptive parent's own children, shall live in the prospective adoptive parent's home.~~]

(5) The cabinet shall:

(a) Review and obtain the prospective adoptive parent's signature on the DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet; and

(b) Inform the prospective adoptive parent of:

1. Visitation and supervision requirements in accordance with KRS 605.090(1)(b); and

2. Detailed information about the child's history and services provided to the child, excluding any identifying information of the biological parent, including:

a. Health, background, and placement history;

b. Behavior, including behaviors in accordance with KRS 605.090(1); and

c. Personal characteristics.

Section 5[~~4~~]. Preparation of the Prospective Adoptive Parent. (1) Cabinet staff shall conduct a preplacement conference for a child available for adoption with the child's:

(a) Foster parent;

(b) Prospective adoptive parent;

(c) If applicable, a QMHP or qualified professional in the area of intellectual disabilities[~~QMRP~~]; and

(d) A representative[~~If applicable, social service worker~~] from the cabinet or child-placing agency where the child is placed.

(2) During the pre-placement conference, cabinet staff shall:

(a) Discuss the information provided in accordance with Section 4(5)(b)[~~3(5)(b)~~] of this administrative regulation with the prospective[~~approved~~] adoptive parent;

(b) Assist the prospective[~~approved~~] adoptive parent in reaching a decision regarding acceptance of placement;

(c) Determine the method of presenting the prospective[~~approved~~] adoptive parent to the child; and

(d) Discuss with the prospective adoptive parent acceptance of the child's plan for visitation and placement.

(3) If there is a planned foster parent adoption, the preplacement conference may occur at the same time the adoptive placement agreement is signed in accordance with KRS 199.555.

Section 6[~~5~~]. Adoptive Placement. (1) Planned visitation between a child older than one (1) month and a prospective adoptive parent shall occur at least two (2) times prior to placement.

(2) After parental rights to the child are terminated, final placement with a prospective adoptive parent shall occur as quickly as possible upon concurrence of:

(a) Cabinet staff;

(b) The prospective adoptive parent;[~~and~~]

(c) The recommendation of a qualified professional in the area of intellectual disabilities, if applicable; and

(d) The child, to the extent the child's age and maturity permit the child's participation.

(3) Adoption assistance shall be provided in accordance with 922 KAR 1:050 or 922 KAR 1:060.

Section 7[~~6~~]. Out-of-State Adoptive Placement. (1) If a prospective adoptive parent has not been identified after the child has been referred to the C.F.R.M[~~by the time the child becomes available for adoption~~], cabinet staff shall:

(a) Consider an out-of-state placement; and

(b) Refer the child to the Adoption Services Branch for referral on the adoption ***Web site[~~website~~]***[~~SNAP~~] if**[~~:~~**

~~1.~~] termination of parental rights has been granted**[~~; and~~**

~~2. No adoptive placement has been identified through the C.F.R.M program~~][~~within thirty (30) days following the termination of parental rights~~].

(2) Placement of a Kentucky child with an out-of-state prospective adoptive parent may occur if:

(a) The prospective adoptive parent is seeking a child through:

1. An out-of-state public child welfare agency; or

2. A licensed private child welfare agency; and

(b) A home study has been completed or updated within one (1) year by the out-of-state public child welfare agency or licensed private child welfare agency, in accordance with the requirements of the out-of-state agency.

(3) If a prospective adoptive parent who resides out-of-state cannot pay the expense to attend a pre-placement conference or visit the child, the cabinet may pay travel expenses for the

prospective adoptive parent, to the extent funds are available.

(4) If the Kentucky and out-of-state deputy compact administrators agree to the child's visit in accordance with KRS 615.030, a child may visit and be placed with a prospective adoptive parent who resides in another state, in accordance with KRS 615.030.

(5) Upon approval of the commissioner or designee, cabinet staff or another adult whom the child knows shall accompany a Kentucky child available for adoption on an out-of-state visit or placement with a prospective out-of-state adoptive parent.

Section 8[~~7~~]. Open Adoption. The cabinet shall not prohibit an open adoption.

Section 9[~~8~~]. Postplacement Service. (1) The goal of a postplacement service shall be to:

(a) Ensure the success of the placement; and

(b) Prevent disruption of the placement.

(2) The cabinet shall coordinate support services for a child and a prospective adoptive parent prior to the legal adoption and through finalization of the adoption.

(3) Until the adoption judgment has been granted by a court of competent jurisdiction, the cabinet shall conduct an annual permanency review of a child placed with a prospective adoptive parent.

(4) Post-Adoption Placement Stabilization Services (PAPSS) shall be offered in accordance with 922 KAR 1:530.

Section 10[~~9~~]. Closure of An Approved Adoptive Home. Unless an extension is approved by the commissioner, closure of an approved adoptive home shall occur in accordance with:

(1) 922 KAR 1:310; or

(2) 922 KAR 1:350.

Section 11[~~10~~]. Service Appeals. A service appeal may be requested in accordance with 922 KAR 1:320.

Section 12[~~11~~]. Confidentiality of Records. (1) A child's records shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, as described by KRS 194A.060(1), 199.430(3), 199.520, 199.525, 199.570, 199.572, 199.575, 620.050, 625.045, 625.108, and 922 KAR 1:510.

(2) If the child is not adopted, the prospective adoptive parent shall return all documentation pertaining to the child to the cabinet within ten (10) working days of the decision not to adopt.

Section 13[~~12~~]. Request for Information from Adoption Records. (1) Identifying information from the cabinet's record may be released only upon written order by the court upon application to the circuit court that granted the adoption by an adoptee, twenty-one (21) years of age or older.

(2) If the birth parent has not previously filed consent for release of identifying information with the circuit court, the judge may:

(a) Issue a court order requiring the cabinet to conduct a search for each birth parent as identified on the original birth certificate; and

(b) Determine the parent's desire concerning the release of identifying information from the record.

(3) Upon receipt of written request by the adult adoptee or the adoptive family, nonidentifying health and background information may be released by the cabinet from a closed adoption record.

(4) If a request is received from an adoptee, eighteen (18) years of age or older, for contact with an adult preadoptive birth sibling separated during finalization of a closed adoption, cabinet staff shall:

(a) Review the adoption record; and

(b) Release identifying information if a mutual request for contact is contained within the record.

(5) If a request is received from a birth relative seeking an adoptee, either adult or minor, information may be given that adoption did occur and reassurance of the well-being of the adoptee at last contact may be confirmed, but cabinet staff shall not contact an adoptee or adoptive family at the request of the birth family.

(6) If an adult adoptee seeks contact with the birth family, cabinet staff shall inform the adult adoptee of a birth relative's interest.

Section 14[~~13~~]. Incorporation by Reference. (1)[~~The following material is incorporated by reference:~~

~~(a)~~] "DPP-171, Notice of Confidentiality Requirements Acknowledgement Cover Sheet", 9/18, is incorporated by reference[~~edition 9/08; and~~

~~(b) "DPP-112C, Adoption Placement Exception Request", edition 9/08~~].

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

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

APPROVED BY AGENCY: December 10, 2018

FILED WITH LRC: December 13, 2018 at 4 p.m.

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 42:005. Definitions for[~~related to~~] 401 KAR Chapter 42.

RELATES TO: KRS 224.1[~~224.01~~], 224.10, 224.60, 40 C.F.R. 280 Subpart A, 42 U.S.C. 6991 – 6991m[~~6991c~~], 9601-9675

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.60-105, 42 U.S.C. 6991-6991m[~~6991k, 6991e~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105(2) requires the cabinet to regulate underground storage tanks by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect human health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for underground storage tank (UST) systems. This administrative regulation establishes definitions for[~~defines terms used throughout~~] 401 KAR Chapter 42.

Section 1. Definitions. Except as established in this section, definitions for 401 KAR Chapter 42 shall be as established in 40 C.F.R. 280.12 and 280.250.

(1) "Analytical Testing":

(a) Means:

1. The techniques established in Test Methods for Evaluating Solid Waste Physical/ChemicalMethods, U.S. EPA Publication SW-846 as referenced in 40 C.F.R. 260.11(c)(3); or

2. Cabinet-approved techniques, including the required quality assurances and quality controls used to identify the quantitative, chemical makeup of a sample; and

(b) Does not mean field instruments, qualitative, or semi-quantitative techniques utilized to inform decision making, but not utilized to determine regulatory compliance[~~"Aboveground release" means a UST system release to the surface of the land or to surface water. This includes UST system releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system~~].

(2)[~~"Actual cost" means the cost incurred by the person performing the services or supplying the products.~~

~~(3) "Ancillary equipment" means any devices used to distribute, meter, or control the flow of regulated substances to and from a UST system, including piping, fittings, flanges, valves, and pumps.~~

~~(4) "API" means the American Petroleum Institute.~~

~~(5) "Assets" is defined by KRS 224.60-120(3).~~

~~(6) "Automatic line leak detector" means:~~

~~(a) Electronic line leak detector; or~~

~~(b) Mechanical line leak detector.~~

~~(7) "ASTM" means the American Society for Testing and Materials.~~

~~(8)~~] "Background" means the concentration of substances consistently present in the environment at, or regionally proximate to, a UST system release, but outside of the influence of the UST system release. The[~~There are~~] two (2) types of background are natural background and ambient background.

(3)[~~as follows:~~

~~(a) Natural background is the amount of naturally-occurring substances in the environment, exclusive of that from anthropogenic sources; and~~

~~(b) Ambient background is the amount of both naturally occurring substances and ubiquitous anthropogenic substances in the environment at levels that are representative of the region surrounding the UST facility and at levels not attributable to activities on the property.~~

~~(9) "Belowground release" means a UST system release to the subsurface of the land or to groundwater. This includes UST system releases from the belowground portions of a UST system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.~~

~~(10) "Beneath the surface of the ground" means, for purposes of identifying an underground storage tank system as set forth in KRS 224.60-100, beneath the ground surface or otherwise covered with earthen materials.~~

~~(11)~~] "Bodily injury and property damage" is defined by KRS 224.60-115(1).

(4)[~~(12)~~] "Cabinet" is defined by KRS 224.1-010(8)[~~224.01-010(9)~~].

(5)[~~(13) "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a UST system can be cathodically protected through the application of either galvanic anodes or impressed current.~~

~~(14)~~] "Cathodic protection tester" means a person accredited or certified[~~as being a cathodic protection tester~~] in accordance with 401 KAR 42:020, Section 11(9)[~~42:030.~~

~~(15) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 – 9675~~].

(6)[~~(16)~~] "Change in service" means continued use of a UST system that previously stored a regulated substance to store a non-regulated substance.

(7)[~~(17)~~] "Claim" is defined by KRS 224.60-115(3).

(8)[~~(18) "Compatible" means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST system.~~

~~(19) "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a UST system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two (2) UST systems shall be allocated equally between them.~~

~~(20) "Consumptive use" means, with respect to heating oil, consumed on the premises where stored.~~

~~(21)~~] "Contamination" means degradation in the quality of surface water, sediment, groundwater, air, soil, or bedrock as a result of human activities.

(9)[~~(22)~~] "Contract" means the legally-binding written agreement for performance of corrective action entered into by an owner or operator and an[~~a contracting~~] eligible company or partnership[~~eligible pursuant to 401 KAR 42:316~~].

(10)[~~(23)~~] "Corrective action":

(a) For purposes of 401 KAR 42:250 and[~~,42:290, 42:300, 42:316,~~] 42:330[~~, 42:335 and 42:340~~], is defined by KRS 224.60-115(4); or

(b) For purposes of 401 KAR[~~42:011,~~] 42:020 and[~~, 42:030, 42:040, 42:045, 42:050,~~] 42:060[~~, 42:070, 42:080, 42:090, 42:095, and 42:200~~], means those actions necessary to protect human health and the environment if there is a UST system release. Corrective action includes initial response remedial actions to clean up contaminated groundwater, surface waters or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action also includes actions necessary to monitor, assess, and evaluate a UST system release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a UST system release has occurred.

(11)[~~(24) "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by professional education and related practical experience, is qualified to engage in the~~

practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers (NACE International), or a professional engineer licensed by the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors with certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(25)] "Delivery prohibition" means prohibiting the delivery, deposit, or acceptance of a regulated substance to an underground storage tank that has been determined to be ineligible by the cabinet in accordance with 401 KAR 42:020[42:045] for[such] delivery, deposit, or acceptance.

(12)[(26) "Dielectric material" means a material that does not conduct direct electrical current.

(27) "Dispenser" means a device that is used to transfer regulated substances from a UST system to a point outside of the UST system.

(28)] "Division" is defined by KRS 224.60-115(6).

(13)[(29)] "Domestic-use cistern" means a cistern constructed in a manner to allow the infiltration of groundwater and is currently used or potentially used by humans for consumption or other uses resulting in dermal or inhalation exposure.

(14)[(30)] "Domestic-use spring" means a perennial spring continuously utilized by humans for consumption or other potable uses resulting in dermal or inhalation exposure.

(15)[(31)] "Domestic-use well" means a well currently used or potentially used by humans for consumption or other uses resulting in dermal or inhalation exposure.

(16) "Double walled" means factory certified construction utilizing an inner wall and an outer wall with an interstitial space between the inner wall and outer wall suitable for interstitial monitoring.

(17)[(32) "Double-walled piping" means piping consisting of an inner wall and an outer wall with an interstitial space between the inner and outer wall.

(33) "Double-walled tank" means a tank consisting of an inner wall and an outer wall with an interstitial space between the inner and outer wall.

(34) "Electrical equipment" means underground equipment containing dielectric fluid used for the operation of equipment such as transformers and buried electrical cable.

(35)] "Eligible company or partnership" means a person issued a letter of eligibility in accordance with 401 KAR 42:250[42:316].

(18)[(36)] "Empty" means all regulated substances have been removed from the UST system using commonly employed practices so that not more than two and five-tenths (2.5) centimeters (one (1) inch) of residue, or zero and three-tenths (0.3) percent by weight of the total capacity of the UST system, remain in the system.

(19)[(37)] "Entry level" means a deductible[an] amount equal to the financial responsibility the owners or operators[owner or operator] shall establish and maintain in accordance with KRS 224.60-120, except for actions established in 401 KAR 42:250, Section 5(3).

(20)[(38)] "Environmental emergency" is defined by KRS 224.1-400(1)(d)[224.01-400(1)(d)].

(21)[(39) "Environmentally sensitive feature" means surface waters and jurisdictional wetland areas. The term does not include road-side ditches or manmade drainage ways that do not discharge to surface waters or wetland areas within a fifty (50) meter radius of the excavation zone.

(40) "EPA identification number" means the number assigned by the U.S. EPA or the cabinet to each hazardous waste generator; transporter; and treatment, storage, or disposal facility.

(41) "Excavation zone" means the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation. An excavation zone contains one (1) or more than one (1) UST system.

(42) "Existing UST system" means a UST system used to contain an accumulation of regulated substances or for which installation commenced on or before December 22, 1988. Installation is considered to have commenced if:

(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the UST facility or installation of the UST system; and

(b)1. A continuous, physical construction or installation program has begun at the UST facility; or

2. The owner or operator has entered into contractual obligations, that cannot be canceled or modified without substantial loss, for physical construction at the UST facility or installation of the UST system to be completed within a reasonable time.

(43)] "Facility" is defined by KRS 224.60-115(7).

(22) "Field blank" means an aliquot of reagent water exposed to the environment during field sample collection and processed in the laboratory as an environmental sample. A field blank is used to document that contamination is not introduced during sample collection.

(23)[(44) "Farm tank" means a tank located on a tract of land devoted to the production of crops (including nurseries) or raising animals (including fish hatcheries) and associated residences and improvements.

(45) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government, including any government corporation, or the U.S. Government Printing Office.

(46) "Federal regulations" is defined by KRS 224.60-115(8).

(47)] "Financial ability" means the capacity of a petroleum storage tank owner or operator to finance the performance of corrective action.

(24)[(48) "Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

(49)] "Free product" is defined by KRS 224.60-115(9).

(25)[(50) "Guarantor" is defined by KRS 224.60-120(4).

(51) "Gathering lines" means pipelines, equipment, facilities, and buildings used in the transportation of oil or gas during oil or gas production or gathering operations.

(52)] "Groundwater" means the subsurface water occurring in the zone of saturation beneath the water table, and perched water zones below the B-soil horizon, including water circulating through fractures, bedding planes, and solution conduits.

(26)[(53) "Hazardous substance UST system" means a UST system that contains a hazardous substance identified in Section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under 401 KAR Chapters 31 through 39), or contains a mixture of this type of hazardous substance and petroleum and is not a petroleum UST system.

(54) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels if used as substitutes for one (1) of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(55) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(56) "Hydrogeologically downgradient" means in the direction from a point of higher hydrostatic pressure to a point of lower hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a higher water table elevation exists to a point where a lower water table elevation exists, as defined by wells or piezometers.

(57)] "Hydrogeologically upgradient" means in the direction from a point of lower hydrostatic pressure to a point of higher hydrostatic pressure, as defined by wells or piezometers constructed to the same depth, or in the direction from a point where a lower water table elevation exists to a point where a higher water table elevation exists, as defined by wells or piezometers.

(27)[(58)] "Independent third-party evaluator" means a consulting firm, test laboratory, not-for-profit research organization, or educational institution with no organizational or financial conflict of interest.

(28)[(59)] "Interior lining" means corrosion and chemical resistance materials that are applied to the inside of the tank to protect the internal surface of the tank from corrosion.

(29)[(60)] "Interstitial space" means the area between the inner and outer wall of any component of a UST system.

(30)[double-walled tanks or double-walled piping;

(61)] "Liquid-tight" means impervious to the passage of water or a liquid regulated substance.

(31)[(62) "Liquid trap" means a sump, well cellar, or other trap used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids.

(63) "Maintenance" means the normal operational upkeep to prevent a UST system from releasing a regulated substance.

(64)] "Monitoring" means the act of systematically collecting and accessing data on operational parameters or on the quality of the air, soil, bedrock, groundwater, sediment, or surface water.

(32)[(65)] "Motor fuel" is defined by KRS 224.60-115(12).

(33)[(66) "NACE" means the National Association of Corrosion Engineers.

(67) "Net worth" is defined by KRS 224.60-120(3).

(68)] "Newly discovered UST system" means a UST system at a UST facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence.

(34)[(69) "New UST system" means a UST system that will be used to contain an accumulation of regulated substances and for which installation commenced after December 22, 1988.

(70) "NFPA" means the National Fire Prevention Association.

(71) "Noncommercial purposes" means, with respect to motor fuel, not for resale.

(72)] "Occurrence" is defined by KRS 224.60-115(13).

(35)[(73)] "Off-site" means any area beyond the point of compliance.

(36)[(74)] "On-site" means the area within the point of compliance.

(37)[(75) "On the premises where stored" means, with respect to heating oil, a UST system located on the same property where the stored heating oil is used.

(76) "Operation" means the storage and dispensing of a regulated substance from a UST system.

(77)] "Operational life" means the period beginning when installation of the UST system has commenced and ending when the UST system is closed in accordance with[under] 401 KAR 42:060[42:070].

(38)[(78) "Operator" means a person in final control of, or having final responsibility for, the daily operation of the UST system. The operator shall be a person who has full authority to comply with the requirements of 401 KAR Chapter 42.

(79) "Original invoice" means an original or duplicate copy of an itemized list of all products or services obtained, including the itemized cost thereof provided to the contractor or owner or operator by the person supplying the products or providing the services.

(80)] "Overfill release" means a UST system release that occurs if a UST system is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

(39)[(81) "Owner" means:

(a) For a UST system in use on November 8, 1984, or brought into use after that date, a person who owns a UST system used for storage, use, or dispensing of a regulated substance; and

(b) For a UST system in use before November 8, 1984, but no longer in use on that date, a person who owned the UST system immediately before the discontinuation of its use.

(82)] "Permanent closure" means[either]:

(a) Closure, occurring prior to December 22, 1988, in accordance with the requirements of the Kentucky Fire Marshal, and applicable industry standards when closure occurred, and[in a manner] that prevents future use of the UST system; or

(b) After December 22, 1988, removing the UST system from the ground or filling the UST system with an inert solid material, or a combination of both methods in accordance with 401 KAR 42:060, Section 6.

(40)[(83)] "Person" is defined by KRS 224.60-115(14).

(41)[(84)] "Petroleum" is defined by KRS 224.60-115(15).

(42)[(85)] "Petroleum storage tank" is defined by KRS 224.60-115(16).

(43)[; (86)] "Petroleum storage tank operator" is defined by KRS 224.60-115(17).

(44)[; (87)] "Petroleum storage tank owner" is defined by KRS 224.60-115(18).

(45)[(88) "Petroleum UST system" means a UST system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. The term includes those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(89) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of these types of materials).

(90) "Pipeline facilities" means new or existing pipe rights-of-way and any associated equipment, facilities, or buildings, including gathering lines.

(91)] "Point of compliance" means the property boundaries of the property on which the UST facility is located.

(46)[(92)] "Product deliverer" means a person that[who] delivers or deposits regulated substances into a UST system.

(47) "Professional engineer" is defined by KRS 322.010(3).

(48) "Professional geologist" **is defined by [means a geologist registered in the state of Kentucky in accordance with]**KRS **322A.010(4)[Chapter 322A]**[(93) "Ranking system" means the system for determining the sequence by which written directives shall be issued in order to address the completion of corrective action, and the subsequent reimbursement of those eligible costs, as established by 401 KAR 42:290].

(49)[(94)] "Registration" means[or "register" shall have the same meaning as] "notification"[or "notice",] as used in 40 C.F.R. 280.22[Part 280 Subpart B].

(50)[(95)] "Regulated substance" is defined by KRS 224.60-100(2).

(51)[(96)] "Release" is defined by:

(a) KRS 224.60-115(20); or

(b) **40** C.F.R. 280.12 for the purposes of 401 KAR 42:020 and 42:060, except for a release that is permitted or authorized by the state or federal law.

(52)[(97) "Release detection" or "leak detection" means a method of determining if:

(a) A release of a regulated substance has occurred from the UST system into the environment; or

(b) A regulated substance has infiltrated the interstitial space of a UST system.

(98)] "Repair" is defined by 40 C.F.R. 280.12, except that the term shall also include restoration of[means to restore] a UST system component that has exhibited[caused a UST system release of a regulated substance or that exhibits] an unusual operating condition.

(53) "Replaced" or "replacement" means:

(a) For a tank, to remove a tank and install another tank;

(b) For piping, to remove fifty (50) percent or more of piping and install other piping, excluding connectors, connected to a single tank or single compartment. For multiple piping runs connected to a single tank or compartment, this definition applies independently to each piping run; and

(c) For ancillary equipment, to remove a piece of equipment and install new equipment.

(54)[(99) "Residential tank" means a tank located on property used primarily for dwelling purposes.

(100)] "Residual tank materials" means accumulated tank water, bottom sediments, mixture of product and water, or other material remaining in a tank after removal of tank contents.

(55)[(101) "SARA" means the Superfund Amendments and Authorization Act of 1986.

(102) "Secretary" is defined by KRS 224.01-010(24).

~~(103) "Septic tank" means a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from the receptacle is distributed for disposal through the soil, and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.~~

~~(104) "SFMO" means the State Fire Marshal's Office.~~

~~(105) "Statistical Inventory Reconciliation" or "SIR" means a leak-detection system that uses computer software to conduct a statistical analysis of inventory, delivery, and dispensing data collected over a period of time to determine if a UST system is leaking.~~

~~(106) "STI" means the Steel Tank Institute.~~

~~(107) "Storm water" or "wastewater collection system" means piping, pumps, conduits, and other equipment used to collect or transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to or from retention areas or any areas where treatment is designated to occur.~~

~~(108)~~] "Sump" means a subsurface area designed to provide access to[~~underground~~] UST system equipment.

(56)[~~(109) "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials) that is not an injection well.~~

~~(110)~~] "Surface water" means:

(a)1. Those waters having well-defined banks and beds, either constantly or intermittently flowing;

2. Lakes and impounded waters;

3. Marshes and wetlands; and

4. Subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection to the surface; and

(b) Does not mean[~~.~~] effluent ditches and lagoons used for waste treatment that are situated on property owned, leased, or under valid easement by a permitted discharger[~~are not considered to be surface waters of the Commonwealth~~].

(57)[~~(111)~~] "Suspected UST system release" means the observation of an unusual operating condition or an unconfirmed UST system release.

(58)[~~(112) "Tank" means a stationary component of a UST system, excluding the connected underground piping, underground ancillary equipment, and containment system, if any, designed to contain an accumulation of regulated substances and constructed of nonearthen materials (for example, concrete, steel, plastic, or a combination of these materials) that provide structural support.~~

~~(113)~~] "Tank contents" means accumulated tank water, bottom sediments, or mixture of product and water, that is removed from a tank at one (1) time by the same method and that is accepted by a recycling facility.

(59)[~~(114) "Temporary closure" means taking a UST system out of operation pursuant to the requirements of 401 KAR 42:070.~~

~~(115)~~] "Third party" is defined by KRS 224.60-115(22).

(60)[~~(116)~~] "Trip blank" means a sample of analyte-free media taken from the laboratory to the sampling site and returned to the laboratory unopened. A trip blank is used to document contamination attributable to shipping and field handling procedures per cooler per sampling event.

(61)[~~(117) "Under-dispenser containment" or "UDC" means a liquid-tight containment system underneath a dispenser.~~

~~(118)"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the UST system situated on or above the surface of the floor.~~

~~(119) "Underground utility conduit" means a manmade underground conduit installed for utility purposes either on or off site.~~

~~(120)~~] "Underground storage tank" is defined by KRS 224.60-100(1).

(62) "Unusual operating condition" means an abnormal condition observed during the normal use of a UST system, including erratic behavior of product dispensing equipment, the sudden loss of product from a portion of the UST system, the unexplained presence of water in the tank exceeding one (1) inch, a failing result from a tank or line tightness test, a failing result of a corrosion protection evaluation, a failing result of a spill containment device test, a failing result of an under-dispenser containment test, a failing result of a containment sump test, an unexplained failing result from a release detection method or device, an unexplained inventory discrepancy, two (2) consecutive months of inconclusive statistical inventory reconciliation (SIR) results, an unexplained equipment failure or malfunction, an unexplained presence of vapors, an unexplained presence of product in sumps, under-dispenser containment or a spill containment device, infiltration of liquid into the interstitial space of a UST system, an unexplained overfill or release detection alarm, or evidence of a release of a regulated substance.

(63)[~~(121) "Upgrade" means the addition of or retrofitting of UST system components to improve the ability of a UST system to prevent a UST system release. Examples of upgrades include the addition of cathodic protection, improvements to the interior lining, and improvements of spill and overfill controls.~~

~~(122)~~] "UST facility"[~~or "site"~~] means[~~, with respect to an owner or operator,~~] all UST systems[~~which are~~] owned or operated by an owner or operator, and[~~are~~] located on a single parcel of property or on a contiguous or adjacent property.

(64) "UST site" or "site" means UST facility.

(65)[~~(123) "UST system", "tank system", or "underground storage tank system" means an underground storage tank, connected underground piping, and underground ancillary equipment, if any.~~

~~(124) "UST system release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance from a UST system into groundwater, surface water, surface or subsurface soils. The term does not include spilling, leaking, emitting, discharging, escaping, leaching, or disposing that is permitted or authorized by Kentucky or federal law.~~

~~(125) "UST system release detection" means a method, that complies with the requirements of 401 KAR 42:040, for determining whether a UST system release has occurred.~~

~~(126) "Unusual Operating Condition" means a condition observed during the normal operation of an underground storage tank system that is reported to the cabinet pursuant to 401 KAR 42:050. Unusual operating conditions include the erratic behavior of product dispensing equipment, the sudden loss of product from a portion of the UST system, the unexplained presence of water in the tank exceeding one (1) inch; failing results from a tank or line tightness test, failing results of a corrosion protection evaluation, unexplained failing results from a release detection method or device, unexplained inventory discrepancies, two (2) consecutive months of inconclusive statistical inventory reconciliation (SIR) results, unexplained equipment failure or malfunction, unexplained presence of vapors, infiltration of liquid into the interstitial space of a UST system, unexplained overfill or release detection alarms, or evidence of a release of a regulated substance.~~

~~(127)~~] "Vapor intrusion" means the presence of volatile and semi-volatile organic compounds in residential or commercial buildings, assessed in accordance with Section 7.3 of the UST Corrective Action Manual[~~Release Response and Initial Abatement Requirements Outline~~], incorporated by reference in 401 KAR 42:060, resulting from contaminated subsurface media originating from a UST system release.[~~(128) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.~~]

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: January 10, 2019

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

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502) 782-6303, fax (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation defines terms used in 401 KAR Chapter 42 for the management of the underground storage tank (UST) program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the terms to administer and implement the UST program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 224.60-100 by defining terms for 401 KAR Chapter 42 for the management of the UST program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in administration of the statutes and the UST program, implemented under the provisions of KRS 224.60-105, by defining the terms necessary to administer the program.

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

(a) How the amendment will change this existing administrative regulation: The amendment after comments will change this existing administrative regulation by correcting a typographical error and also by changing a definition to reference the Kentucky Revised Statutes.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is to correct deficiencies noted in the public comments received.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 224.60-100 by defining terms for 401 KAR Chapter 42 for the management of the UST program.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in administration of the statutes and the UST program, implemented under the provisions of KRS 224.60-105, by defining the terms necessary to administer the program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the owner and operator of a UST facility, eligible companies that contract with those owners or operators, certified laboratories that process samples collected at a UST facility, and certified tank installers/removers. There are 3,216 UST facilities, 58 eligible companies that contract with those owners or operators, 37 certified laboratories that process samples collected at UST facilities, and 228 certified tank installers/removers.

(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 identified in question (3) will not be required to take any actions as a result of this amendment after comments as it only corrects mistakes noted in the terms used in 401 KAR Chapter 42.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment after comments will not cost entities identified in question (3) any funds as it only corrects mistakes noted in the terms used in 401 KAR Chapter 42.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities identified in question (3) will not accrue benefits as this amendment after comments only corrects mistakes noted in the terms used in 401 KAR Chapter 42.

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

(a) Initially: There is no cost associated with implementing this amendment after comments.

(b) On a continuing basis: There is no cost associated with implementing this amendment after comments.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of tank fees, the PSTEAF, and grants from the U.S. Environmental Protection Agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulation only defines terms used in 401 KAR Chapter 42.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 state or local governments that own or operate an underground storage tank facility, as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: 40 C.F.R. Part 280 and KRS 224.60-105.

(3) Estimate the effect of this administrative regulation on the 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 administrative regulation will not affect the expenditures and revenues of a state or local government agency as it only defines terms.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue for state or local government as it only defines terms. However, currently the division receives $287,700 in tank fees and $24.2 Million PSTEAF annually, and $1,925,333 Leaking Underground Storage Tank (LUST) Prevention and LUST Cleanup biennially in federal grants to administer the underground storage tank program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as it only defines terms. However, currently the division expects to receive $287,700 in tank fees and $24.2 Million PSTEAF annually, and $1,925,333 LUST Prevention and LUST Cleanup biennially in federal grants to administer the UST program for subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's current operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): $1,925,333 (biennially) in federal grant funding (LUST Prevention and LUST Cleanup), $287,700 tank fees, $24.2 Million PSTEAF.

Expenditures (+/-): $24.4 Million, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280 Subpart A, 42 U.S.C. 6991 – 6991m

2. State compliance standards. KRS 224.10-100(5), 224.60-105

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280 Subpart A

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose additional or different requirements than those required by the federal regulation. Kentucky has incorporated various definitions that are not included in the federal rule.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Several of the definitions are defined in statute. Kentucky has also included various definitions that are necessary for clarification and consistency in the implementation of this administrative regulation.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 42:020. UST system requirements, notification, registration, and annual fees[Systems: design, construction, installation, and registration].

RELATES TO: KRS 224.1[224.01], 224.10, 224.60, 10 C.F.R. Part 50[Chapter 322, Chapter 322A], 40 C.F.R. Part 280, Subparts A, B, C, D, G, H, I, J, K, Part 281, Subpart D,[Subpart B] 42 U.S.C. 2011 - 2021, 2022 - 2286i, 2296a - 2297h-13, 6991 - 6991m[6991c, 6991e, 6991k]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-150, 42 U.S.C. 6991 - 6991m[6991e, 6991k]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks (USTs) by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. KRS 224.60-150 states that the cabinet shall levy and collect an annual fee of thirty (30) dollars per tank from owners or operators of USTs for the purpose of funding the administration of the UST Program. KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. This administrative regulation establishes the scope of the UST program, including provisions for exclusions, requirements concerning[performance standards,] registration, annual fees, performance standards, operation and maintenance of UST systems, delivery prohibition, operator training, and requirements for demonstrating financial responsibility for corrective action, compensation of third parties for bodily injury and property damage, and lender liability[designated compliance managers and UST facility employees, and alternatives for upgrading existing UST systems].

Section 1. Applicability and Exclusions. (1)**[The requirements of 401 KAR Chapter 42 shall apply to all owners and operators of UST systems.]**Except as established in subsection (3) of this section**, applicability and exclusions shall be as established in 40 C.F.R. 280.10, 280.11, and this administrative regulation**.

(2) Requirements for previously federally-deferred field-constructed tanks and airport hydrant fuel distribution systems shall be as established in 40 C.F.R. 280.250 through 280.252, and this administrative regulation.

(3) **In addition to the exclusions established in subsection 1 of this section,** the following shall be excluded from the requirements of 401 KAR Chapter 42:

(a) A UST system containing wastes established as hazardous in 401 KAR Chapter **39[31]** and UST systems containing mixtures of hazardous waste and other regulated substances;

(b)**[A UST system excluded by 40 C.F.R. 280.10(b)(2) through (6);**

(c)] Exclusions listed in KRS 224.60-100(1)(a) through (i); **and[(d) A UST system containing radioactive material that are regulated as referenced in the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011 – 2021, 2022 – 2286i, 2296a – 2297h-13;**

(e) A UST system that is part of an emergency generator system at a nuclear power generation facility licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including 10 C.F.R. Part 50; and]

(c)[(f)] A UST system used in the operation of heating equipment, boilers, and furnaces, but with a secondary usage as part of an emergency generator system, if:

1. UST system contents are consumed on the premises where stored; and

2. The UST system stores fuel oil number 1, 2, 4, 5, 6, or residual fuel oil.

Section 2. Notification, Registration, and Annual Fees. (1) Notification requirements for UST systems shall be as established in KRS 224.60-105, 40 C.F.R. 280.22, and this section.

(a) Owners shall submit the UST Notice of Intent to Install Underground Storage Tank or Piping, DWM 4231, to the appropriate Division of Waste Management Regional Office, at a minimum, fourteen (14) days prior to installation of a UST or an entire piping run, in accordance with Section 6(4) of this administrative regulation, to afford a division representative the opportunity to be present during installation.

(b) If a division representative fails to be present on the date scheduled for installation, the installation may proceed.

(2) Registration of UST systems shall comply with the requirements in subsection (1) of this section and this subsection.[Registrations. (1)]

(a) The owner shall submit, to the cabinet, a UST Facility Registration, DWM 4225,[Form, DEP 7112] for a[each] UST facility within thirty (30) days of bringing a UST system into use at the UST facility[operation].

(b) The form shall be signed by the owner and operator of the UST system.

(3) A corporation or limited liability company, registering as an owner or operator of a UST system, shall be authorized to conduct business in the Commonwealth of Kentucky, hold an active status, and be in good standing, with the Kentucky Secretary of State.

(4)(a)[(c) The form shall be notarized.

(2)(a)] Except as established in subsection (5) of this section[Section 2 of this administrative regulation], an[the] owner shall submit to the cabinet an amended UST Facility Registration, DWM 4225[Form, DEP 7112] within thirty (30) days of any change to information contained within the most recently submitted UST Facility Registration[Form].

(b) The form shall be signed by the owner and operator of the UST system.

(5)[(c) The form shall be notarized.

(3) An amended UST Facility Registration Form, DEP 7112 shall be submitted for a UST system being placed into temporary closure for more than six (6) months.

(4)] An unregistered UST system discovered during permanent closure activities conducted in accordance with 401 KAR 42:060,[42:070] shall be listed on the UST Closure Assessment Report Checklist, DWM 4262, incorporated by reference in 401 KAR 42:060, in lieu of an amended UST Facility Registration, DWM 4225[42:070].

(6)[(5) With the exception of unregistered UST systems discovered during permanent closure activities in accordance with subsection (1) of this section.

Section 2. Change of Address for UST Owner.] An owner shall notify the cabinet within thirty (30) days of an address change by submittal of[one (1) of the following]:

(a)[(1) Submittal of] An amended UST Facility Registration,

DWM 4225[~~Form, DEP 7112~~]; or

(b) A UST Facility Owner Address Correction, DWM 4224[~~(2) Submittal of an Address Change Form for Owners of UST Systems, DEP 0060~~].

(7)[~~Section 3. Changes of Ownership. (1)~~] If ownership of a UST system changes, the new owner shall comply with this subsection.

(a) The new owner shall complete and submit an amended and[~~,~~] signed[~~, and notarized~~] UST Facility Registration, DWM 4225[~~Form, DEP 7112~~], to indicate the new ownership. The form shall include the previously-assigned agency interest number and shall be submitted to the cabinet within thirty (30) days after the transaction.

(b) The new owner shall maintain a copy of the properly executed deed or other properly executed legal document proving the transfer of the UST system and submit to the cabinet if requested.

(c) Upon the sale of a UST system, the previous owner[~~(2) If an owner sells a UST system, the seller~~] shall[~~:~~

~~(a)~~] advise the new owner of the obligation to submit an amended[~~,~~] and signed[~~, and notarized~~] UST Facility Registration, DWM 4225[~~Form, DEP 7112~~], to the cabinet that indicates the change in ownership[~~; and~~

~~(b) Submit to the cabinet, within thirty (30) days after the transaction, a copy of the properly executed deed or other mutually executed legal document supporting the sale of the UST system, along with a letter indicating the UST facility name as registered with the cabinet, the UST facility location, and the agency interest number~~].

(8)[~~Section 4. Issuance of a Certificate of Registration and Reimbursement Eligibility.~~]Upon a determination by the UST Branch[~~cabinet~~] that the UST Facility Registration, DWM 4225[~~Form, DEP 7112~~], is complete and accurate, and the requirements of subsection (9) of this section are met, a written approval letter shall be issued by the UST Branch[~~the cabinet shall issue a Certificate of Registration and Reimbursement Eligibility, DEP 7113~~].

(9) Annual fees for each tank that is in the ground, and not permanently closed in accordance with 401 KAR 42:060, on July 1 of a year (July 1 through June 30), shall be as established in KRS 224.60-150, and:

(a) Owners or operators of USTs shall pay a thirty (30) dollar annual fee for each tank in the ground on July 1 of that year (July 1 through June 30);

(b) Payment shall be made according to instructions on the invoice from the cabinet stating the required payment;

(c) Payment shall be made thirty (30) days from the date on the invoice from the cabinet specifying the required payment;

(d) Payment submitted by check shall be made payable to the Kentucky State Treasurer with a note stating payment applies to UST tank fees;

(e) Annual fees shall not be due for years prior to the one beginning July 1, 1990; and

(f) Annual fees shall not be required for an unregistered tank newly discovered during permanent closure activities conducted in accordance with 401 KAR 42:060.

Section 3. Temporary Closure. (1) An amended UST Facility Registration, DWM 4225, shall be submitted in accordance with Section 2(4) of this administrative regulation.

(2) If a UST system is in temporary closure, the owner and operator shall continue operation and maintenance of corrosion protection and UST system release detection, in accordance with this section.

(a) If a UST system is empty, these operation and maintenance requirements shall not be required:

1. UST system release detection in accordance with Section 15 of this administrative regulation; and

2. Walkthrough inspections in accordance with Section 17 of this administrative regulation.

(b) Spill and overfill operation and maintenance testing and inspections shall not be required in accordance with Sections 8 and 9 of this administrative regulation.

(3) In addition to the requirements of subsection (2) of this section, if a UST system is in temporary closure for more than three (3) months, the owner and operator shall:

(a) Leave vent lines open and functioning; and

(b) Cap and secure all other lines, pumps, man ways, and ancillary equipment.

(4) If a UST system is in temporary closure for more than twelve (12) months, and does not comply with the requirements of subsections (2) and (3) of this section, the owner and operator of the UST system shall:

(a) Perform permanent closure in accordance with 401 KAR 42:060; or

(b) Request an extension of temporary closure in accordance with Section 22 of this administrative regulation and perform an assessment in accordance with Section 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060.

(5) If a UST system is in temporary closure for more than twelve (12) months, and complies with the performance standards for corrosion protection, spill containment and overfill prevention, and release detection in accordance with this administrative regulation, the owner and operator shall conduct tank and piping tightness tests, and any outstanding periodic test, prior to returning the UST system into use.

Section 4.[~~5. Notification Requirements. Requirements for notification shall be as established in 40 C.F.R. 280.22.~~

~~Section 6. Notice and Verification of Installation of Underground Storage Tank and Piping. (1)(a) Owners shall submit the Notice of Intent to Install Underground Storage Tank or Piping, DEP 8044, to the appropriate Division of Waste Management Regional Office at least fourteen (14) days prior to installation of an underground storage tank or an entire piping run to afford the division representative the opportunity to be present during installation.~~

~~(b) If a division representative fails to be present on the date scheduled for installation, the installation may proceed.~~

~~(2) After April 1, 2012, owners and operators shall submit a Verification and Compatibility Form, DEP 7115, to the cabinet within thirty (30) days after bringing a UST system, tank, or entire piping run into operation.~~

~~Section 7. Operational Training Requirements.~~

~~(1) An owner of a UST system registered, but not permanently closed, with the USTB prior to June 8, 2012 shall designate at least one (1) individual, who shall be trained in accordance with subsections (5) and (6) of this section by August 8, 2012, as the primary designated compliance manager (DCM) for the registered UST system.~~

~~(2) An owner of a UST system registered, but not permanently closed, on or after June 8, 2012 shall designate at least one (1) individual who shall be trained in accordance with subsections (5) and (6) of this section within sixty (60) days of registration, as the primary designated compliance manager (DCM) for the registered UST system.~~

~~(3) If the primary DCM no longer holds DCM status, the owner shall, within thirty (30) days, designate another individual as primary DCM who shall obtain training in accordance with subsections (5) and (6) of this section within thirty (30) days of designation. An owner:~~

~~(4)(a) Shall designate a primary DCM who may receive compliance related correspondence from the Underground Storage Tank Branch. An owner:~~

~~1. May designate themselves as the primary DCM; or~~

~~2. May designate another individual as the primary DCM; and~~

~~(b) May designate multiple individuals as an associate DCM for a UST system.~~

~~(5) Except as provided in this subsection, operational training, in accordance with this administrative regulation, shall be accomplished through use of the cabinet training system. Individuals unable to use or access the cabinet training system shall contact the Underground Storage Tank Branch for alternate designation and operational training procedures.~~

~~(6) Through completion of operational training in accordance with subsection (5) of this section, a DCM shall demonstrate an in-depth understanding of:~~

~~(a) UST system operation, maintenance, inspection, and testing requirements including, at a minimum: UST system spill prevention, overfill prevention, release detection, secondary containment, corrosion protection, product compatibility, and notification requirements as applicable to the current configuration of the UST system in accordance with this administrative regulation and 401 KAR 42:030, and 42:040;~~

~~(b) UST system recordkeeping requirements in accordance with 401 KAR 42:030 and 42:040;~~

~~(c) UST system release reporting, release response, temporary closure, permanent closure, initial abatement, and financial responsibility requirements in accordance with 401 KAR 42:050, 42:060, 42:070, and 42:090;~~

~~(d) All relevant equipment and its compliance with performance standards in accordance with 401 KAR 42:030 and 42:040;~~

~~(e) Requirements for delivery prohibition in accordance with 401 KAR 42:045; and~~

~~(f) UST facility employee training requirements in accordance with Section 8 of this administrative regulation.~~

~~(7) The owner shall ensure that the primary DCM successfully repeat the training annually, within twelve (12) months of the most recent training date.~~

~~Section 8. UST Facility Employee Training Requirements.~~

~~(1) The owner or operator shall ensure that all employees associated with the operation of the UST system receive training, by August 8, 2012 and every twelve (12) months thereafter, in the following areas:~~

~~(a) Response to an equipment alarms;~~

~~(b) Fire extinguisher operation;~~

~~(c) Spill and overfill response;~~

~~(d) Threat to the public or to the environment caused by spills or releases;~~

~~(e) Emergency shut-off procedures; and~~

~~(f) Contact telephone numbers in response to emergencies caused by a release or a threatened release from a UST system.~~

~~(2) The owner or operator shall maintain a list of all employees trained in accordance with this administrative regulation. The owner or operator shall maintain written records of all training documentation supplied to UST facility employees and shall make those records available to the cabinet upon request.~~

~~Section 9.~~] Performance Standards for New UST Systems. (1) Performance standards for new UST systems shall be as established in 40 C.F.R. 280.20, Section 4.0 of the UST System Compliance Manual, and this section.[~~; and~~]

(2) Noncorrodible piping requirements shall be as established in Section 14 of this administrative regulation.

(3) Owners and operators shall submit a UST System Compatibility Verification, DWM 4234, in accordance with Section 12 of this administrative regulation[~~In addition to the performance standards in subsection (1) of this section, UST systems installed after April 1, 2012 shall meet the performance standards of Section 11 of this administrative regulation~~].

Section 5[~~10~~]. Upgrading of Existing UST Systems. Upgrading requirements for existing UST systems shall be as established in 40 C.F.R. 280.21 and this section, except that:

(1) Interior lining shall not be an acceptable method of corrosion protection; and

(2) All interior lined steel tanks that had not, as of December 22, 2013, been upgraded with impressed current corrosion protection shall be permanently closed immediately in accordance with 401 KAR 42:060.

Section 6[~~11~~]. Double[~~-~~] Walled Tanks and Piping Requirements. (1) Requirements for double walled tanks and piping shall be as established in 40 C.F.R. 280.20 and the performance standards of this section.

(2) All tanks and piping[~~UST systems~~] installed, or UST systems changing from storage of a non-regulated substance to storage of a regulated substance, on or after April 1, 2012, shall comply with[~~be designed and manufactured with double-walled construction and shall meet~~] the requirements in Section 4 of this administrative regulation, and the UST System Compliance Manual[~~Installation and Maintenance Outline~~], except that the use of flow restrictors shall be in accordance with Section 9(3) of this administrative regulation[~~including continuous electronic interstitial monitoring~~].

(3)[~~(2)~~] All existing single[~~-~~] walled piping shall be permanently closed in accordance with 401 KAR 42:060[~~42:070~~] if an associated tank[~~UST~~] is permanently closed.

(4)[~~(3)~~] Owners and operators shall replace an entire piping run with[~~install~~] double[-] walled piping, in accordance with the UST System Compliance Manual,[~~Installation and Maintenance Outline~~] if fifty (50)[~~100~~] percent or more of the[~~of a~~] piping run, extending from the tank to the farthest dispenser or other end-use equipment, excluding connectors, is replaced.

(5)[~~(4)~~] Newly installed piping that is associated with a newly installed UST system dispenser, located in an area where a UST system dispenser did not previously exist, shall be designed and manufactured with double[-] walled construction and shall comply with[~~meet~~] the requirements in Section 4.0 of the UST System Compliance **Manual**[~~Installation and Maintenance Outline~~].

(6)[~~(5)~~] An existing tank that is[~~may be~~] removed shall comply with[~~and reinstalled if:~~

~~(a)~~] the[~~tank meets the~~] requirements of Section 4.0 of the UST System Compliance Manual if reinstalled[~~Installation and Maintenance Outline~~;

~~(b) The tank is inspected and tested by the equipment's manufacturer prior to being reinstalled; and~~

~~(c) The owner or operator provides a written certification from the manufacturer that the tank is suitable for reinstallation~~].

Section 7. Emergency Shutoff Valves (Shear Valves). (1) Shear valve requirements shall be as established in 40 C.F.R. 280.20(d) and this section.

(2) All pressurized piping systems that connect tanks to dispensers shall be installed with shear valves for each supply line at the base of each dispenser.

(3) The shear valves shall be rigidly anchored to the dispenser island or another appropriate anchoring point in a manner that allows the shear valve to close automatically in the event of significant impact to a dispenser.

(4) A shear valve found to be defective, inoperable, leaking, not functioning as designed by the manufacturer, or not rigidly anchored shall be immediately replaced or repaired in accordance with Sections 4 and 13 of this administrative regulation.

Section 8. Spill Containment Devices (Spill Buckets and Catch Basins). (1) Requirements for spill buckets and catch basins shall be as established in 40 C.F.R. 280.20(c), 280.30, 280.35, and this section.

(2) Owners and operators shall not allow regulated substances, liquids, or debris to accumulate in a spill containment device. Owners and operators shall immediately, upon discovery, remove all liquid accumulations and debris from a spill containment device.

(3) All spill containment devices installed on or after April 1, 2012 shall be double walled, liquid-tight, compatible with the substance being stored in the UST system, and installed in accordance with the manufacturer's instructions.

(4) All double walled spill containment devices installed on or after April 1, 2012 shall be tested at installation, and, at a minimum, every thirty-six (36) months thereafter, for liquid-tightness using a test method approved by the double walled spill containment device's manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or a method approved by the cabinet based upon site-specific conditions.

(5) All single walled spill containment devices, and all double walled spill containment devices, installed prior to April 1, 2012 shall be **immediately[~~initially~~]** tested**[~~no later than October 5,~~**

2019.] and, at a minimum, every thirty-six (36) months thereafter, for liquid-tightness using a test method approved by the spill containment device's manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or a method approved by the cabinet based upon site-specific conditions.

(6) The thirty-six (36) month testing requirements for double walled spill containment devices established in subsections (4) and (5) of this section shall not be required if the spill containment device interstice is monitored, at a minimum, every thirty (30) days and is documented as follows:

(a) For electronic devices capable of printing sensor readings, owners and operators shall obtain a record, at a minimum, every thirty (30) days; or

(b) For devices not capable of printing sensor readings, a monthly log shall be maintained and documented on the UST Visual Interstitial Log, DWM 4236.

(7) The thirty-six (36) month testing established in subsections (4) and (5) of this section shall be conducted within thirty (30) days of the requirements of subsection (6) of this section no longer being met.

(8) The test for liquid-tightness shall be documented on the UST Containment Device Test, DWM 4222 and shall be submitted to the UST Branch within:

(a) Seven (7) days of the test date for failing test results; or

(b) Thirty (30) days of the test date for passing test results.

(9) Owners and operators shall ensure immediate replacement or repair of a damaged, defective, or leaking spill containment device in accordance with Sections 4 and 13 of this administrative regulation.

Section 9. Overfill Prevention Requirements.

(1) Except as established in this section, overfill prevention device requirements shall be as established in 40 C.F.R. 280.20(c), 280.30, and 280.35.

(2) All overfill prevention devices installed on or after April 1, 2012 shall be installed in an extractable fitting to allow for inspection, maintenance, and testing of the device.

(3) Flow restrictors, also known as ball floats, shall not be an approved method for overfill prevention for **newly installed** UST systems**[installed after April 5, 2019]**.

(4) All overfill prevention devices shall be accessible for testing, shall be tested to ensure that overfill prevention equipment is set to activate at the levels established in 40 C.F.R. 280.20(c), and will activate if a regulated substance reaches that level. Overfill prevention devices shall be tested using a method approved by the device's manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or a method approved by the cabinet based upon site-specific conditions.

(5) All **existing** overfill prevention devices **not subject to the requirements in subsection 7 of this section[installed prior to April 5, 2019]**, shall be **immediately[initially]** tested**[prior to October 5, 2019.]** and at a minimum, every thirty-six (36) months thereafter.

(6)(a) All flow restrictors, also known as ball floats, shall **immediately** be removed and physically inspected to verify the ball and cage are intact and functioning properly**[by October 5, 2019]**. If this equipment is not functioning properly, the ball float shall be replaced with another form of overfill prevention in accordance with subsection (4) of this section.

(b) If the flow restrictor, also known as a ball float, cannot be evaluated in accordance with paragraph (a) of this subsection, an automatic shutoff device or a high level alarm, set to activate at ninety (90) percent capacity, shall be installed as a replacement of the existing ball float.

(7) All newly installed overfill prevention devices shall be tested at installation and, at a minimum, every thirty-six (36) months thereafter.

(8) The overfill prevention device test shall be documented on the UST Overfill Prevention Device Test, DWM 4232 and shall be submitted to the UST Branch within:

(a) Seven (7) days of the test date for failing test results; or

(b) Thirty (30) days of the test date for passing test results.

Section 10[~~12~~]. Under-Dispenser Containment (UDC) and Sump Requirements[~~Sumps~~].

(1) Requirements for UDC and sumps shall be as established in 40 C.F.R. 280.20, 280.35, and this section.

(2) A UST system dispenser installed on or after[~~Beginning~~] April 1, 2012,[~~all newly installed UST system dispensers,~~] located in an area where a UST system dispenser did not previously exist, shall have liquid-tight UDC installed in accordance with this section[~~administrative regulation~~] and Section 7.0 of the UST System Compliance Manual[~~Installation and Maintenance Outline~~].

(3)[~~(2)~~] If equipment below the shear valve, used to connect an existing UST system dispenser to the piping, is replaced in conjunction with a dispenser replacement[~~on or after April 1, 2012~~], liquid-tight UDC shall be installed or existing equipment shall comply with the requirements of this section [~~in accordance with this administrative regulation~~] and Section 7.0 of the UST System Compliance Manual[~~Installation and Maintenance Outline~~].

(4)[~~(3)~~] A UDC or sump[~~All sumps~~] containing product piping, installed or replaced[~~in conjunction with a UST system installed~~] on or after April 1, 2012, shall comply with[~~meet~~] the liquid-tight containment requirements in Section 7.0 of the UST System Compliance Manual[~~Outline.~~

~~(4) If replaced, a sump installed in accordance with subsection (3) of this section shall meet the liquid-tight containment requirements in the UST System Installation and Maintenance Outline~~].

(5) Owners and[~~or~~] operators shall maintain written records of all installations of UDC and sumps[~~and UDC~~], installed on or after April 1, 2012, for the operating life of the UDC or sump[~~or UDC~~]. These records shall be made available to the cabinet upon request.

(6) If a UDC or sump sensor monitoring device detects the presence of a liquid, the owner and[~~or~~] operator shall ensure that the UDC or sump shall be[~~is~~] immediately inspected.

(7) If one-eighth of an inch or greater of free product is discovered within a UDC or sump, the requirements of 401 KAR 42:060, Section 1, shall apply.

(8) Free product shall be recovered and disposed of in accordance with KRS Chapter 224.

(9) If liquid, other than free product, is discovered within a UDC or sump, the UDC or sump shall be further inspected to determine the source of liquid infiltration, the liquid shall be removed, and the UDC or sump shall be repaired, as necessary.

(10) Except as established in subsection (11) of this section, UDC and sumps installed on or after April 1, 2012 shall be tested for liquid-tightness at installation and, at a minimum, every thirty-six (36) months thereafter. To verify liquid-tightness, UDC and sumps shall be tested using a method approved by the device's manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory or a method approved by the cabinet based upon site-specific conditions.

(11) Testing of double walled UDC and sumps, required every thirty-six (36) months in accordance with subsection (10) of this section, shall not be required if the UDC or sump interstice is monitored, at a minimum, every thirty (30) days, and:

(a) For electronic devices capable of printing sensor readings, a record is obtained, at a minimum, every thirty (30) days; or

(b) For a device not capable of printing sensor readings, a monthly log is maintained and documented on the UST Visual Interstitial Log, DWM 4236.

(12) The thirty-six (36) month testing required in subsection (10) of this section shall be conducted within thirty (30) days of the requirements of subsection (11) of this section no longer being met.

(13) The liquid-tightness test shall be documented on the UST Containment Device Test, DWM 4222 and shall be submitted to the UST Branch within:

(a) Seven (7) days of the test date for failing test results; or

(b) Thirty (30) days of the test date for passing test results.[~~(a)1. If free product is discovered within a sump, a~~

~~suspected release shall be reported in accordance with 401 KAR 42:050; and~~

~~2. Free product shall be recovered and disposed of properly in accordance with KRS Chapter 224;~~

~~(b) If liquid, other than free product, is discovered within a sump, the sump shall be further inspected to determine the source of liquid infiltration and repaired as necessary.~~]

Section 11[~~13~~]. Corrosion Protection Operation and Maintenance[~~Emergency Shutoff Valves~~].

(1) Requirements for operation and maintenance of corrosion protection shall be as established in 40 C.F.R. 280.31 and this section[~~All pressurized piping systems that connect tanks to UST system dispensers shall be installed with emergency shutoff valves for each supply line at the base of each UST system dispenser~~].

(2) UST system components that routinely contain product and are regularly, or intermittently, in contact with soil, water, or backfill, shall be protected from corrosion[~~The emergency shutoff valves shall be rigidly anchored to the UST system dispenser island or another appropriate anchoring point in a manner that allows the emergency shutoff valve to close automatically in the event of severe impact to a UST system dispenser~~].

(3) Owners and operators with steel tanks or piping that have never had corrosion protection installed in accordance with subsection (2) of this section shall immediately remove all regulated substances and initiate permanent closure in accordance with 401 KAR 42:060[~~An emergency shutoff valve found to be defective, inoperable, leaking, not functioning as designed by the manufacturer, or not rigidly anchored shall be immediately repaired or replaced by the owner or operator~~].

(4) A tank or piping that has been left unprotected from corrosion, or that has been inadequately protected from corrosion, for over 365 days shall undergo an integrity assessment on the unprotected tank or piping, conducted by a contractor certified by the State Fire Marshal's Office in accordance with 815 KAR 30:060, utilizing a method certified by an independent third-party evaluator.

(a) Documentation of the integrity assessment and results, including the average tank metal thickness, shall be submitted to the cabinet on the UST Integrity Assessment, DWM 4228, within thirty (30) days of the assessment date.

(b) If the integrity assessment determines that the average thickness of the steel tank is less than seventy-five (75) percent of the tank's original metal thickness, the steel tank shall be permanently closed in accordance with 401 KAR 42:060.

(5) Owners and operators shall ensure that cathodic protection systems and evaluations shall be as established in this subsection of this section.

(a) A cathodic protection system evaluation shall be required within 180 days from the date of installation, repair, or modification of a cathodic protection system and, at a minimum, every thirty-six (36) months thereafter.

(b) If a cathodic protection system fails an evaluation, but the cathodic protection system evaluator determines that the failure may be attributable to adverse physical conditions related to the evaluation, and further determines that the system is otherwise in good working condition, then a re-evaluation shall be performed.

1. If a re-evaluation is performed, it shall be performed within thirty (30) days of the failing evaluation.

2. A re-evaluation shall only be performed once for a failed system evaluation.

3. If the cathodic protection system fails the re-evaluation, then repairs or modifications shall be completed as soon as practicable, but not more than ninety (90) days after the performance of the evaluation.

(c) If a cathodic protection system fails the evaluation, and it does not qualify for the thirty (30)[~~-~~] day re-evaluation period in paragraph (b) of this subsection, then repairs or modifications shall be completed as soon as practicable, but not more than ninety (90) days after the performance of the evaluation.

(d) If a cathodic protection system evaluation result is inconclusive, as a result of inconsistent remote and local potential readings, a corrosion expert shall evaluate the cathodic protection system and make a determination regarding cathodic protection system adequacy for the UST facility as soon as practicable, but not more than ninety (90) days after the performance of the evaluation.

(6) Impressed current cathodic protection system requirements shall also comply with the requirements established in this subsection of this section.

(a) Impressed current cathodic protection system design, or modifications to an impressed current corrosion protection system, shall only be conducted by a person qualified as a corrosion expert.

(b) Owners and operators shall complete the UST Rectifier Operational Record for Impressed Current Cathodic Protection Systems (60-day Log), DWM 4233, every sixty (60) days.

(c) The form shall be retained by the owner and operator for a minimum of three (3) years and made available to the cabinet upon request.

(7) Owners and operators shall maintain written records for the last two (2) cathodic protection evaluations.

(8) The owners and operators shall ensure that a cathodic protection tester completes, signs, and submits to the cabinet the cathodic protection system evaluation within thirty (30) days of the system evaluation. Results of the cathodic protection evaluation shall be documented on:

(a) A UST Galvanic Cathodic Protection Evaluation, DWM 4226, for a galvanic cathodic protection system; or

(b) A UST Impressed Current Cathodic Protection Evaluation, DWM 4227, for an impressed current cathodic protection system.

(9) A cathodic protection tester shall have completed a third-party corrosion protection tester training, which shall include, at a minimum:

(a) Basics of corrosion, underground corrosion, and corrosion prevention;

(b) Assessing physical conditions for corrosion potential;

(c) Hands on field experience in the testing of both impressed current and sacrificial anode systems, including using reference cells, taking remote readings for appropriate systems, how to read and understand a rectifier, taking measurements using -850 criterion, and typical and non-typical problems;

(d) Review of EPA's regulatory requirements for corrosion protection; and

(e) Review of standards and recommended practices from corrosion protection publications, as referenced in the note to 40 C.F.R. 280.31(b).

(10) Owners and operators shall ensure that individuals, qualified to perform cathodic protection system evaluations in accordance with subsection (9) of this section, submit to the cabinet upon request, documentation verifying that the training requirements have been met.

(11) All interior lined steel tanks that had not, as of December 22, 2013, been upgraded with external corrosion protection shall be permanently closed immediately in accordance with 401 KAR 42:060.

Section 12. Compatibility.

(1) Requirements for compatibility shall be as established in 40 C.F.R. 280.32, Section 4.0 of the UST System Compliance Manual, and this section.

(2) The owners and operators of UST systems installed on or after April 1, 2012 shall submit the UST System Compatibility Verification, DWM 4234, within thirty (30) days of bringing the UST system into use, in order to verify that the UST systems are compatible with the regulated substances stored.

(3) A UST System Compatibility Verification, DWM 4234, shall be submitted within thirty (30) days of the replacement of a UST system component, associated with a UST system installed on or after April 1, 2012, if the UST system component is no longer covered by a previously submitted UST System Compatibility Verification, DWM 4234.

(4) A UST System Compatibility Verification, DWM 4234, shall be submitted to the cabinet if the regulated substance stored is no longer covered by a previously submitted UST System Compatibility Verification, DWM 4234.

Section 13. Repairs.

(1) UST system repairs shall be as established in 40 C.F.R. 280.33 and this section.

(2) UST system repairs shall be performed by a contractor certified by the State Fire Marshal's Office, in accordance with 815 KAR 30:060.

(3) Owners and operators of UST systems shall ensure that repairs shall prevent releases due to structural failure or corrosion.

(4) Within thirty (30) days following the date of the completion of a repair to a tank, piping, or UST system component, owners and operators shall:

(a) Submit a UST System Compatibility Verification, DWM 4234, in accordance with Section 12 of this administrative regulation; and

(b) Conduct a test, adequate to detect a release from the repaired component of the UST system, in accordance with this administrative regulation.

Section 14. Noncorrodible[~~Nonmetallic~~] Piping.

(1) All new or replaced underground noncorrodible[~~nonmetallic~~] piping installed on or after April 1, 2012, shall comply with[~~meet~~] or exceed the Standard for Safety established by Underwriters Laboratories Inc. in Standard for Nonmetallic Underground Piping for Flammable Liquids - UL 971, as referenced in the note to 40 C.F.R. 280.20(b)(1).

(2) Owners and operators[~~The owner or operator~~] shall ensure repairs to noncorrodible[~~repair non-metallic~~] piping are performed in accordance with Section 13 of this administrative regulation,[~~401 KAR 42:030~~] or shall permanently close noncorrodible[~~non-metallic~~] piping in accordance with Section 6.0 of 401 KAR 42:060,[~~42:070~~] if the piping exhibits any of the conditions identified in UST Systems: Inspecting and Maintaining Sumps and Spill Buckets, EPA 510-R-05-001.

Section 15. Release Detection.

(1) General release detection requirements for petroleum UST systems shall be as established in 40 C.F.R. 280.40, 280.41, 280.42, 280.45, and this section.

(2) System integrity tests shall be performed in accordance with a method approved by the device's manufacturer, a code of practice developed by a nationally recognized association or independent testing laboratory, or an equally protective method approved by the cabinet based on site-specific conditions. Results shall be submitted for:

(a) A line tightness test on a UST Line Tightness Test, DWM 4229;

(b) An automatic line leak detector test on a UST Automatic Line Leak Detector Operational Test, DWM 4221;

(c) An electronic release detection equipment test on a UST Electronic Release Detection Equipment Test, DWM 4223; and

(d) A tank tightness test on a UST Tank Tightness Test, DWM 4235.

(3) Owners and operators shall immediately report failing results of a test performed in accordance with subsection (2) of this section to the cabinet as a suspected release in accordance with 401 KAR 42:060, Section 1.

(4) All test results shall be documented in accordance with subsection (2) of this section.

(a) Failing test results shall be submitted to the UST Branch within seven (7) days of the test date.

(b) Passing test results shall be submitted to the UST Branch within thirty (30) days of the test date.

(5) Owners and operators shall ensure that tests of tanks and piping for tightness, and operational tests of automatic line leak detectors, shall be conducted by a UST system equipment tester.

(6) A UST system equipment tester shall:

(a) Use testing equipment and methods that are certified, as of the time of testing, by an independent third-party evaluator;

(b) Have completed a training course conducted or endorsed by the manufacturer of the testing equipment;

(c) Maintain training credentials as established by the manufacturer of the testing equipment; and

(d) Provide a copy of their training credentials to the cabinet upon request.

(7) Failure to provide training credentials as established in subsection (6) of this section, upon written request from the cabinet, shall render the test results invalid.

(8) Methods of release detection for tanks and piping installed prior to April 1, 2012 shall be as established in 40 C.F.R. 280.43(b), (c), (d), (g), (h), and 280.44 and this section of this administrative regulation.

(a) A release detection method shall be certified, at the time of testing, by an independent third-party evaluator.

(b)1. Electronic interstitial monitoring shall be the primary method of release detection for all UST systems installed on or after April 1, 2012, in accordance with Section 9.0 of the UST System Compliance Manual.

2. Owners and operators shall only install electronic devices capable of printing sensor readings. Owners and operators shall obtain a record, at a minimum, every thirty (30) days, to verify that release detection is being performed and that releases have not occurred.

(c) Owners and operators of tanks and piping installed prior to April 1, 2012, for which interstitial monitoring is the primary method of release detection, shall:

1. If using electronic devices capable of printing sensor readings, obtain, at a minimum, every thirty (30) days a sensor reading to verify that release detection is being performed and that releases have not occurred; or

2. If using devices not capable of printing sensor readings, maintain a monthly log documented on the UST Visual Interstitial Log, DWM 4236, to verify that release detection is being performed and that releases have not occurred.

(d) Owners and operators of piping installed prior to April 1, 2012, for which interstitial monitoring is the primary method of release detection, shall comply with the requirements in paragraph (c) of this subsection and comply with the requirements for UDCs and sumps in Section 10 of this administrative regulation.

(e) All release detection records shall be retained for the most recent twelve (12) months, except:

1. Annual operational test results, which shall be retained for three (3) years; and

2. Tank tightness testing and line tightness testing results, which shall be retained until the next test is conducted.

(f) All electronic release detection monitoring equipment for UST systems shall be operationally tested at installation, and at a minimum, every twelve (12) months thereafter, using a test method approved by the manufacturer or a code of practice developed by a nationally recognized association or independent testing laboratory.

(g) Owners and operators shall not remove, alter, or disable release detection monitoring equipment, required to be maintained in accordance with this administrative regulation, in a manner that would render the equipment inaccurate or inoperable.

(9) Except as established in subsection (12) of this section, automatic line leak detectors (ALLD) for all pressurized piping systems shall be:

(a) Performance tested at installation, and at a minimum, every twelve (12) months thereafter, by a qualified individual that complies with the requirements of subsection (6) of this section;

(b) Performance tested through simulation of a release at the dispenser located furthest away from the ALLD or at the highest elevation above the ALLD; and

(c) Installed within a UST system during the test as it would be during normal use.

(10) Electronic line leak detectors, in addition to the requirements established in subsection (9), shall be:

(a) Tested to verify that the ALLD functions and shuts down the submersible turbine pump (STP);

(b) Capable of detecting a leak rate equivalent to three (3) gallons-per-hour at ten (10) pounds per square inch of line pressure; and

(c) Tested to verify that the STP relay switch is not malfunctioning in the permanent on position, which would prevent the electronic line leak detector from operating properly.

(11) Mechanical line leak detectors, in addition to the

requirements established in subsection (9), shall be:

(a) Tested to verify that the ALLD is capable of detecting a leak rate equivalent to three (3) gallons-per-hour at ten (10) pounds per square inch of line pressure while reducing the flow; and

(b) Tested to verify that the STP relay switch is not malfunctioning in the permanent on position, which would prevent the mechanical line leak detector from operating properly.

(12) ALLD requirements for all pressurized piping systems installed for emergency generators shall be as established in 40 C.F.R. 280.44(a).

Section 16. Operator Training Requirements.

(1) Operator training requirements for UST systems shall be as established in 40 C.F.R. 280 Subpart J and this section.

(2) A combined Class A and Class B operator shall comply with the requirements of both the Class A operator and the Class B operator as established in 40 C.F.R. 280.242.

(3) An owner of a UST system registered, but not permanently closed, **and not subject to the requirements in subsection 4 of this section[~~prior to April 5, 2019~~]**, shall immediately designate at least one (1) individual to be trained (if not previously designated and trained) within thirty (30) days of designation, as a combined Class A and Class B operator.

(4) An owner of a **newly installed, or newly acquired but not permanently closed,** UST system**[~~registered, but not permanently closed, on or after April 5, 2019,~~]** shall**,** within thirty (30) days of registration, designate at least one (1) individual to be trained, within thirty (30) days of designation, as a combined Class A and Class B operator.

(5) If an owner of a UST system no longer has a trained combined Class A and Class B operator, the owner shall immediately designate another individual as a combined Class A and Class B operator, and that designated individual shall complete operator training within thirty (30) days.

(6) The owner of a UST system shall ensure that:

(a) A trained combined Class A and Class B operator successfully retrains annually, within twelve (12) months of the most recent training date, unless otherwise approved by the cabinet on an individual basis;

(b) An operator training certificate, in accordance with this section, is submitted to the cabinet within thirty (30) days of completion; and

(c) An operator trained in accordance with this section, shall submit to the cabinet upon request, documentation verifying that the training requirements have been met.

Section 17. Walkthrough Inspections.

(1) Except as established in this section, requirements for periodic operation and maintenance walkthrough inspections shall be as established in 40 C.F.R. 280.36.

(2) Owners and operators of UST systems shall comply with the requirements and procedures for walkthrough inspections in Section 11.0 of the UST System Compliance Manual.

(3) Owners and operators shall ensure that the walkthrough inspections are completed by the owner, operator, or a combined Class A and Class B operator as established in Section 16 of this administrative regulation.

(4) Monthly walkthrough inspections shall be completed and documented on the UST Monthly Walkthrough Inspection, DWM 4230, **or another form containing, at a minimum, the same information,** for:

(a) Existing UST facilities, **not subject to the requirements of paragraphs (b) and (c) of this subsection, immediately[~~initially on or before April 5, 2019~~]**, and every thirty (30) days thereafter;

(b) Newly installed UST facilities, initially within thirty (30) days of registration, and every thirty (30) days thereafter; and

(c) UST facilities that have a change in ownership**[~~on or after April 5, 2019~~]**, within thirty (30) days of registration, and every thirty (30) days thereafter.

(5) Annual walkthrough inspections shall be completed and documented on the UST Annual Walkthrough Inspection, DWM 4220, **or another form containing, at a minimum, the same information,** for:

(a) Existing UST facilities, **not subject to the requirements of paragraphs (b) and (c) of this subsection, immediately[~~initially on or before April 5, 2019~~]**, and every twelve (12) months thereafter;

(b) Newly installed UST facilities, initially within thirty (30) days of registration, and every twelve (12) months thereafter; and

(c) UST facilities that have a change in ownership**[~~on or after April 5, 2019~~]**, within thirty (30) days of registration, or within twelve (12) months of the last annual walkthrough inspection, and every twelve (12) months thereafter.

(6) The annual walkthrough shall include replacing hand held release detection equipment, including tank gauge sticks, if the equipment is damaged or unable to function as originally designed.

(7) Walkthrough inspection forms required by subsections (4) and (5) of this section shall be retained for twelve (12) months after the last annual walkthrough inspection completion date.

Section 18. Delivery Prohibition.

(1) The cabinet shall **issue a Notice of Violation to the UST system's owner or operator[~~determine that a UST system is ineligible for delivery, deposit, or acceptance of regulated substances~~]**upon confirmation of any of these conditions:

(a) Spill prevention equipment is not installed, operational, or maintained;

(b) Overfill prevention equipment is not installed, operational, or maintained;

(c) Corrosion protection equipment is not installed, operational, or maintained;

(d) Release detection is not performed;

(e) Release detection equipment is not installed, operational, or maintained;

(f) Registration is not submitted or is not amended as necessary;

(g) Annual fee is past due by more than one (1) year; or

(h) A defective UST system component, confirmed by UST system testing, or visual observation by the cabinet, and for which the owner and operator have not documented a repair or replacement, has:

1. Caused a release of a regulated substance into the environment; or

2. Allowed a regulated substance to infiltrate into the interstitial space or secondary containment of the UST system.

(2)**[~~If a condition established in subsection (1) of this section exists, the cabinet shall issue a Notice of Violation to the UST system's owner or operator.~~**

[~~(3)~~]The Notice of Violation shall serve as notice to owners and operators of the cabinet's intent to invoke delivery prohibition for the UST system if the violation is not corrected within the time frame established in writing by the cabinet.

(3)[~~(4)~~] A second Notice of Violation shall be issued upon failure by an owner or operator to correct a condition cited in the initial Notice of Violation issued in accordance with subsection (3) of this section, or to request an extension in accordance with Section 22 of this administrative regulation.

(4)[~~(5)~~] Upon issuance by the cabinet of the second Notice of Violation, delivery prohibition shall be invoked and an authorized representative of the cabinet shall attach a delivery prohibition tag to the non-compliant UST system.

(5)[~~(6)~~] Owners and operators shall ensure that a delivery prohibition tag shall not be removed, defaced, altered, or destroyed.

(6)[~~(7)~~] Owners and operators shall not allow the delivery, deposit, or acceptance of regulated substances into a UST system if the cabinet has invoked delivery prohibition, unless directed in writing by the cabinet for the purpose of UST system testing.

(7)[~~(8)~~] Owners and operators shall notify the appropriate product deliverer if delivery prohibition has been invoked.

(8)[~~(9)~~] Except as established in subsection (12) of this section, delivery prohibition shall remain in effect until the non-compliant UST system is returned to compliance for the violation that caused delivery prohibition to be invoked.

(9)[~~(10)~~] The cabinet shall determine if a UST system is authorized to accept deliveries within two (2) business days

(Monday through Friday) of receipt of written notice from the owner or operator that the remedial measures established in the Notice of Violation have been completed.

(10)[~~(11)~~] If the violation has been corrected, the cabinet shall terminate delivery prohibition and remove an affixed delivery prohibition tag within two (2) business days (Monday through Friday).

(11)[~~(12)~~] If the division director or designee determines, in writing, that delivery prohibition at a UST facility would jeopardize the availability of, or access to, motor fuel in a rural and remote area, the cabinet shall defer the application of delivery prohibition for a UST system for a period not to exceed forty-five (45) days, unless an extension is approved in accordance with Section 22 of this administrative regulation by the division director or designee.

(12)[~~(13)~~] This **section[~~administrative regulation~~]** shall not apply to a regulated UST used to fuel an emergency backup generator.

Section 19. Recordkeeping. Requirements for recordkeeping shall be as established in 40 C.F.R. 280.34, 280.45, Section 12.0 of the UST System Compliance Manual, and this administrative regulation.

Section 20. Financial Responsibility.

(1) Requirements for financial responsibility shall be as established in 40 C.F.R. 280 Subpart H and this section of this administrative regulation.

(2) The Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) may be utilized as a mechanism to demonstrate financial responsibility in accordance with subsection (1) of this section, and the requirements as established in 401 KAR 42:250.

(3) Owners and operators shall certify, through signature on the UST Facility Registration, DWM 4225, that financial responsibility has been established and shall be maintained in accordance with this administrative regulation.

Section 21. Lender Liability. Requirements for lender liability shall be as established in 40 C.F.R. 280 Subpart I.

Section 22. Extensions.

(1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in a written directive[~~writing pursuant to this administrative regulation~~].

(2) The extension request shall be submitted in writing and received by the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if an extension would not have a detrimental impact on human health or the environment.

Section 23[~~16~~]. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "UST Annual Walkthrough Inspection", DWM 4220, **January 2019[~~August 2018~~]**[~~"UST Facility Registration Form", DEP 7112, November 2016~~];

(b) "UST Automatic Line Leak Detector Operational Test", DWM 4221, August 2018 [~~Address Change Form for Owners of UST Systems", DEP 0060, November 2016~~];

(c) "UST Containment Device Test", DWM 4222, **January 2019[~~August 2018~~]**;[~~"Certificate of Registration and Reimbursement Eligibility", DEP 7113, April 2011; and~~]

(d) "UST Electronic Release Detection Equipment Test", DWM 4223, August 2018[~~"UST System Installation and Maintenance Outline", November 2016~~];

(e) "UST Facility Owner Address Correction", DWM 4224, August 2018[~~"Notice of Intent to Install Underground Storage Tank or Piping", DEP 8044, September 2011~~];

(f) "UST Facility Registration", DWM 4225, August 2018 [~~"Installation Verification and Compatibility Form", DEP 7115, November 2016~~];

(g) "UST Galvanic Cathodic Protection Evaluation", DWM 4226, August 2018;[~~"Standards for Nonmetallic Underground Piping for Flammable Liquids", July 1, 2005, Underwriters Laboratories Inc. UL 971; and~~]

(h) "UST Impressed Current Cathodic Protection Evaluation", DWM 4227, August 2018;

(i) "UST Integrity Assessment", DWM 4228, August 2018;

(j) "UST Line Tightness Test", DWM 4229, **January 2019[~~August 2018~~]**;

(k) "UST Monthly Walkthrough Inspection", DWM 4230, **January 2019[~~August 2018~~]**;

(l) "UST Notice of Intent to Install Underground Storage Tank or Piping", DWM 4231, August 2018;

(m) "UST Overfill Prevention Device Test", DWM 4232, August 2018;

(n) "UST Rectifier Operational Record for Impressed Current Cathodic Protection Systems (60-day Log)", DWM 4233, August 2018;

(o) "UST System Compatibility Verification", DWM 4234, **January 2019[~~August 2018~~]**;

(p) "UST Tank Tightness Test", DWM 4235, August 2018;

(q) "UST Visual Interstitial Log", DWM 4236, August 2018;

(r) "UST System Compliance Manual", **January 2019[~~August 2018~~]**; and

(s) "UST Systems: Inspecting and Maintaining Sumps and Spill Buckets", EPA 510-R-05-001, May 2005.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at the Division of Waste Management's Web site at http://waste.ky.gov/ust or from www.epa.gov.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: January 10, 2019

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

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone (502) 782-6303, fax (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope of the underground storage tank (UST) program, including provisions for exclusions, registration requirements, annual fees, delivery prohibition, performance standards, operation and maintenance of UST systems, operator training, walkthrough inspection, requirements for demonstrating financial responsibility for corrective action, compensation of third parties for bodily injury and property damage, and lender liability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the scope of the UST program, including provisions for exclusions, registration requirements, annual fees, delivery prohibition, performance standards, operation, and maintenance of UST systems, operator training, walkthrough inspections, requirements for demonstrating financial responsibility for corrective action, compensation of third parties for bodily injury and property damage, and lender liability.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate UST by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105 requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. KRS 224.60-150 states that the cabinet shall levy and collect an annual fee of thirty (30) dollars per tank from the owners or operators of USTs for the purpose of funding the administration of

the UST Program. KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for UST systems as required by KRS 224.60-105, and collect annual fees in accordance with KRS 224.60-150.

(2) If 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 after comments will change this existing administrative regulation by clarifying confusing language in the regulation and in the material incorporated by reference, on delivery prohibition, exclusions, and emergency reporting; removing dates intended as the effective date of the regulation; and correcting typographical and organizational mistakes.

(b) The necessity of the amendment to this administrative regulation: This amendment after comments is necessary to make corrections and clarify the regulations according to the comments received.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate USTs by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105 requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. KRS 224.60-150 states that the cabinet shall levy and collect an annual fee of thirty (30) dollars per tank from the owners or operators of USTs for the purpose of funding the administration of the UST Program. KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes requirements for UST systems, implements the federal requirements for UST systems, and establishes registration procedures as required by KRS 224.60-105. In addition, this administrative regulation establishes annual fees as required by KRS 224.60-150.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the owner and operator of a UST facility, eligible company that contract with that owner or operator, a certified laboratory that processes samples collected at a UST facility, and a certified tank installer/remover. There are 3,216 UST facilities, 58 eligible companies that contract with those owners or operators, 37 certified laboratories that process samples collected at UST facilities, and 228 certified tank installers/removers.

(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: Owners and operators of UST facilities will have to comply with requirements for registration, annual fees, performance standards, compliance testing, operator training, walkthrough inspections, and financial responsibility. Certified installers/removers are responsible for installing UST systems in accordance with this administrative regulation. Other entities identified in question (3) will not have to take any actions as a result of this amendment as it pertains to the owner and operator.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Owners and operators of UST facilities will have an increase in operational testing costs for the new federally mandated compliance testing for spill containment and overfill prevention. The increase in cost for owners and operators to comply with additional testing is estimated to be $3,000 every three years. This cost is based on the average UST facility having three (3) tanks. There will also be cost increase estimates ranging from $1,000 to $2,500 for the initial overfill prevention testing/replacement, per tank for owners and operators that utilize flow restrictors (ball floats) as their method of overfill protection. Other entities identified in question (3) will not have costs associated as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to owners and operators include compliance with both the federal and state regulations, and a reduced risk for releases into the environment.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
Initially: There is no cost associated with implementing this amendment.

(a) On a continuing basis: There is no cost associated with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of tank fees, the PSTEAF, and grants from the U.S. Environmental Protection Agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation describes the procedures to submit annual tank fees thirty (30) dollar annual fee on a per tank basis mandated by KRS 224.60-105. This fee, formerly established within 401 KAR 42:200, remains unchanged and has been incorporated in 401 KAR 42:020 as part of the Governor's Red Tape Initiative to reduce and streamline regulations.

(9) TIERING: Is tiering applied? Tiering is not applied. KRS 224.60-150 bases the thirty (30) dollar annual fee on a per tank basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 any units of state or local government that own or operate a UST facility, as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100, 224.60-105, 224.60-150, 40 C.F.R. Part 280, Subparts A, B, C, D, G, H, I, J, K, Part 281, Subpart D, 42 U.S.C. 2011 – 2021, 2022 – 2286i, 2296a – 2297h-13, 6991 – 6991m

(3) Estimate the effect of this administrative regulation on the 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 administrative regulation will not affect the expenditures and revenues of a state or local government agency as the UST program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue for state or local government as the UST program is already in effect. Currently the division receives $287,700 in tank fees and $24.2 Million PSTEAF annually, and $1,925,333 Leaking Underground Storage Tank (LUST) Prevention and LUST Cleanup biennially in federal grants to administer the UST program.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. However, the division expects to receive $287,700 in tank fees and $24.2 Million PSTEAF annually, and $1,925,333 LUST Prevention and LUST Cleanup biennially in federal grants to administer the UST program for subsequent years.

(c) How much will it cost to administer this program for the first year? The UST program is already in effect and costs $25.5 Million to administer as a whole, including reimbursement to owners and operators for eligible corrective action costs.

(d) How much will it cost to administer this program for subsequent years? $25.5 Million, as a whole, including reimbursement to owners and operators for eligible corrective action costs.

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

Revenues (+/-): $1,925,333(biennially) in federal grant funding (LUST Prevention and LUST Cleanup), $287,700 tank fees, $24.2 Million PSTEAF.

Expenditures (+/-): $24.4 Million, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 10 C.F.R. Part 50, 40 C.F.R. Part 280, Subparts A, B, C, D, G, H, I, J, K, Part 281, Subpart D, 42 U.S.C. 2011 – 2021, 2022 – 2286i, 2296a – 2297h-13, 6991 – 6991m

2. State compliance standards. KRS 224.10-100, 224.60-105, 224.60-150

3. Minimum or uniform standards contained in the federal mandate. 10 C.F.R. Part 50, 40 C.F.R. Part 280, Subparts A, B, C, D, G, H, I, J, K, Part 281, Subpart D, 42 U.S.C. 2011 – 2021, 2022 – 2286i, 2296a – 2297h-13, 6991 – 6991m

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose stricter, additional, or different requirements than those required by the federal regulation, that are currently already in effect. Kentucky requires owners to notify the cabinet prior to an installation of an underground storage tank (UST) or entire piping run and requires documentation supporting the transfer of a UST system if requested. The allowance of upgrading steel tanks that have interior lining as the sole method of corrosion protection was removed. Interior-lined steel tanks that have not been upgraded with external corrosion protection must be permanently closed. Inventory control, vapor monitoring, and groundwater monitoring are not allowed as methods of release detection. Add an allowance for an integrity assessment if not protected from corrosion for more than 365 days. Include an allowance for an alternate approach for UST systems that use flow restrictors (ball floats) as overfill prevention by allowing owners and operators the option to install alternate methods of overfill protection. The amendment after comments does not further add any stricter, additional, or different requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements and are consistent with current administrative regulations. The cabinet notification of a UST or entire piping run installation allows for the formal photographic documentation of the components of the UST system as they are being installed. The cabinet may require supporting documentation for UST system ownership to protect the previous UST owner. In the current regulations, Kentucky removed the allowance for interior-lined tanks as the sole method of corrosion protection with a deadline to upgrade with another form of corrosion protection by December 22, 2013. In conjunction with this addition, all interior-lined steel tanks that have not been upgraded with external corrosion protection were required to be permanently closed. Historically, interior-lined tanks have been associated with catastrophic releases into the environment. Kentucky's current regulation has not allowed inventory control, vapor monitoring, or groundwater monitoring as methods of release detection since April 1, 2012. Historically, these three (3) methods of release detection have not adequately detected releases, and do not have the same level of protectiveness. Kentucky has included an option for the completion of an integrity assessment if not protected from corrosion for more than 365 days. This allows owners and operators to demonstrate compliance with performance standards without having to perform permanent closure. If an owner or operator utilizes flow restrictors (ball floats) as a method of overfill prevention, the owner or operator may install additional overfill prevention devices which will activate prior to the level of the existing flow restrictor, if they are able to do so. This allows the owners and operators the opportunity not to be required to evaluate the existing flow restrictor which may not be easily accessible for evaluation.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 42:060. UST system release[~~response~~] and corrective action requirements[~~for UST systems containing petroleum or hazardous substances~~].

RELATES TO: KRS 224.1, 224.1-400(11)[~~224.01~~], 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R.[~~Part~~] 280, Subparts E, F, G, 40 C.F.R. 281, Subpart D[~~F~~], 42 U.S.C. 6991-6991m[~~6991-6991c~~]

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks (USTs) by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of UST systems, change in service of UST systems, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum[~~public participation~~].

Section 1. Reporting for Releases, Spills, and Overfills[~~General Requirements~~].

(1) Reporting of confirmed or suspected releases shall be as established in 40 C.F.R. 280.50 and this section.

(2) Except as established in subsection (3) of this section, reporting and cleanup requirements for spills and overfills shall be as established in 40 C.F.R. 280.53.

(3) Confirmed releases, spills, and overfills shall be reported immediately, in accordance with KRS 224.1-400(11), to the cabinet's 24-hour Environmental Emergency Response Team number at (800) 928-2380 or (502) 564-2380.

(4) An unusual operating condition, or an unconfirmed UST system release, shall be reported immediately as a suspected release to the cabinet's 24-hour Environmental Emergency Response Team number at (800) 928-2380 or (502) 564-2380, unless:

(a) The UST system equipment or component is found not to be releasing regulated substances to the environment;

(b) Any defective UST system equipment or component is immediately repaired or replaced; and

(c) For secondarily contained UST systems, any liquid in the interstitial space not used as part of the interstitial monitoring method is immediately removed.

Section 2. Environmental Emergencies. During the course of an environmental emergency response, the Environmental Response Team shall have the authority to prevent delivery, deposit, storage, or dispensing of regulated substances and to require all actions necessary to protect human health and the environment.

Section 3. Off-Site Impacts. Requirements for Investigations due to off-site impacts shall be as established in 40 C.F.R. 280.51.

Section 4. Release Investigation and Confirmation.

(1) Procedures for suspected release investigation and confirmation shall be as established in 40 C.F.R. 280.52 and this administrative regulation.

(2) Owners and operators shall immediately investigate and test, within seven (7) days, any UST component that may contribute to a confirmed or suspected release, or an unusual operating condition required to be reported in accordance with Section 1 of this administrative regulation. Any defective UST component shall be repaired or replaced as soon as practical, but shall not exceed the time requirements established in 401 KAR 42:020.

(3) Owners and operators shall perform a site check, if directed by the cabinet, in accordance with Section 3.0 of the UST Corrective Action Manual.

Section 5. Release Response and Corrective Action.

(1) General requirements shall be as established in 40 C.F.R. 280.60 through 280.67.

(2) The procedures in the UST Corrective Action Manual shall be followed.

(3) In addition to the requirements established in 40 C.F.R. 280.62 and 280.63, the owner or operator shall complete and submit to the cabinet the UST Site Check Checklist, DWM 4268.

(4) In addition to the requirements established in 40 C.F.R. 280.63 and 280.65, the owner or operator shall complete and submit to the cabinet, when directed in writing, the[~~Section 2. Initial Response. Initial response requirements shall be as established in 40 C.F.R. 280.61.~~

~~Section 3. Initial Abatement Measures and Site Check. (1) Requirements for initial abatement and site check shall be as established in 40 C.F.R. 280.62 and 280.63.~~

~~(2) The following documents shall be used to meet the requirements of subsection (1) of this section~~]:

(a) UST Over-Excavation Checklist, DWM 4267[~~Release Response and Initial Abatement Requirements Outline~~];

(b) UST Site Investigation Checklist, DWM 4269[~~Check Outline~~];

(c) UST[~~Site Check Report Form, DEP 6082;~~

~~(d)~~] Vapor Intrusion Building Assessment Checklist, DWM 4271[~~, DEP 0058~~]; and

(d)[~~(e)~~] UST Vapor Intrusion Assessment Checklist, DWM 4270[~~, DEP 0057~~].

(5) In addition to the requirements established in 40 C.F.R. 280.66 and 280.67, the owner or operator shall complete and submit to the cabinet, when directed in writing, the[~~Section 4. Free Product Removal. Removal of free product shall be as established in 40 C.F.R. 280.64.~~

~~Section 5. Investigations for Soil and Groundwater Cleanup. (1) Investigations for soil and groundwater cleanup shall be as established in 40 C.F.R. 280.63 and 280.65.~~

~~(2) The following documents shall be used in meeting the requirements of subsection (1) of this section:~~

~~(a) Site Investigation Outline;~~

~~(b) Over-Excavation Report Form, DEP 4067; and~~

~~(c) Site Investigation Report Form, DEP 8049.~~

~~(3) Owners and operators shall undertake, as directed in writing by the cabinet, corrective actions necessary to ensure all domestic-use wells, domestic-use springs, and domestic-use cisterns impacted by a release from a regulated UST system meet the maximum contaminant levels specified in 401 KAR Chapter 8, applicable to the regulated substance stored.~~

~~Section 6. Corrective Action Plan. (1) Requirements for a corrective action plan shall be as established in 40 C.F.R. 280.66.~~

~~(2) The following documents shall be used to meet the requirements of subsection (1) of this section~~]:

(a) UST Corrective Action Certification, DWM 4263[~~Outline~~];

(b) UST Over-Excavation Checklist, DWM 4267[~~Report Form, DEP 4067~~];

(c) UST Groundwater Monitoring Checklist, DWM 4264[~~Corrective Action Report Certification, DEP 5040~~]; and

(d) UST Interim Corrective Action Checklist, DWM 4265[~~Monitoring Report Form, DEP 8045~~].

(6) The forms referenced in subsections (3) through (5) of this section shall be certified by a professional engineer or a professional geologist.

(7) Owners and operators shall undertake, as directed in writing by the cabinet, corrective actions necessary to ensure that contamination of all domestic-use wells, domestic-use springs, and domestic-use cisterns impacted by a release from a regulated UST system does not exceed the maximum contaminant levels, established in 401 KAR Chapter 8, applicable to the regulated substance stored.

Section 6. Permanent Closure or Change in Service. (1) Owners or operators performing permanent closure, or change in service, of a UST system shall comply with the requirements of Section 4.0 of the UST Corrective Action Manual.

(2)(a) This administrative regulation shall apply to an owner or operator of a UST system that has a UST system release confirmed after October 6, 2011, or has submitted a UST Notice of Intent to Permanently Close Underground Storage Tank or Piping, DWM 4266, that has been received by the appropriate Division of Waste Management regional office after October 6, 2011.

(b) With the exception of those UST systems whose requirements are established in paragraph (c) of this subsection, the owners and operators of a UST system that have, prior to October 6, 2011, either submitted a notice of intent to permanently close UST systems or reported a confirmed release to the cabinet, shall comply with the closure requirements in effect on the date the notice of intent to permanently close UST systems was received by the appropriate Division of Waste Management regional office or the confirmed release was reported to the cabinet. This paragraph shall not apply to the screening levels, which shall be determined in accordance with Section 7 of this administrative regulation.

(c) An owner or operator shall comply with the permanent closure requirements that were in place prior to April 18, 1994, for a UST system:

1. From which dispensing had ceased prior to April 18, 1994, regardless of the submittal date of the UST Notice of Intent to Permanently Close Underground Storage Tank System;

2. For which a UST Notice of Intent to Permanently Close Underground Storage Tank System was submitted after December 22, 1988, but prior to April 18, 1994; or

3. For which a confirmed release was reported prior to April 18, 1994, regardless of the submittal date of the UST Notice of Intent to Permanently Close Underground Storage Tank System.

(3)(a) Owners and operators shall notify the cabinet of intent to permanently close or make a change in service for a UST system a minimum of fourteen (14) days prior to beginning either the permanent closure or change in service in accordance with subsections (1) and (4) of this section.

1. The notice shall be completed and submitted on the UST Notice of Intent to Permanently Close Underground Storage Tank or Piping, DWM 4266.

2. Initial abatement action shall not alleviate owners and operators of the responsibility to notify the cabinet of the intent to permanently close a UST system.

3. The cabinet may specify a shorter notification time prior to

permanent closure if permanent closure activities are completed in response to actions conducted in accordance with Sections 2.0 and 3.0 in the UST Corrective Action Manual or actions directed by the Environmental Response Team.

(b) The UST Notice of Intent to Permanently Close Underground Storage Tank or Piping, DWM 4266, shall only be valid for twelve (12) months following submittal to the cabinet.

(4) An assessment at permanent closure or change in service shall be as established in the requirements of this subsection.

(a)1. In order to complete permanent closure, or a change in service of a UST system, owners and operators shall measure for the presence of a UST system release in accordance with Section 2.0 of the UST Corrective Action Manual.

2. Permanent closure activities shall be reported to the cabinet within ninety (90) days after UST system removal, closure in place, or change in service, in accordance with Section 4.7 of the UST Corrective Action Manual.

(b) If analytical results from permanent closure sampling indicate that further actions are necessary, those actions shall be performed at the written direction of the cabinet, and in accordance with Section 5.0 of the UST Corrective Action Manual.

(c) The handling, transportation, and disposal of a regulated substance from a UST system and contaminated soils, backfill materials, groundwater, cleaning liquids, and other similar materials generated during activities performed in accordance with this administrative regulation shall be performed in accordance with applicable requirements of 401 KAR Chapters 30 through 49.

(5) Applicability to previously closed UST systems shall be as established in 40 C.F.R. 280.73.

(6) Requirements for reporting and maintaining closure records shall be as established in this subsection.

(a)1. Owners or operators shall complete and submit to the cabinet a UST Closure Assessment Report Checklist, DWM 4262, within ninety (90) days of the date of permanent closure or a change in service, in accordance with Section 4.7 of the UST Corrective Action Manual.

2. The UST Closure Assessment Report Checklist, DWM 4262, shall be certified by a professional engineer or a professional geologist.

(b) Owners or operators shall complete and submit a UST Certification of Properly Cleaned USTs, DWM 4260, to the cabinet if a UST system is permanently closed by removal.

(c) Recordkeeping shall be as established in 40 C.F.R. 280.74.

Section 7. UST Facility Classification[~~Public Participation. Public participation shall be as established in 40 C.F.R. 280.67~~].

(1)(a) An owner or operator of a UST system for which a UST Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted, or a confirmed UST system release of petroleum was reported to the cabinet, on or after April 18, 1994, shall be required to classify the UST facility in accordance with this section.

(b) The owner or operator shall, if the UST system is permanently closed**[after April 5, 2019]**, or if directed by the cabinet, in order to appropriately classify the UST facility, submit a UST Classification Guide, DWM 4261, which shall be certified by a professional engineer or a professional geologist.

(c) Section 7.0 of the UST Corrective Action Manual shall be used in completing the UST Classification Guide, DWM 4261, for determining the classification of a UST facility.

(d) Section 7.0 of the UST Corrective Action Manual lists the applicable screening levels for petroleum constituents for each classification.

(2) An owner or operator of a UST system that either submitted a UST Notice of Intent to Permanently Close Underground Storage Tank System, or reported a confirmed UST system release of petroleum to the cabinet, or for which dispensing ceased, prior to April 18, 1994, shall not be required to classify the UST facility in accordance with this administrative regulation, unless:

(a)**[After April 5, 2019,]**The owner or operator reports an additional confirmed UST system release of petroleum to the cabinet; and

(b) The additional confirmed UST system release of petroleum is commingled with a UST system release of petroleum associated with the UST Notice of Intent to Permanently Close Underground Storage Tank System submitted prior to April 18, 1994, or the UST system release of petroleum reported to the cabinet prior to April 18, 1994.

(3) An owner or operator of a UST system that chooses**[, after April 5, 2019,]** to remove from the ground a UST system for which dispensing ceased prior to April 18, 1994, shall not be required to classify the UST facility in accordance with this administrative regulation.

(4) An owner or operator may submit, in accordance with 401 KAR 30:020, Section 2, a written request for a variance to the applicable screening levels established in accordance with this administrative regulation if:

(a) Prior to **October 6, 2011[April 5, 2019]**:

1. A UST Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted to the cabinet; or

2. A confirmed UST system release of petroleum was reported to the cabinet; and

(b) The allowable levels previously applicable to the UST facility are less stringent than the screening levels established by this administrative regulation.

(5) An owner or operator, required to classify a UST facility in accordance with this administrative regulation, shall utilize the screening levels established in Section 7.0 of the UST Corrective Action Manual, regardless of the date of permanent closure of the UST system.

Section 8. No Further Action Letter.

(1) A no further action letter shall be issued if the cabinet has determined that all applicable requirements in 401 KAR Chapter 42 have been met.

(2) Any unpaid annual fees due in accordance with 401 KAR 42:020, shall be paid in full prior to the cabinet issuing a no further action letter.

(3) If a threat to human health or the environment exists, related to a release or permanent closure for which a No Further Action letter was previously issued, the cabinet shall revoke the No Further Action letter and require necessary action in accordance with 401 KAR Chapter 42.

Section 9. Extensions.

(1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in a written directive[~~writing pursuant to this administrative regulation~~].

(2) The extension request shall be submitted in writing and received by the UST[~~Underground Storage Tank~~] Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may[~~shall~~] grant an extension, if an extension would not have a detrimental impact on human health or the environment.

(4) The cabinet shall not grant an extension for requirements established in Sections 1, 2, 4(1), or 4(2) of this administrative regulation[~~Section 9. No Further Action Letter. (1) If a UST facility has met all applicable requirements in 401 KAR Chapter 42, the cabinet shall issue a no further action letter.~~

~~(2) Any unpaid registration fees due in accordance with 401 KAR 42:200, shall be paid in full prior to the cabinet issuing a no further action letter.~~

~~(3) If a threat to human health or the environment exists, related to a release or permanent closure for which a No Further Action letter was previously issued, the cabinet shall revoke the No Further Action letter and require necessary action in accordance with 401 KAR Chapter 42~~].

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "UST Certification of Properly Cleaned USTs", DWM 4260, August 2018[~~"Release Response and Initial Abatement Requirements Outline", November 2016~~];

(b) "UST Classification Guide", DWM 4261, August 2018[~~"Site~~

~~Check Outline", November 2016~~];

(c) "UST Closure Assessment Report Checklist", DWM 4262, August 2018[~~"Site Check Report Form", DEP 6082, November 2016~~];

(d) "UST Corrective Action Certification", DWM 4263, August 2018[~~"Vapor Intrusion Building Assessment", DEP 0058, November 2016~~];

(e) "UST Groundwater Monitoring Checklist", DWM 4264, August 2018[~~"Vapor Intrusion Assessment", DEP 0057, November 2016~~];

(f) "UST Interim Corrective Action Checklist", DWM 4265, August 2018[~~"Site Investigation Outline", November 2016~~];

(g) "UST Notice of Intent to Permanently Close Underground Storage Tank or Piping", DWM 4266, August 2018[~~"Over-Excavation Report Form", DEP 4067, November 2016~~];

(h) "UST Over-Excavation Checklist", DWM 4267, August 2018[~~"Site Investigation Report Form", DEP 8049, November 2016~~];

(i) "UST Site Check Checklist", DWM 4268, **January 2019**[~~**August 2018**~~][~~"Corrective Action Outline", November 2016~~];

(j) "UST Site Investigation Checklist", DWM 4269, August 2018;[~~"Corrective Action Report Certification", DEP 5040, November 2016; and~~]

(k) "UST Vapor Intrusion Assessment Checklist", DWM 4270, August 2018;

(l) "UST Vapor Intrusion Building Assessment Checklist", DWM 4271, August 2018; and

(m) "UST Corrective Action Manual", **January 2019**[~~**August 2018**~~][~~"Corrective Action Monitoring Report Form", DEP 8045, November 2016~~].

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may[~~is~~] also be obtained at[~~available on~~] the Division of Waste Management's Web site at http://waste.ky.gov/ust.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: January 10, 2019

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

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone: (502) 782-6303, fax: (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for underground storage tank (UST) system release reporting, release response, permanent closure of a UST system, change in service of a UST system, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for UST system release reporting, release response, permanent closure of a UST system, change in service of a UST system, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate USTs by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for a UST system. This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of a UST system, change in service of a UST system, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for a UST system as required by KRS 224.60-105.

(2) If 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 after comments will change the existing administrative regulation by: clarifying monitoring well construction requirements, correcting a typographical error, removing dates that were intended to be the same as the effective date of the administrative regulation, and correcting an erroneous date.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of a UST system, change in service of a UST system, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum. The amendment after comments is necessary to clarify requirements and correct errors.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate USTs by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of UST systems, change in service of UST systems, site characterization, corrective action, and UST facility classification, including screening levels of UST systems containing petroleum. The amendment after comments is necessary to clarify requirements and correct errors.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of UST systems, change in service of UST systems, site characterization, corrective action, and UST facility classification, including screening levels of UST systems containing petroleum as required by KRS 224.60-105.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect an owner and operator of a UST facility, eligible companies that contract with those owners or operators, certified laboratories that process samples collected at underground storage tank facilities, and certified tank installers/removers. There are 3,216 UST facilities, 58 eligible companies that contract with those owners or operators, 37 certified laboratories that process samples collected at UST facilities, and 228 certified tank installers/removers.

(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: An owner and operator of a UST facility will have to comply with requirements for release reporting and corrective action. Eligible companies, under contract with an owner or operator, will be performing corrective actions as directed by the cabinet. Certified laboratories will be processing samples collected

during corrective action activities at underground storage tank facilities. Certified tank installers/removers are responsible for performing the permanent closure of a UST system.

(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 increase nor decrease in cost for complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to an owner and operator include compliance with both the federal and state regulations. The owner or operator will receive a no further action letter in relation to the release once the cabinet has determined that all applicable requirements in 401 KAR Chapter 42 have been met.

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

(a) Initially: There is no cost associated with implementing this amendment.

(b) On a continuing basis: There is no cost associated with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of tank fees, the PSTEAF, and grants from the U.S. Environmental Protection Agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied. All UST systems are required to comply with the requirements established in this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact state or local governments that own or operate an underground storage tank (UST) facility as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.1, 224.1-400(11), 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R. 280, Subparts E, F, G, 40 C.F.R. 281, Subpart D, 42 U.S.C. 6991 – 6991m

(3) Estimate the effect of this administrative regulation on the 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 administrative regulation will not affect the expenditures and revenues of a state or local government agency as the UST program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. Currently the division receives $287,700 in tank fees and $24.2 Million PSTEAF annually, and $1,925,333 Leaking Underground Storage Tank (LUST) Prevention and LUST Cleanup biennially in federal grants to administer the underground storage tank program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. However, the division expects to receive $287,700 in tank fees and $24.2 Million PSTEAF annually, and $1,925,333 Lust Prevention and LUST Cleanup biennially in federal grants to administer the underground storage tank program for subsequent years.

How much will it cost to administer this program for the first year? The underground storage tank program is already in effect and costs $25.5 Million to administer as a whole, including reimbursement to an owner and operator for eligible corrective action costs.

(c) How much will it cost to administer this program for subsequent years? $25.5 Million, as a whole, including reimbursement to an owner and operator for eligible corrective action costs.

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

Revenues (+/-): $1,925,333(biennially) in federal grant funding (LUST Prevention and LUST Cleanup), $287,700 tank fees, $24.2 Million PSTEAF.

Expenditures (+/-): $24.4 Million, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280, Subparts E, F, G, 40 C.F.R. 281, Subpart D, 42 U.S.C. 6991 – 6991m

2. State compliance standards. KRS 224.10-100, 224.60-105, 224.60-137

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280, Subparts E, F, G, 40 C.F.R. 281, Subpart D, 42 U.S.C. 6991 – 6991m

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation does impose additional or different requirements than those required by the federal regulation. Kentucky requires a Professional Engineer (P.E.) or Professional Geologist (P.G.) registered/licensed in the state of Kentucky to certify the assessment reports. Groundwater or vapor monitoring in lieu of an assessment at permanent closure is not an option for an owner and operator.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The current regulation requires a P.E. or P.G. to certify the assessment reports based on the nature of the corrective action work performed, including recommendations and conclusions. Kentucky's current regulation has not allowed inventory control, vapor monitoring, or groundwater monitoring as methods of release detection since April 1, 2012. Historically, these three (3) methods of release detection have not adequately detected releases and do not have the same level of protectiveness as allowed methods of release detection.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement[~~procedures~~].

RELATES TO: KRS 61.878(1)(c), 224.1-400, 224.1-405, 224.10-410, 224.10-420, 224.10-430, 224.10-440, 224.10-470, 224.60-110[~~224.01-400, 224.01-405~~], 224.60-120, 224.60-130, 224.60-135, 224.60-140, 224.60-150, 40 C.F.R. 280, Subpart H

STATUTORY AUTHORITY: KRS 224.10-100(28), 224.60-120(6), 224.60-130(1)(a) through (e)[~~224.60-130 (1)(a)-(e)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the Petroleum Storage Tank Environmental

Assurance Fund (PSTEAF). KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.60-120(6) requires the cabinet to establish administrative regulations to implement the requirements for financial responsibility of petroleum storage tank owners or operators. This administrative regulation establishes procedures to administer the PSTEAF, payment for third-party claims, financial audits, eligible company and partnership certification, laboratory certification, and facility ranking.

Section 1. Applicability.

(1) This administrative regulation establishes the eligibility requirements and procedures for a petroleum storage tank owner or operator to make application, become an eligible applicant, and receive reimbursement from the cabinet for the cost of corrective action due to a release from a petroleum storage tank[. Federal and state-owned facilities shall not be eligible for reimbursement from the PSTEAF].

(2) Federally-owned facilities shall not be eligible for reimbursement from the PSTEAF in accordance with KRS 224.60-115(16).

(3) Eligible reimbursement for actions directed by the Underground Storage Tank (UST) Branch prior to October 6, 2011 shall be made in accordance with the reimbursement administrative regulations in effect at the time work was performed[401 KAR Chapter 42 in effect prior to October 6, 2011].

Section 2. Application for Assistance for Reimbursement.

(1) A petroleum storage tank owner or operator seeking reimbursement from[either] the Financial Responsibility Account (FRA) or the Petroleum Storage Tank Account (PSTA), shall:

(a) [Have a Certificate of Registration and Reimbursement Eligibility.]In accordance with 401 KAR 42:020, submit to the UST Branch a complete and accurate UST Facility Registration, DWM 4225, incorporated by reference in 401 KAR 42:020[or a Certificate of Eligibility, issued prior to September 13, 2006, which indicates that the petroleum storage tank owner or operator is eligible to participate in the Petroleum Storage Tank Environmental Assurance Fund for the associated UST Facility];

(b) Complete and submit a UST Application for Assistance for PSTEAF, DWM 4282, including all required attachments;

(c) Enter into and submit,[Apply for assistance.

1. A petroleum storage tank owner or operator seeking reimbursement, who has not submitted an Application for Assistance, shall submit a completed Application for Assistance, DEP 6063, including all required attachments.

2. A petroleum storage tank owner or operator shall certify in the Application for Assistance that:

a.(i)] a contract[has been entered into and submitted] in accordance with Section 3 of this administrative regulation;

(d)1. Document that[and

(ii)] a release requiring corrective action from a petroleum storage tank [an eligible facility] has occurred [and has been reported to the cabinet]; or

2[b]. Receive a written directive from the UST[Underground Storage Tank] Branch[has been issued for the performance of a site check], in accordance with 401 KAR 42:060[42:050]; and

(e) Subrogate, to the cabinet, the rights to recover costs of corrective action, for which the cabinet has compensated the person seeking reimbursement, from the person responsible or liable for the release in accordance with KRS 224.60-140(14)(c)[(c) Provide a written notice, in accordance with 401 KAR 42:070, to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement].

(2) If an application for assistance is found deficient by the UST[Underground Storage Tank] Branch, a written correspondence[deficiency letter], outlining the deficiencies, shall be issued to the applicant.

(a) Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the application for assistance to be denied.

(b)[If an extension beyond the thirty (30) days is necessary, the extension request shall be submitted in writing to the Underground Storage Tank Branch prior to the deadline.

(c)] Denial of the application for assistance shall not prevent the petroleum storage tank owner or operator from reapplying if the requested documentation becomes available.

(3) If the applicant complies with[meets] the requirements of subsection (1) of this section, the UST[Underground Storage Tank] Branch shall[:

(a)] determine the eligibility of the applicant to receive reimbursement from either the FRA or PSTA, in accordance with Section 4 of this administrative regulation, and shall issue a written approval of[Financial Responsibility Account or the Petroleum Storage Tank Account according to Section 4 of this administrative regulation; and

(b) Approve] the application for assistance.

(4) Reimbursement in accordance with[pursuant to] an approved application for assistance shall be restricted to:

(a) Actions directed in writing by the UST[Underground Storage Tank] Branch; and

(b) Initial and immediate response[abatement] actions taken at a facility[in accordance with Section 2 of the Release Response and Initial Abatement Requirements Outline, incorporated by reference in 401 KAR 42:060, subject to the reimbursement provisions of Section 2.14 of the Contractor Cost Outline], prior to a written directive from the UST[Underground Storage Tank] Branch, and not declared an environmental emergency by the cabinet, and subject to the reimbursement provisions established in Section 3.13 of the UST PSTEAF Reimbursement Rates;

(5) If the petroleum storage tank owner or operator seeking reimbursement from the PSTEAF changes and the new petroleum storage tank owner or operator assumes responsibility for the compliance with 401 KAR Chapter 42, the new petroleum storage tank owner or operator shall submit an amended:

(a)[Submit an amended] UST Facility Registration, DWM 4225, incorporated by reference in 401 KAR 42:020[Form, DEP 7112], in accordance with 401 KAR 42:020, Section 2(4)[4] indicating a change in petroleum storage tank owner or operator; and

(b)[Submit an amended] UST Application for Assistance for PSTEAF, DWM 4282[, DEP6063], including all required attachments, within thirty (30) days of the transfer of the[facility] petroleum storage tank.

(6) To maintain eligibility for participation in and reimbursement from the PSTEAF, the petroleum storage tank owner or operator shall maintain compliance with the requirements of this administrative regulation.

Section 3. Contracts.

(1) A petroleum storage tank owner or operator shall obtain a contract from an[the] eligible company or partnership to be eligible for reimbursement from the cabinet for the performance of corrective action or site check activities at[for] a facility.

(2) In accordance with KRS 224.60-130(1)(a), an eligible company or partnership shall not require payment from an applicant in an amount greater than the reimbursable amount.

(3) The contract shall be executed prior to commencing corrective action or site check activities.

(4)[(3)] If a contract is revised, a copy of the revised contract shall be submitted to the UST[Underground Storage Tank] Branch within thirty (30) days of the revised contract execution.

(5)[(4)] If a contract is terminated and a new contract is executed:

(a)[A notarized Affidavit of Termination of Contract, DEP 0061 by] The petroleum storage tank owner or operator approved for PSTEAF reimbursement shall submit a notarized UST Affidavit of Termination of PSTEAF Contract, DWM 4280,[be submitted] to the UST[Underground Storage Tank] Branch; and

(b) A copy of the newly executed contract shall be submitted to the UST[Underground Storage Tank] Branch within thirty (30) days of contract execution, and prior to the commencing of corrective action or site check activities by the new eligible company or partnership.

Section 4. Account Placement.

(1) When participating in the FRA, a petroleum storage tank owner or operator shall be eligible to receive reimbursement for corrective action costs, site check[~~checks~~] activities directed in writing by the UST[~~Underground Storage Tank~~] Branch after September 13, 2006, that do not confirm contamination above applicable screening levels, and third-party claims in accordance with Section 12 of this administrative regulation[~~401 KAR 42:300~~], incurred on or after April 9, 1990,[~~from the Financial Responsibility Account~~] if the petroleum storage tank owner or operator has [~~satisfied the following requirements~~]:

(a) Registered the petroleum storage tanks with the UST[~~Underground Storage Tank~~] Branch, in accordance with 401 KAR 42:020, prior to the release requiring corrective action or site check activities;

(b)[~~Received a Certificate of Registration and Reimbursement Eligibility for the petroleum storage tanks, pursuant to 401 KAR 42:020, or a Certificate of Eligibility issued prior to September 13, 2006 prior to the release requiring corrective action or site check activities;~~

~~(c)~~] Maintained UST system release detection as required by 401 KAR 42:020[~~42:040~~]. A petroleum storage tank permanently or temporarily closed in accordance with 401 KAR 42:060[~~42:070~~], shall have been in[~~maintained~~] compliance with UST system release detection requirements prior to the permanent or temporary closure of the system;

(c)[~~(d)~~] Maintained corrosion protection for the petroleum storage tank system in accordance with 401 KAR 42:020[~~42:030 and 42:070~~];

(d)[~~(e)~~] Maintained overfill and spill prevention for the petroleum storage tank system in accordance with 401 KAR 42:020[~~42:030~~] for those tanks in use[~~operation~~] after December 22, 1998;

(e)[~~(f)~~] Reported the release to the cabinet in accordance with KRS 224.1-400(11)[~~224.01-400~~] and 401 KAR 42:060[~~42:050~~];

(f)[~~(g)~~] Performed initial abatement procedures as required by the UST Corrective Action Manual[~~Release Response and Initial Abatement Requirements Outline~~], incorporated by reference in 401 KAR 42:060; and

(g)[~~(h)~~] Submitted to the cabinet[~~Filed~~] a UST Notice of Intent to Permanently Close Underground Storage Tank System, DWM 4266[~~DEP 7114~~], incorporated by reference in 401 KAR 42:060[~~42:070~~], if applicable[~~, with the cabinet to permanently close the petroleum storage tank at the facility or to make a change in service in accordance with 401 KAR 42:070~~].

(2) A petroleum storage tank owner or operator that[~~who~~] is not eligible for participation in the FRA[~~Financial Responsibility Account~~], shall be eligible for reimbursement from the (PSTA)[~~Petroleum Storage Tank Account~~] for corrective action costs, incurred on or after April 9, 1990, or site check activities directed in writing by the UST[~~Underground Storage Tank~~] Branch after September 13, 2006, that do not confirm contamination above applicable screening levels, if the petroleum storage tank owner or operator has registered the petroleum storage tanks with the UST Branch in accordance with 401 KAR 42:020[~~satisfied the following requirements:~~

~~(a) Registered the petroleum storage tanks with the Underground Storage Tank Branch in accordance with 401 KAR 42:020;~~

~~(b) Filed a Notice of Intent to Permanently Close Underground Storage Tank System, DEP 7114, incorporated by reference in 401 KAR 42:070, with the cabinet to permanently close the petroleum storage tanks a the facility, if applicable, or to make a change in service, if applicable, in accordance with 401 KAR 42:070; and~~

~~(c) Reported a release to the cabinet in accordance with KRS 224.01-400 and 401 KAR 42:050.~~

~~(3) Facilities placed in the Petroleum Storage Tank Account shall not be eligible for third-party coverage~~].

Section 5. Entry Level[~~to the Financial Responsibility Account and Petroleum Storage Tank Account~~].

(1) For facilities with releases confirmed after September 13, 2006, a petroleum storage tank owner's or operator's entry level shall be equal to the financial responsibility requirement, as established in KRS 224.60-120(1), and shall be deducted from the eligible reimbursement except as established[~~provided~~] in subsection (3) of this section.

(2) An entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement through the FRA and PSTA[~~Financial Responsibility Account or Petroleum Storage Tank Account~~] in accordance with subsection (1) of this section, regardless of a petroleum storage tank owner's participation in the Small Owner Tank Removal Account (SOTRA) in accordance with 401 KAR 42:330.

(3) The entry level shall not be deducted from the eligible reimbursement if the petroleum storage tank owner or operator performs:

(a) A site check[~~is~~] directed by the UST[~~Underground Storage Tank~~] Branch[~~to perform a site check,~~] in accordance with 401 KAR 42:060, that does not confirm contamination requiring further action in accordance with 401 KAR Chapter 42;

(b) An initial and immediate response action in accordance with Section 2.2 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(c) Optional soil removal outside the excavation zone during permanent closure in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(d) Transportation and disposal of excavated material contaminated above applicable screening levels within the excavation zone during permanent closure in accordance with 401 KAR 42:060; or

(e) Transportation and disposal of pit water contaminated above applicable screening levels within the excavation zone during permanent closure in accordance with the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060.

(4) Upon request by the petroleum storage tank owner or operator, the UST[~~Underground Storage Tank~~] Branch shall reimburse, upon final payment, twenty-five (25) percent of the entry level if the petroleum storage tank owner or operator has:

(a) Completed corrective action at the facility within:

1. 180 days from the discovery of the release, for soil contamination only; or

2. Twenty-four (24) months from the discovery of the release, for groundwater contamination only or both soil and groundwater contamination; and

(b) Been issued[~~Received~~] a no further action letter without additional measures being required for an occurrence associated with the submittal of an application for assistance.

(5) The applicable entry level shall be equal to the financial responsibility requirement as established[~~determined,~~] in[~~accordance with~~] KRS 224.60-120(1), based on the number of tanks owned or operated by the petroleum storage tank owner or operator at the time of the occurrence associated with the submittal of an application for assistance.

Section 6. Newly Discovered UST[~~Underground Storage Tank~~] Systems.

(1) A newly discovered UST[~~underground storage tank~~]system encountered at a facility during the performance of corrective action due to a release from a registered petroleum storage tank shall not affect a petroleum storage tank owner's or operator's account placement eligibility.

(2) The number of newly discovered tanks shall not increase the entry level of the petroleum storage tank owner or operator.

Section 7.[~~Procedures for~~] Establishing the Reimbursable Amount for a Written Directive[~~issued by the Underground Storage Tank Branch~~].

(1) The reimbursable amount established for the completion of a written directive issued by the UST[~~Underground Storage Tank~~] Branch shall be based on[~~the following~~]:

(a) The formulated task rates established in Section 3.0[~~2.0~~] of the UST PSTEAF Reimbursement Rates[~~Contractor Cost Outline~~]; and

(b) For a specific task that does not have a formulated task rate in the UST PSTEAF Reimbursement Rates, a cost estimate shall be submitted by the owner or operator[~~, in accordance with subsection (2) of this section, for a specific task, including applicable materials, that does not have a formulated task rate in the Contractor Cost Outline; or~~

~~(c) A combination of (a) and (b) of this subsection.~~

(2) ~~If directed in writing by the Underground Storage Tank Branch, a cost estimate shall be submitted by the owner or operator, for a specific task that does not have a formulated task rate~~]. The cost estimate shall include:

(a)[~~Include~~] A cost itemization to complete the individual task[~~for which a formulated task rate has not been established if the task is being completed by the eligible company or partnership or by a subcontractor which shall be calculated~~] using those personnel and equipment rates established in Section 5.0 of the UST PSTEAF Reimbursement Rates[~~3 of the Contractor Cost Outline~~] applicable to individual components of the task;

(b)[~~Include~~] Three (3) bids from suppliers or manufacturers[~~manufactures~~] of corrective action equipment for individual equipment purchase or rental, exceeding $3,000, if applicable, containing a description of the equipment [~~to be purchased or rented~~] provided by the supplier or manufacturer [~~for new equipment purchased~~]; and

(c)[~~Include~~] An estimate for materials to be purchased, if applicable[~~;~~

~~(d) Be submitted on the Cost Estimate form, DEP 6090; and~~

~~(e) Include the required supporting documentation identified within the Cost Estimate form, DEP 6090~~].

(3) The UST[~~Underground Storage Tank~~] Branch shall establish the reimbursable amount in a written directive[~~,~~] based on the formulated task[~~applicable~~] rates established in the UST PSTEAF Reimbursement Rates[~~Contractor Cost Outline~~] and applicable, approved, cost estimates[~~the completed Cost Estimate form, DEP 6090, submitted, if applicable, establish the reimbursable amount in a written directive~~].

(4) The cabinet shall attach to the written directive[~~the following~~]:

(a) An itemization of the reimbursable amount; and

(b) A UST Claim Request for Directed Actions, DWM 4286.[~~The USTB Written Directive Claim Request form, DEP 6091;~~]

(5) The issuance of a written directive by the UST[~~Underground Storage Tank~~] Branch shall, subject to the provisions of Section 8 of this administrative regulation, constitute an obligation and guarantee of payment of the reimbursable amount identified within a written directive, in accordance with KRS 224.60-140(5).

(6) Upon compliance with Section 8 of this administrative regulation, the reimbursable amount established by the UST[~~Underground Storage Tank~~] Branch in a written directive shall, as applicable and in accordance with the UST PSTEAF Reimbursement Rates[~~Contractor Cost Outline~~], be adjusted as established in this subsection.[~~follows upon compliance by the eligible applicant with Section 8 of this administrative regulation:~~]

(a) The reimbursable amount for over-excavation identified in the written directive issued by the UST[~~Underground Storage Tank~~] Branch is an estimate of the tonnage to be removed and shall be based on the volume and density of material in the proposed excavation area. The UST[~~Underground Storage Tank~~] Branch shall convert cubic yardage to tons using a density of one and one-half (1.5) tons per cubic yard. The reimbursable amount shall be adjusted based on:

1.a. The soil tonnage verified through the submittal of weigh tickets; or

b. If soil is disposed of at a permitted disposal facility incapable of providing weigh tickets, a calculation of the tonnage associated with the actual area and depth of over-excavation, not to exceed the tonnage estimate identified in the written directive from the UST[~~Underground Storage Tank~~] Branch; and

2. The actual quantity of water encountered during an over-excavation that is removed, transported and disposed of, contingent upon analytical confirmation that contaminant levels of the water exceed the applicable groundwater screening levels, and[~~reimbursement for the removal, transportation, and disposal of water encountered within the over-excavation shall be contingent upon analytical confirmation that contaminant levels within the water exceed the applicable groundwater screening levels, and the reimbursable amount for water removed, transported, and disposed shall be based on the quantity of water disposed,~~] as documented by disposal manifests and limited to one (1) pit volume;

(b) The reimbursable amount for a Mobile Dual-Phase[~~Dual Phase~~] Extraction Event, identified in a written directive issued by the UST[~~Underground Storage Tank~~] Branch, shall be adjusted to include the amount of water disposed as documented by disposal manifests, or the amount of water verified by the eligible company or partnership as being treated on site;

(c) The reimbursable amount for Operation and Maintenance of an approved remediation system shall be adjusted to include the actual cost of utilities as documented by invoices submitted;

(d) If the UST[~~Underground Storage Tank~~] Branch has not received and approved the UST Application for Assistance for PSTEAF, DWM 4282[~~DEP 6063~~], prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem, and field equipment cost. The UST[~~Underground Storage Tank~~] Branch shall add the applicable formulated task rates for mobilization, per diem, and field equipment to the reimbursable amount of the submitted claim, in accordance with the UST PSTEAF Reimbursement Rates.[~~Contractor Cost Outline~~] once an approved UST Application for Assistance for PSTEAF, DWM 4282, is submitted;

(e) If the UST[~~Underground Storage Tank~~] Branch has not received a signed contract between the eligible applicant and the eligible company or partnership prior to the issuance of the written directive, the reimbursable amount identified in the written directive issued shall not include the applicable formulated task rates for mobilization, per diem, and field equipment cost. The UST[~~Underground Storage Tank~~] Branch shall add the applicable formulated task rates for mobilization, per diem, and field equipment to the reimbursable amount of the submitted claim, in accordance with the UST PSTEAF Reimbursement Rates[~~Contractor Cost Outline~~], once the requirements of Section 3 of this administrative regulation are met;

(f) If a written directive issued by the UST[~~Underground Storage Tank~~] Branch cannot be complied with to the extent necessary to achieve a technically complete determination by the UST[~~Underground Storage Tank~~] Branch, in accordance with 401 KAR 42:060[~~the Corrective Action Outline~~], for reasons beyond the control of the applicant, or[~~and~~] eligible company or partnership, the previously approved reimbursable[~~reimbursement~~] amount established in the written directive shall, unless[~~otherwise~~] addressed in the written directive, be adjusted by the UST[~~Underground Storage Tank~~] Branch, with reference to the UST PSTEAF Reimbursement Rates[~~Contractor Cost Outline~~] and the applicable, approved cost estimate[~~submitted on the Cost Estimate form, DEP 6090, as applicable~~], to deduct the cost of actions not completed; or

(g)[~~If a written directive issued by the Underground Storage Tank Branch cannot be completed, based upon omissions, misrepresentations, or otherwise inaccurate information submitted by the eligible company or partnership in a previous report, the reimbursable amount identified in the written directive shall be adjusted to deduct those actions directed based upon omissions, misrepresentations, or otherwise inaccurate information submitted; or~~

~~(h)~~] If the UST[~~Underground Storage Tank~~] Branch rescinds an issued[~~a~~] written directive[~~issued,~~] prior to the completion of the entire scope of work identified in the written directive, the previously approved reimbursement amount shall be adjusted to reflect the cost of actions completed, with reference to the UST PSTEAF Reimbursement Rates[~~Contractor Cost Outline~~] and the approved cost estimate[~~submitted~~], if applicable.

(7) Reimbursement for an individual corrective action equipment purchase or rental shall not include markup and shall be

limited to:

(a) The original purchase price provided by the supplier or manufacturer, including applicable sales tax, if purchased; or

(b) Rental costs not exceeding the purchase price provided by the supplier or manufacturer, if rented.

(8) The UST Branch shall have final authority to determine all reimbursable actions including site characterization and corrective action technologies in accordance with 401 KAR 42:060[~~Costs incurred prior to issuance of a written directive by the Underground Storage Tank Branch in accordance with this section shall be ineligible for reimbursement~~].

Section 8. Reimbursement[~~Procedures~~] for a Written Directive[~~issued by the Underground Storage Tank Branch~~].

(1) Reimbursement for a written directive shall be made after the following actions are completed:

(a) The submittal and approval of a UST[~~an~~] Application for Assistance for PSTEAF, DWM 4282[~~DEP 6063~~], in accordance with Section 2 of this administrative regulation;

(b) The UST[~~USTB~~] Claim Request for Directed Actions, DWM 4286, which includes payment verification affidavit as required by KRS 224.60-140(18),[~~Written Directive Claim Request Form, DEP 6091, which was~~] provided with the written directive has been completed, signed, and submitted to the UST[~~Underground Storage Tank~~] Branch;

(c)[~~The Payment Verification Affidavit Form, DEP 6075, as required by KRS 224.60-140(18);~~

~~(d)~~] The submittal of a UST Payment Waiver[~~form~~], DWM 4289[~~DEP 6077~~], executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);

(d)[~~(e)~~] The submittal of weigh tickets and invoices documenting the actual cost of items that do not have a formulated task rate established in the UST PSTEAF Reimbursement Rates[~~utilities~~] or other required backup documentation as indicated in the written directive;

(e)[~~(f)~~] The technical report submitted in response to the written directive is determined by the UST[~~Underground Storage Tank~~] Branch to be technically complete in accordance with[~~relation to~~] the written directive and 401 KAR 42:060[~~Chapter 42~~]; and

(f)[~~(g)~~] Payment has been received for all applicable annual[~~registration~~] fees in accordance with KRS 224.60-150 and 401 KAR 42:020, Section 2[~~42:200~~].

(2) Reimbursement shall be contingent upon the contracted eligible company or partnership complying with[~~meeting and maintaining~~] the requirements established in accordance with Section 19 of this administrative regulation[~~401 KAR 42:316~~].

(3) Reimbursement shall be contingent upon a certified laboratory performing the required analysis in accordance with Section 20 of this administrative regulation[~~401 KAR 42:340~~].

(4) If the contract with the eligible company or partnership designated on a written directive is terminated prior to the commencement of reimbursable activities in response to the written directive, the obligation and guarantee of payment of the reimbursable amount[~~, made in accordance with KRS 224.60-140(5),~~] shall be void.

(5) The information completed by the UST[~~Underground Storage Tank~~] Branch on the UST Claim Request for Directed Actions, DWM 4286[~~USTB Written Directive Claim Request form, DEP 6091~~], attached to the written directive, shall not be modified by the applicant or the eligible company or partnership designated on the written directive.

(6) If the applicant fails to correct a claim-related deficiency or to supply additional claim information, within thirty (30) days of written notice from the UST Branch, that portion of the claim shall be denied.

(7) The UST[~~Underground Storage Tank~~] Branch shall issue a determination in accordance with[~~pursuant to~~] KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for reimbursement.

(8)[~~(7)~~] All claims shall be submitted within two (2) years after issuance of a no further action letter by the UST[~~Underground Storage Tank~~] Branch, in accordance with KRS 224.60-130(1)(n).

(9)[~~(8)~~] If a request to re-evaluate the reimbursable amount, established in accordance with Section 7 of this administrative regulation, is submitted in accordance with Section 14 of this administrative regulation, and a not-to-exceed amount is warranted, final reimbursement shall be made on a time and material basis, which shall require the following supporting documentation:

(a) An itemization of the eligible company or partnership invoice with supporting documentation;

(b) Itemized subcontractor and vendor invoices with supporting documentation; and

(c) Time sheets to support all personnel time billed for the completion of the scope of work identified in the written directive.

Section 9. Reimbursement for[~~Procedures for Reimbursable~~] Actions[~~that are~~] Not Directed in Writing[~~by the Underground Storage Tank Branch~~].

(1) Reimbursement shall be made for the following actions[~~, which shall not require written directives from the Underground Storage Tank Branch or cost estimates from the applicant and eligible company or partnership,~~] in accordance with the applicable formulated task rates established in the UST PSTEAF Reimbursement Rates.[~~Contractor Cost Outline;~~]

(a) Optional Soil Removal Outside the Excavation Zone at permanent closure, in accordance with Section 4.16[~~6~~] of the UST Corrective Action Manual[~~Closure Outline~~] incorporated by reference in 401 KAR 42:060.[~~42:070;~~]

(b) Transportation and disposal, treatment, or recycling[~~of contaminated material or water~~], at a permitted facility, of material or water contaminated above applicable screening levels, removed from within the excavation zone,[~~contaminated above applicable screening levels,~~] at permanent closure, in accordance with the UST Corrective Action Manual[~~Closure Outline~~] incorporated by reference in 401 KAR 42:060.[~~42:070;~~]

(c) Initial and immediate response actions, identified in Section 3.13[~~2.14~~] of the UST PSTEAF Reimbursement Rates[~~Contractor Cost Outline~~], taken at a facility[~~,~~] in accordance with Section 2.0[~~2~~] of the UST Corrective Action Manual[~~Release Response and Initial Abatement Requirements Outline~~], incorporated by reference in 401 KAR 42:060, prior to a written directive from the UST[~~Underground Storage Tank~~] Branch or prior to the date of a declared environmental emergency by the cabinet.[~~;~~]

(d) Transportation and disposal of drums containing purged water or soil cuttings associated with actions directed in accordance with 401 KAR 42:060.[~~;~~]

(e) Encroachment permit renewals necessary to complete directed actions.[~~; and~~]

(f) Unscheduled maintenance of a remediation system installed in accordance with [~~an~~] approved corrective action activities[~~Plan, in accordance with Section 2.13 of the Contractor Cost Outline, and invoices supporting the cost of necessary materials or equipment not exceeding a total cost of $3,000, but shall not include unscheduled maintenance equipment costs covered by equipment warranty~~]. Pre-approval is required for one (1) unscheduled maintenance event that will exceed $3,000 for material and[~~or~~] equipment [~~costs associated with unscheduled maintenance of a remediation system exceeding $3,000 shall require pre-approval before work is performed~~].

(2) Reimbursement shall be made after the following actions are completed:

(a) The[~~submittal and~~] approval of a UST[~~an~~] Application for Assistance for PSTEAF, DWM 4282[~~DEP 6063~~], in accordance with Section 2 of this administrative regulation;

(b) The UST Claim Request[~~Form~~] for Actions Not Directed, DWM 4285, which includes payment verification affidavit as required by KRS 224.60-140(18)[~~By The USTB, DEP 6064~~], has been completed, signed, and submitted to the UST[~~Underground Storage Tank~~] Branch;

(c)[~~The Payment Verification Affidavit form, DEP 6075, as required by KRS 224.60-140(18);~~

~~(d)~~] The submittal of a UST Payment Waiver [~~form~~], DWM 4289[~~DEP 6077~~], executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-

140(18);

(d)[(e)] The submittal of required backup documentation as identified on the instruction sheet associated with each worksheet;

(e)[(f)] Payment has been received for all applicable annual[registration] fees in accordance with KRS 224.60-150[224.60-10] and 401 KAR 42:020 Section 2[42:200];

(f)[(g)] The UST Optional Soil Removal at Permanent Closure[Outside the Excavation Zone] Reimbursement Worksheet, DWM 4288[DEP 6094], has been completed and submitted to the UST[Underground Storage Tank] Branch for optional soil removal outside of the excavation zone at permanent closure in accordance with 401 KAR 42:060[42:070] for actions listed in subsection (1)(a) of this section, if applicable[performed];

(g)[(h)] The UST Miscellaneous Tasks Reimbursement Worksheet, DWM 4287[DEP 6093], has been completed and submitted to the UST[Underground Storage Tank] Branch for actions listed in subsection (1)(b), (c), (d), (e), or (f) of this section, if applicable[performed]; and

(h)[(i)] The technical report submitted in accordance to subsections[for subsection] (1)(a), (b), or (c) of this section has been deemed[is] technically complete, if applicable, in accordance with 401 KAR Chapter 42.

(3) Reimbursement shall be contingent upon the contracted eligible company or partnership complying with[meeting and maintaining] the requirements established in accordance with Section 19 of this administrative regulation[401 KAR 42:316].

(4) Reimbursement shall be contingent upon a certified laboratory performing the required analysis in accordance with Section 20 of this administrative regulation[401 KAR 42:340].

(5) The UST[Underground Storage Tank] Branch may require additional information and documentation to determine that a[an eligible] request for reimbursement is reasonable and necessary[and reasonable].

(6) If the applicant fails to correct a claim-related deficiency, or to supply additional claim information, within thirty (30) days of written notice from the UST[Underground Storage Tank] Branch, that portion of the claim shall be denied.

(7) The UST[Underground Storage Tank] Branch shall issue a determination, in accordance with[pursuant to] KRS 224.60-140(7), as to the eligibility for reimbursement of[if] the costs submitted in the claim [shall be eligible for reimbursement].

(8) All claims shall be submitted within two (2) years after issuance of a no further action letter by the UST[Underground Storage Tank] Branch in accordance with KRS 224.60-130(1)(n).

Section 10.[Reimbursement Procedures for] Facility Restoration.

(1) The UST Branch shall issue a written directive in accordance with Section 7 of this administrative regulation, once the applicant provides the information required by Section 5.9.2 in the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060[An itemized cost estimate shall be submitted to the Underground Storage Tank Branch on the Facility Restoration Worksheet, DEP 6095, for the completion of facility restoration actions].

(2) If the UST Branch does not issue a written directive in accordance with subsection (1) of this section, the applicant may submit an obligation request to the cabinet, with the information required by Section 5.9.2 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, for the completion of facility restoration actions[Written approval, by the Underground Storage Tank Branch, of the cost estimate shall constitute, subject to adjustment in accordance with subsection (4) of this section, an obligation and guarantee of payment, in accordance with KRS 224.60-140(5), for the cost of actions that are completed in full].

(3) Reimbursement for facility restoration activities shall be made in accordance with Section 8 of this administrative regulation[Costs incurred prior to the written approval of the cost estimate by the Underground Storage Tank Branch shall be ineligible for reimbursement.

(4) Upon the completion of site restoration actions, final reimbursement shall be based on the costs identified through the submittal of the Facility Restoration Worksheet, DEP 6095, that identified the actual work completed.

(5) Reimbursement for facility restoration actions involving the replacement of surface material shall be limited to costs necessary for the replacement of surface material removed during corrective action activities.

(6) Reimbursement for site restoration activities shall be made after the following actions are completed:

(a) The submittal and approval of an Application for Assistance, DEP 6063, in accordance with Section 2 of this administrative regulation;

(b) The Claim Request Form For Actions Not Directed by the USTB, DEP 6064, has been completed, signed, and submitted to the Underground Storage Tank Branch;

(c) The Payment Verification Affidavit form, DEP 6075, as required by KRS 224.60-140(18);

(d) The Payment Waiver form, DEP 6077, executed by each affected vendor or subcontractor, as applicable, in accordance with KRS 224.60-140(18);

(e) The Facility Restoration Worksheet, DEP 6095, has been completed and submitted, with the required documentation, to the Underground Storage Tank Branch; and

(f) Payment has been received for all applicable annual registration fees in accordance with KRS 224.60-150 and 401 KAR 42:200.

(7) Reimbursement shall be contingent upon the contracted eligible company or partnership meeting and maintaining the requirements of 401 KAR 42:316.

(8) The Underground Storage Tank Branch may require additional information and documentation to determine that an eligible request for reimbursement is necessary and reasonable.

(9) If the applicant fails to correct a claim-related deficiency or to supply additional claim information within thirty (30) days of written notice from the Underground Storage Tank Branch, that portion of the claim shall be denied.

(10) The Underground Storage Tank Branch shall issue a determination pursuant to KRS 224.60-140(7) as to if the costs submitted in the claim are eligible for reimbursement.

(11) All claims shall be submitted within two (2) years after issuance of a no further action letter by the Underground Storage Tank Branch].

Section 11. Payment[Reimbursement] for Actions Directed[and Documented] by the Environmental Response Team[Branch during a Declared Environmental Emergency]. Payment[Reimbursement] for actions directed and documented by the Environmental Response Team[Branch] during a declared environmental emergency shall not be governed by this administrative regulation and shall be made in accordance with KRS Chapter 224[procedures established by the cabinet].

Section 12. Third-Party Claims.

(1) An eligible third-party claim shall be limited to bodily injury and property damage, asserted against an owner or operator as a result of sudden or non-sudden accidental releases into the environment from a petroleum storage tank at a facility eligible for participation in the FRA.

(2) A petroleum storage tank owner or operator shall be eligible to apply for reimbursement or payment for a third-party claim if:

(a) The cabinet has approved an application for assistance; and

(b) The owner or operator has maintained compliance with the eligibility requirements for participation in the FRA in effect at the time the application for assistance was approved.

(3) If a petroleum storage tank owner or operator receives a written notice from the cabinet indicating noncompliance with the eligibility of the FRA in accordance with Section 4 of this administrative regulation, the petroleum storage tank owner or operator shall only be eligible for reimbursement of the costs of third-party claims brought against the petroleum storage tank owner or operator within sixty (60) days from the date of the written notice.

(4) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall:

(a) Submit a new UST Application for Assistance for PSTEAF, DWM 4282; and

(b) Notify the cabinet of the assertion of the third-party claim within twenty-one (21) days of service of process of an action against the owner or operator by the third party, or the receipt of an assertion of a claim in writing by a third party.

(5) A third-party claim shall be paid on the basis of:

(a) A final and enforceable judgment; or

(b) A written agreement between a third party and the owner or operator, upon review and concurrence by the cabinet.

(6)(a) A settlement of a third-party claim shall not be made by an owner or operator without the prior approval of the cabinet.

(b) The cabinet shall not pay a third-party judgment, or reimburse an owner or operator for payment of the judgment, in an amount exceeding a settlement offer rejected by the owner or operator if the settlement offer was:

1. Not submitted to the cabinet for consideration; or

2. Previously approved by the cabinet.

(7) Claim payment shall be limited to actual, documented, bodily injury and property damage caused by the release of petroleum.

(a) A claim for bodily injury and property damage shall be paid to the extent that the damages are not addressed by the performance of corrective action.

(b) The aggregate amount of payment of all third-party claims shall not exceed $1,000,000 per occurrence.

1. Claim requests shall be submitted on the UST Third-Party Claim, DWM 4292.

2. The applicant shall retain a copy of the completed form for their records.

(c) The cabinet shall acquire by subrogation the right of the third-party to recover, from the person responsible or liable for the release, the amount of damages paid to the third-party.

(d) Reimbursement for third-party claims shall be made in accordance with Section 21 of this administrative regulation.

(e) Payment of a third-party claim shall be made after approval by the cabinet.

Section 13. Eligible and Ineligible Costs.

(1) Eligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Initial and immediate response actions taken outside of the excavation zone, in accordance with Section 2.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, prior to a written directive from the UST Branch or prior to the date of a declared emergency by the cabinet[~~Tank and Line Tightness Testing as requested in writing by the Underground Storage Tank Branch in conjunction with Site Check, Site Investigation, or Corrective Action activities for a facility~~];

(b) Site checks at a facility, in accordance with[~~upon~~] a written directive issued after September 13, 2006[~~,~~] by the UST[~~Underground Storage Tank~~] Branch;

(c) Tank and line tightness testing as requested in writing by the UST Branch in conjunction with site check, site investigation, or corrective action activities for a facility;

(d) Performance of "corrective action" as defined by[~~in~~] KRS 224.60-115(4), due to a release of motor fuel from a regulated petroleum storage tank system, upon written direction by the UST[~~Underground Storage Tank~~] Branch;

(e)[~~(d)~~] Transportation, disposal, or treatment at a permitted facility, and replacement of excavated[~~backfill~~] material[~~, excluding the tank volume~~], contaminated above applicable screening levels:

1. Within the excavation zone,[~~:~~] excluding the tank volume, in accordance with Section 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060; or

2. Outside the excavation zone, in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(f)[~~(e)~~] Transportation and disposal, treatment, or recycling, at a permitted facility, of free product or water, contaminated above screening levels encountered:

1. Within the excavation zone, during[~~permanent closure~~] activities in accordance with Section 4.0 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060[~~42:070, or as directed in writing by the Underground Storage Tank Branch for those facilities currently performing corrective action activities in accordance with 401 KAR 42:060~~]; and

2. During activities in accordance with Section 4.16 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060;

(g) A fifteen (15) percent total markup above the cost of materials purchased associated with a task for which there is not a formulated task rate established in the UST PSTEAF Reimbursement Rates;

(h) An eligible company or partnership that employs an unaffiliated subcontractor or other vendor shall receive a fifteen (15) percent markup for costs that do not have a formulated task rate established in the UST PSTEAF Reimbursement Rates;

(i)[~~(f) The cost of~~] Surface material to replace removed or damaged[~~replacement for excavated~~] areas directly associated with corrective action activities, upon written direction by the UST Branch; [~~(g) Initial response actions taken outside of the excavation zone, in accordance with Section 2 of the Release Response and Initial Abatement Requirements Outline, incorporated by reference in 401 KAR 42:060, prior to a written directive from the Underground Storage Tank Branch or prior to the date of a declared emergency by the cabinet;~~] and

(j)[~~(h)~~] Other costs, associated with corrective action activities, as required[~~identified~~] in a written directive issued by the UST[~~Underground Storage Tank~~] Branch for the facility.

(2) Ineligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Except as established in subsection (1) of this section, costs incurred prior to written approval by the UST Branch;

(b) Costs incurred for the purpose of complying with the requirements of 401 KAR 42:020;

(c) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(d)[~~(b) Out-of-state travel expense, including air fare;~~

~~(c) Loss of business, income or profits;~~

~~(d) An attorney fee related to:~~

~~1. Judicial or administrative litigation;~~

~~2. Consultation on administrative regulations;~~

~~3. Preparation or submittal of documentation related to reimbursement process; or~~

~~4. Other legal services determined by the Underground Storage Tank Branch not to be integral to the performance of corrective action.~~

~~(e) Decreased property values for the facility;~~

~~(f) Facility improvements, including costs to upgrade the facility;~~

~~(g) An aesthetic improvement to the facility;~~

~~(h) The cost of surface material replacement for areas not removed as part of corrective action;~~

~~(i) Payment of the owner or operator's personnel for overtime or for staff time in planning or implementing corrective action as defined in KRS 224.60-115(4);~~

~~(j) Interest on an overdue account or loan;~~

~~(k) A cost covered by insurance payable to the owner or operator;~~

~~(l) A contractor surcharge implemented because the owner or operator failed to act in a timely fashion;~~

~~(m) Work performed that is not in compliance with safety codes;~~

~~(n)~~] A cost associated with a release from a storage tank exempt from requirements of 401 KAR Chapter 42 as established in KRS 224.60;

(e)[~~(o) Contractor markup expense for a normally expected overhead item or in-stock material;~~

~~(p) Contractor markup expense for personnel cost;~~

~~(q) A laboratory "rush" fee, unless directed by the Underground Storage Tank Branch;~~

~~(r)~~] A cost or cost recovery for governmental emergency services;

(f)[~~(s) Corrective action activities subsequent to the issuance of~~

~~a no further action letter, unless otherwise directed in writing by the Underground Storage Tank Branch;~~

~~(t) Reimbursement for work or a portion of work performed at a facility if the results of laboratory analysis do not confirm the need for corrective action or for actions to achieve more stringent allowable levels than those prescribed by the cabinet, except for investigatory or corrective actions otherwise directed from the Underground Storage Tank Branch in writing;~~

~~(u)~~] A cost of a party employed to act as a surrogate or stand-in for the owner or operator of the facility;

(g)[~~(v)~~] Preparation of documentation, cost estimates, written agreements, contracts, or client invoices that will be submitted to the UST[~~Underground Storage Tank~~] Branch for reimbursement purposes;

(h)[~~(w)~~] Except as established[~~provided~~] in 401 KAR 42:330, costs[~~cost~~] related to the removal, or actions incidental to the removal of a tank system;

(i) Road mileage beyond 1,000 miles round trip;

(j) Reimbursement for work or a portion of work, performed at a facility if the results of laboratory analysis do not confirm the need for corrective action, or for actions to achieve contaminant concentrations less than those directed by the cabinet, except for investigatory or corrective actions directed from the UST Branch in writing;

(k) Work performed that is not in compliance with safety codes;

(l)[~~(x) Cost of resampling and laboratory tests performed as a result of an operational or methodology mistake by the analytical laboratory, or cost for an analytical laboratory to become certified or accredited under the requirements of KRS 224.60-130(1)(a) and 401 KAR 42:340;~~

~~(y) Costs relating to compliance with a local program having corrective action standards more stringent than those required by the cabinet;~~

~~(z) Costs to achieve corrective action standards more stringent than those required by the applicable administrative regulation;~~

~~(aa) Actions resulting from contractor error or negligence;~~

~~(bb) Costs covered by the contractor's liability insurance;~~

~~(cc) Other services or costs determined by the Underground Storage Tank Branch to be an unreasonable or unnecessary cost of corrective action;~~

~~(dd) Overtime for individual personnel exceeding forty (40) hours during a standard workweek;~~

~~(ee)~~] Free product recovery from monitoring wells or borings during corrective action activities, unless directed in writing by the UST[~~Underground Storage Tank~~] Branch;

(m)[~~(ff) Costs incurred for additional assessment or Corrective Action Plan modification necessary as a result of delayed implementation of the Corrective Action Plan, beyond the deadline established in writing by the Underground Storage Tank Branch;~~

~~(gg) Costs incurred for the purpose of compliance with permit conditions for permitted soil treatment facilities;~~

~~(hh) The portion of the lease or rental cost for capital equipment that exceed the purchase price of the equipment;~~

~~(ii) Costs incurred for the removal, transportation and disposal, recycling, or treatment of free product from within the excavation zone of a UST system, that is not permanently closed, for which contamination above applicable screening levels outside the excavation zone has not been confirmed;~~

~~(jj) Costs incurred for the purpose of meeting the requirements of 401 KAR 42:020, 42:030, and 42:040;~~

~~(kk) Equipment replacements costs covered by equipment warranty;~~

~~(ll)~~] Costs incurred to replace a monitoring well destroyed, damaged, or that cannot be accessed or located due to actions within the control of the applicant;

(n) Costs incurred for the purpose of compliance with permit conditions for permitted soil treatment facilities;

(o) Costs incurred for the removal, transportation and disposal, recycling, or treatment of free product from within the excavation zone of a UST system, that is not permanently closed, for which contamination above applicable screening levels outside the excavation zone has not been confirmed;

(p) Costs relating to compliance with a local program having corrective action standards more stringent than those directed by the cabinet;

(q) A laboratory "rush" fee, unless directed by the UST Branch;

(r) Costs of resampling and laboratory tests performed as a result of an operational or methodology mistake by the analytical laboratory, or costs for an analytical laboratory to become certified or accredited in accordance with the requirements of KRS 224.60-130(1)(a) and Section 20 of this administrative regulation;

(s) Laboratory costs incurred after the laboratory certification eligibility expiration date;

(t) Costs incurred for additional assessment or Corrective Action Plan modification necessary as a result of delayed implementation of the Corrective Action Plan, beyond the deadline established in writing by the UST Branch;

(u) Cost incurred as a result of delayed implementation of a written directive, beyond twelve (12) months from the issuance date of the deadline established in writing by the UST Branch;

(v) The portion of a lease or rental cost for capital equipment that exceeds the purchase price of the equipment;

(w) Equipment replacement costs covered by equipment warranty;

(x) Payment of the owner's or operator's personnel for overtime or for staff time in planning or implementing "corrective action" as defined by KRS 224.60-115(4);

(y) Out-of-state travel expense, including air fare;

(z) Contractor markup expense for a normally expected overhead item or in-stock material;

(aa) Contractor markup expense for personnel costs;

(bb) Markup for pass-through costs for utilities and employee expense accounts;

(cc) Fifteen (15) percent markup for the costs of corrective action for[~~and~~

~~(mm)~~] an eligible company or partnership that employs a subcontractor, a subsidiary company, or other vendor, that is affiliated with the eligible company or partnership or a principal[~~principle~~] of the eligible company or partnership;[~~partnerships~~]

(dd) Overtime for eligible company or partnership personnel exceeding forty (40) hours, individually, during a standard workweek;

(ee) Actions resulting from contractor error or negligence;

(ff) A contractor surcharge implemented because the owner or operator failed to act in a timely fashion;

(gg) Costs covered by the contractor's liability insurance;

(hh) Costs covered by insurance payable to the owner or operator;

(ii) Interest on an overdue account or loan;

(jj) Loss of business, income or profits;

(kk) An attorney fee related to:

1. Judicial or administrative litigation;

2. Consultation on administrative regulations;

3. Preparation or submittal of documentation related to the reimbursement process; or

4. Other legal services not integral to the performance of corrective action;

(ll) Corrective action costs incurred after the eligible company or partnership eligibility expiration date;

(mm) Corrective action activities performed subsequent to the issuance of a no further action letter, unless directed in writing by the UST Branch;

(nn) Facility or aesthetic improvements, including costs to upgrade the facility, except for approved surface replacement in accordance with Section 10 of this administrative regulation;

(oo) Decreased property values for the facility;

(pp) Costs of surface material replacement for areas not removed or damaged as part of corrective action; and

(qq) Unreasonable or unnecessary costs and expenses for corrective action, in accordance with KRS 224.60-140(5).[~~shall not receive the fifteen (15) percent mark up for the cost of corrective action~~.

~~Section 13. Reimbursement Rates. (1) Established rates for eligible reimbursement shall be identified in the Contractor Cost Outline~~.

~~(2) Costs not included in the Contractor Cost Outline shall be reasonable and necessary to the performance of corrective action in order to be eligible for reimbursement.~~

~~(3) Pass-through costs for utilities and employee expense accounts shall not receive a markup on the actual cost.~~

~~(4) A fifteen (15) percent total markup above the estimated cost of materials purchased associated with a task for which there is not a formulated unit rate shall be allowed.~~]

Section 14.[~~Request for~~] Re-Evaluation of a[~~the~~] Reimbursable Amount[~~Identified in a Written Directive~~].

(1) If the applicant determines that the scope of work required[~~identified~~] in a written directive cannot be completed without exceeding the total reimbursable amount set forth in the written directive, a request for re-evaluation of the reimbursable amount may be submitted to the UST[~~Underground Storage Tank~~] Branch on the UST Re-Evaluation of a Reimbursable Amount[~~Re-Evaluation Form~~], DWM 4291[~~DEP 0062~~], and shall include:

(a) The submittal of three (3) current written estimates, for services or materials not provided by the contracting company or partnership, from subcontractors in the area in which the facility is located, if applicable;

(b) The submittal of an itemized cost breakdown of the eligible company's[~~contracting company~~] or partnership's time and materials to be used for the completion of[~~in completing~~] the written directive; and

(c) The costs[~~shall be~~] calculated using the personnel and equipment rates established in Section 3.0[~~3~~] of the UST PSTEAF Reimbursement Rates[~~Contractor Cost Outline~~].

(2) The UST[~~Underground Storage Tank~~] Branch shall review the itemized cost breakdown, determine the[~~and based upon a determination of~~] reasonable and necessary costs for the scope of work and[~~, the Underground Storage Tank Branch shall either~~:

(a)[~~Determine that the itemized cost breakdown exceeds the reimbursable amount,~~] Rescind the original written directive, and issue a new written directive establishing a not-to-exceed amount if the itemized cost breakdown, as adjusted for reasonable and necessary costs, exceeds the reimbursable amount; or

(b) [~~Determine that the reasonable and necessary costs itemized are at or below the initial reimbursement amount, and~~] Deny the request for re-evaluation, established[~~leaving the reimbursable amount identified~~] in the original directive letter, if costs itemized are at or below the initial reimbursement amount[~~in effect~~].

(3) If the establishment of a not-to-exceed amount is warranted, in accordance with subsection (2)(a) of this section, final reimbursement shall be determined on an actual time and materials basis, and the appropriate supporting documentation shall be submitted to the UST[~~Underground Storage Tank~~] Branch, in accordance with Section 8(9)[~~8(8)~~] of this administrative regulation, as an attachment to the claim.

Section 15. Reconsideration for a Claim.

(1) An applicant may request a reconsideration of a denial of a claim request, or portion thereof by submitting a completed UST Reconsideration Request, DWM 4290, within thirty (30) days from the date the person has notice, or could reasonably have had notice, of the denial, which shall include:

(a) A statement of the grounds for reconsideration;

(b) Supporting documents; and

(c) Other evidence not previously considered.

(2) The cabinet shall review the previous claim decision, and may revise the claim if the evidence accompanying the request warrants revision by demonstrating clear error or through submittal of additional documentation.

(3) The cabinet shall not reconsider a claim more than once.

Section 16. Signatures.

(1) Application and reimbursement forms required by this administrative regulation for which a signature is required shall be signed by an eligible petroleum storage tank owner or operator as follows:

(a) For a corporation or limited liability company, by:

1. A president, vice-president of the corporation in charge of a principal business function, or member, or any other person who performs similar policy- or decision-making functions for the corporation[~~or secretary~~]; or

2. A legally[~~The duly~~] authorized representative or agent, except that a representative of an eligible company or partnership shall not have signatory authority for an owner or operator[~~of the president or secretary if the representative or agent is responsible for overall operation of the facility; or~~

~~3. A person designated by the board of directors by means of a corporate resolution~~];

(b) For a partnership, sole proprietorship or individual, by:

1. A general partner;[~~,~~]

2.[~~the~~] Proprietor; or

3. Individual named as the applicant[~~respectively~~];

(c) For a state or local governmental agency or unit, or non-profit organization[~~municipality~~], by:

1. A principal executive officer, which includes a chief executive officer of an agency, or a senior executive officer, having responsibility for the overall operations of a principal geographic unit; or

2. [~~Executive officer; or~~

~~3.~~] A ranking elected official; or

(d) A person designated by a court to act on behalf of the eligible petroleum storage tank owner or operator.

(2) A claim form or application for assistance shall also be signed by[~~:~~

~~(a) The professional engineer or professional geologist responsible for overseeing corrective action; and~~

~~(b)~~] an authorized representative of the eligible company or partnership, unless corrective action commenced prior to July 1, 1999.

(3) The owner or operator shall submit documentary evidence to substantiate the legality of an authorized representative's power of agency or power of attorney.

Section 17. Financial Audits.

(1) An entity shall be subject to a financial audit if it is an entity referenced in KRS 224.60-130(1)(k).

(2) The cabinet shall have the authority to audit an entity if:

(a) A required document, or other document relevant to a cabinet determination, submitted to the cabinet appears to be fraudulent; or

(b) There is evidence that the entity has violated a federal or state law, or a requirement of Title 401 of the Kentucky Administrative Regulations related to its actions.

(3) Upon written request by the cabinet, records, as established in KRS 224.60-130(l)(k), shall be provided to the cabinet during a financial audit.

(4) The cabinet shall notify the subject of the audit, in writing, of the date that the audit is scheduled to begin. The notice shall be sent at least ten (10) working days before the scheduled start of the audit or a rescheduled audit.

(5)(a) If the petroleum storage tank owner or operator fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover any monies reimbursed to the owner or operator for the cost of corrective action at the facility to which the missing documents relate.

(b) If an eligible company or partnership or subcontractor fails to maintain records as required by KRS 224.60-130(1)(k), the cabinet shall recover any monies paid to the entity pursuant to a contract or agreement to perform a corrective action service at that facility, for which costs have been reimbursed by the cabinet.

(6) If the audit by the cabinet finds an improper, irregular, or illegal use of any monies received directly or indirectly from the cabinet, or that the monies were obtained by fraud or misrepresentation, the cabinet shall report the results of the audit to the proper authorities for civil and criminal investigation.

(7)(a) Reimbursements to an owner or operator that fails to cooperate with an audit shall be subject to recovery by the cabinet.

(b) Failure by an entity, that contracts or subcontracts for corrective action services at a facility, to cooperate with an audit shall result in the recovery of funds paid by the cabinet for

corrective action services at that facility[~~16. Loss of Future Reimbursement Eligibility. (1) A petroleum storage tank owner or operator shall be ineligible to receive future reimbursement from the Financial Responsibility Account or Petroleum Storage Tank Account if the petroleum storage tank owner or operator has:~~

~~(a) Knowingly or intentionally submitted false or inaccurate information to the cabinet; or~~

~~(b) Knowingly made a false statement, representation, or certification in an application, reimbursement request, or other document submitted to the cabinet.~~

~~(2) A cost incurred by, or paid from, the cabinet based on false or inaccurate information, or a false statement, representation, or certification shall be recovered by the cabinet from the person who asserted the false or inaccurate information, or false statement, representation, or certification.~~

~~(3) The cabinet shall have the right to recover the money paid to a petroleum storage tank owner or operator, or a contractor if:~~

~~(a) The amount was paid due to an error of the cabinet in processing a claim for reimbursement;~~

~~(b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the petroleum storage tank owner or operator or in an invoice submitted by a contractor; or~~

~~(c) A person has obtained reimbursement from the cabinet by fraud or intentional misrepresentation.~~

~~Section 17. Subrogation. Prior to making reimbursement of a claim, the cabinet shall require, by subrogation, the rights of the person seeking reimbursement or recover the amounts paid by the cabinet for the performance of corrective action from the person responsible or liable for the release~~].

Section 18.[~~Facility Inspections. The cabinet shall conduct inspections in accordance with KRS 224.60-130(1)(l) to determine the reasonableness and necessity of the costs of corrective action.~~

~~(1) The cabinet shall be authorized to enter and inspect a facility seeking reimbursement for the costs of corrective action.~~

~~(2) Refusal to allow a cabinet employee entry and inspection of a facility shall make the owner or operator ineligible for reimbursement. Money previously paid to the petroleum storage tank owner or operator of the facility shall be repaid to, or recovered by, the cabinet.~~

~~(3)(a) The cabinet shall be present at the facility during all petroleum storage tank permanent closure activities, except as provided in paragraphs (d) and (e) of this subsection;~~

~~(b) A petroleum storage tank owner or operator shall contact the appropriate Field Operations Branch regional office, by certified mail, to schedule a date to have an inspector present at the facility during petroleum storage tank permanent closure activities. The certified mail notice shall be received a minimum of fourteen (14) calendar days prior to commencement of the permanent closure.~~

~~(c) If the inspector cannot be present at the facility on the day scheduled by the notice sent as required in paragraph (b) of this subsection, the inspector shall, by written notice, require the petroleum storage tank owner or operator to reschedule the permanent closure to a proposed date. This notice shall be mailed by the cabinet no later than ten (10) days prior to the date scheduled by the petroleum storage tank owner or operator.~~

~~(d) If the inspector fails to issue notice to reschedule the permanent closure, or is not present on the day set by the notice, the permanent closure may proceed without penalty.~~

~~(e) This subsection shall not apply to an emergency removal ordered by the cabinet.~~

~~(4)(a) A petroleum storage tank owner or operator shall:~~

~~1. Provide an inspector full access to an area or well for the collection of samples;~~

~~2. Split samples obtained at the facility with the cabinet, if required by the inspector;~~

~~3. Resample an area or well for which the result of analytical testing obtained by the cabinet differs significantly from the result obtained by the petroleum storage tank owner or operator; and~~

~~4. Have the burden of proving the validity of analytical results, if a discrepancy remains after resampling.~~

~~(b) The cabinet shall not reimburse the costs of resampling if proper sampling, sample handling, or analytical protocols were not adhered to by the contractor or certified laboratory.~~

~~(c) Failure to allow sample collection, or to split samples with the cabinet, shall render the owner or operator ineligible for reimbursement.~~

~~Section 19.~~] Account Balance.

(1) The unobligated balance of the FRA[~~Financial Responsibility Account~~] shall not be less than $1,000,000, [~~so as~~] to ensure a reserve balance adequate to comply with[~~meet~~] federal financial responsibility requirements for participants in the account.

(2)(a) If the unobligated balance of the FRA[~~Financial Responsibility Account~~] is $1,000,000[~~or less~~], or the reimbursement of additional claims would cause the unobligated balance of the fund to be less than $1,000,000, the cabinet shall immediately suspend claim reimbursements and the approval of applications until the unobligated balance is greater than $1,000,000.

(b) If the suspension is lifted, the priority of reimbursement for claims submitted related to an approved application for assistance shall be determined by the date of the claim submittal.

(c) During the suspension, all written directives from the cabinet shall be issued in accordance with Section 21 of this administrative regulation.

Section 19. Eligible Companies and Partnerships.

(1) To be eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet, a company or partnership shall:

(a) Employ or contract with a professional engineer or a professional geologist;

(b) Be authorized to conduct business in the Commonwealth of Kentucky and remain active, and in good standing, with the Kentucky Secretary of State;

(c) Hold, in good standing, all licenses, permits, training certifications, or other authority required to perform corrective action services, or otherwise conduct business, in Kentucky;

(d)1. Maintain, at a minimum, general and professional liability insurance and pollution or property coverage in the amount of $1,000,000; and

2. Add the cabinet as an additional interest on the policy to be notified, by the insurance company, if there is a lapse of insurance coverage;

(e) Be approved in writing by the cabinet as eligible to contract with a petroleum storage tank owner or operator seeking reimbursement from the cabinet to perform corrective action services;

(f) Submit the UST Application for a PSTEAF Eligible Companies or Partnerships, DWM 4284; and

(g) Sign an application or claim payment request in addition to the eligible owner or operator. The eligible company or partnership shall certify that:

1. The information provided in the claim is true and correct; and

2. Each claim payment cost is reasonable, necessary, and was performed in compliance with 401 KAR 42:060 and this administrative regulation.

(2) Application requirements for a company or partnership eligibility shall include submittal of:

(a) A completed UST Application for a PSTEAF Eligible Companies or Partnerships, DWM 4284;

(b) Verification of the employment or contracting of a professional engineer or a professional geologist; and

(c) A list of the names and address of officers and principals of the applicant.

(3) The cabinet shall inspect the records and business premises of the applicant if necessary to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(4) The cabinet shall require additional information and documentation if necessary to verify information in the application.

(5) An application for eligible company or partnership status shall be denied if the applicant:

(a) Fails to provide the information required in the application

or in this administrative regulation;

(b) Does not comply with the requirements of subsection (1) of this section;

(c) Fails to allow cabinet staff to access company records for audit purposes in accordance with Section 17 of this administrative regulation;

(d) Fails to provide additional information and documentation requested by the cabinet to verify that the requirements of this administrative regulation have been met;

(e) Provides false or misleading information in the application; or

(f) Fails to maintain general and professional liability insurance and pollution or property coverage.

(6) An applicant whose application for company or partnership eligibility is denied may appeal the determination, by requesting a reconsideration in accordance with Section 15 of this administrative regulation.

(7) The cabinet shall issue a letter of eligibility to a qualifying applicant.

(8) An amended application for a company or partnership shall be submitted if:

(a) The information in the UST Application for a PSTEAF Eligible Companies or Partnerships, DWM 4284, has changed; or

(b) Requested by the cabinet to submit an updated application upon the receipt of information indicating a change to application information.

(9) Eligibility and renewal procedures shall be established in this subsection of this section.

(a) The cabinet shall issue a letter of eligibility to each company or partnership that successfully complies with this administrative regulation.

(b) Eligibility shall be renewed two (2) years from the date of the letter of eligibility. The company or partnership shall be responsible for renewing eligibility prior to expiration.

(c) An application for eligibility renewal shall be submitted to the cabinet on the UST Application for a PSTEAF Eligible Companies or Partnerships, DWM 4284.

(d) The failure of the company or partnership, under contract with an owner or operator, to renew eligibility shall render corrective action costs incurred after the expiration date ineligible for reimbursement.

(10) Revocation of eligibility procedures shall be as established in this subsection of this section.

(a) A letter of eligibility issued in accordance with this administrative regulation shall be revoked if the eligible company or partnership:

1. No longer complies with the eligibility requirements established in subsection (1) of this section;

2. Employs, or has a business relationship with, an employee or agent that knowingly submits materially false information or documentation, or a false payment request, to an owner, operator, or the cabinet;

3. Has a current officer, director, or principal of that company, that has been convicted of, or found liable for, civil or criminal fraud or an environmental crime;

4. Has failed to comply with the terms established in Section 17 of this administrative regulation; or

5. Obtained eligibility through fraud or misrepresentation.

(b) The cabinet shall issue a letter by certified mail notifying a noncompliant company or partnership that its eligibility has been revoked by action of the cabinet.

Section 20. Laboratory Certification.

(1) Applicability and requirements for PSTEAF eligibility criteria for laboratory certification shall be as established in this section.

(a) Owners or operators seeking reimbursement from the PSTEAF for analytical testing shall utilize a laboratory certified in accordance with this section.

(b) This section shall apply to analytical testing performed on or after October 1, 1999.

(c) Owners or operators of a petroleum storage tank that fail to comply with this requirement shall not be reimbursed by the cabinet for costs related to analytical testing.

(2) Certification requirements for laboratory certification shall be as established in this subsection of this section.

(a) A laboratory shall demonstrate current accreditation by submitting documentation of certification by:

1. The American Association for Laboratory Accreditation; or

2. A state approved to accredit environmental laboratories, in accordance with National Environmental Laboratory Accreditation Program requirements and standards.

(b) A laboratory seeking certification from the cabinet shall submit a completed UST Application for Laboratory Certification, DWM 4283.

1. The application shall include proof of accreditation as established in subsection (2)(a) of this section.

2. The laboratory shall be capable of analyzing each of the parameters listed in Table 7 and Table 8 in the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, using at least one (1) of the acceptable methods listed in the tables, except for mobile laboratories.

(3) The cabinet shall reimburse a petroleum storage tank owner or operator for the cost of a laboratory analysis if the:

(a) Analysis is conducted in accordance with the established parameters and methods;

(b) Analysis is required by written directive by the cabinet and performed in accordance with 401 KAR Chapter 42; and

(c) Laboratory is certified by the cabinet to conduct that analysis.

(4) Requirements for maintaining laboratory certification shall be as established in this subsection of this section.

(a) A certified laboratory shall maintain accreditation by the American Association for Laboratory Accreditation or the National Environmental Laboratory Accreditation Program for the duration of certification.

(b) If a certified laboratory's accreditation, in accordance with subsection (1) of this section, is renewed, or otherwise changes in status, the certified laboratory shall submit updated documentation of the accreditation status to the cabinet within thirty (30) days.

(c)1. A laboratory holding valid certification from the UST Branch issued prior to October 6, 2011 shall not be required to submit a new UST Application for Laboratory Certification, DWM 4283.

2. In order to maintain certification status, the certified laboratory shall comply with this subsection of this section.

(d) If a certified laboratory fails to maintain certification in accordance with this subsection of this subsection, the laboratory shall be required to submit a UST Application for Laboratory Certification, DWM 4283, in accordance with subsection (2) of this section.

(5)(a) The cabinet shall revoke a certification if the applicant:

1. Obtains the certification through fraud or misrepresentation; or

2. Knowingly or intentionally submits materially false information to owners, operators, contractors, or the cabinet.

(b) The cabinet shall, within ten (10) days of a revocation determination, notify the laboratory, in writing, of the revocation of certification.

Section 21. Facility Ranking System.

(1) Upon a determination of insufficient PSTEAF funding to initiate corrective action at facilities, facilities shall be ranked according to the extent of damage to the environment, the potential threat to human health, and the financial ability of the petroleum storage tank owner or operator to perform corrective action, in order to prioritize the completion of corrective action and the subsequent reimbursement of eligible costs.

(2) Actions directed and documented by the Environmental Response Team, upon the cabinet's declaration of an environmental emergency, shall take priority over the ranking system in this administrative regulation. Once the Environmental Response Team terminates the emergency phase, subsequent actions at the facility shall be prioritized in accordance with this administrative regulation.

(3) Actions performed by, or on behalf of, the cabinet in accordance with KRS 224.60-135(2) shall not be subject to the ranking system.

(4) Facilities performing site checks or initial abatement, at the written direction of the cabinet in accordance with the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, shall not be subject to the ranking system.

(5) Those facilities for which the owner or operator has verified, through submittal of a notarized UST Affidavit of Waiver for PSTEAF Reimbursement, DWM 4281, that reimbursement from the PSTEAF will not be sought shall not be subject to the ranking system.

(6)(a) Facilities eligible to participate in the FRA and the PSTA shall be ranked for purposes of addressing the completion of corrective action.

1. Facilities with releases for which the cabinet has not issued a No Further Action Letter shall be a Rank 1, if:

a. Contamination is confirmed within domestic-use wells, domestic-use springs, or domestic-use cisterns exceeding the maximum contaminant levels established in 401 KAR Chapter 8; or

b. "Vapor intrusion", as defined by 401 KAR 42:005, is confirmed in occupied residential or commercial buildings.

2. All other facilities with releases for which the cabinet has not issued a No Further Action Letter shall be a Rank 2.

(b) Facilities shall be further categorized within their respective Rank based on the financial ability of the owner or operator.

1. Facilities shall be placed in Category 1 within their respective rank if:

a. The owner's or operator's average total income for the last five (5) years is less than or equal to $100,000; or

b. The owner or operator is registered and recognized by the federal government as a tax-exempt nonprofit organization.

2. Facilities shall be placed in Category 2 within their respective rank if the owner's or operator's average total income for the last five (5) years is more than $100,000.

3. The cabinet shall utilize the information provided in an owner's or operator's application for assistance for PSTEAF, for purposes of determining financial ability to perform corrective action.

(c) The cabinet shall be provided access to a facility for the purpose of verifying classification. Refusal by an owner or operator to allow access requested by the cabinet shall render the facility ineligible for reimbursement from the cabinet.

(d) If the cabinet receives misrepresentations, or otherwise inaccurate information, or receives new information related to specific facilities, it shall amend facility rankings and categories in accordance with this subsection of this section.

(e) Issuance of written directives shall be prioritized for facilities within the FRA and the PSTA, respectively, according to rank and category, in the following order:

1. Rank 1, Category 1;
2. Rank 1, Category 2;
3. Rank 2, Category 1; and
4. Rank 2, Category 2.

(f) The cabinet shall consider the current legislatively enacted budget and available funding in making the allocations established in subsection (1) of this section.

(g) The cabinet shall notify an owner or operator of the decision to suspend written directives for rankings within either the PSTA or the FRA, upon a determination of insufficient PSTEAF funding to initiate corrective action in all rankings.

Section 22. Extensions.

(1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in a written directive.

(2) The extension request shall be received by the UST Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if an extension would be equitable, does not impact the PSTEAF's financial viability, and would not have a detrimental impact on human health or the environment.

(4) The cabinet shall not grant an extension for any requirements established in Sections 12 or 15 of this administrative regulation.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "UST Affidavit of Termination of PSTEAF Contract", DWM 4280, August 2018[~~Application for Assistance", DEP 6063, November 2016~~];

(b) "UST Affidavit of Waiver for PSTEAF Reimbursement", DWM 4281, August 2018 [~~Affidavit of Termination of Contract", DEP 0061,November 2016~~];

(c) "UST Application for Assistance for PSTEAF", DWM 4282, August 2018; [~~"Reimbursable Amount Re-Evaluation", DEP 0062, November 2016~~];

(d) "UST Application for Laboratory Certification", DWM 4283, August 2018[~~"Claim Request for Actions Not Directed by the USTB", DEP 6064, November 2016~~];

(e) "UST Application for a PSTEAF Eligible Companies or Partnerships", DWM 4284, August 2018[~~"Miscellaneous Task Reimbursement Worksheet", DEP 6093, November 2016~~];

(f) "UST Claim Request for Actions Not Directed", DWM 4285, August 2018[~~"Facility Restoration Reimbursement Worksheet", DEP 6095, November 2016~~];

(g) "UST Claim Request for Directed Actions", DWM 4286, August 2018[~~"Optional Soil Removal Outside the Excavation Zone Reimbursement Worksheet", DEP 6094, November 2016~~];

(h) "UST Miscellaneous Tasks Reimbursement Worksheet", DWM 4287, August 2018[~~"Payment Verification Affidavit", DEP 6075, November 2016~~];

(i) "UST Optional Soil Removal at Permanent Closure Reimbursement Worksheet", DWM 4288, August 2018[~~"Payment Waiver", DEP 6077, November 2016~~];

(j) "UST Payment Waiver", DWM 4289, August 2018[~~"Cost Estimate", DEP 6090, November 2016~~];

(k) "UST Reconsideration Request", DWM 4290, August 2018;[~~"Underground Storage Tank Branch Written Directive Claim Request", DEP 6091, November 2016; and~~]

(l) "UST Re-Evaluation of a Reimbursable Amount", DWM 4291, August 2018;

(m) "UST Third-Party Claim", DWM 4292, August 2018; and

(n) "UST PSTEAF Reimbursement Rates", **January 2019**[**~~August 2018~~**][; ~~"Contractor Cost Outline", November 2016~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained at the Division of Waste Management's Web site at http://waste.ky.gov/ust.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: January 10, 2019

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

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone: (502) 782-6303, fax: (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures to administer the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF), payment for third-party claims, financial audits, eligible company and partnership certification, laboratory certification, and facility ranking.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the procedures to administer the PSTEAF, payment for third-party claims, financial audits, eligible company and partnership certification, laboratory certification, and facility ranking.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the (PSTEAF). KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the

provisions of law administered by the cabinet. KRS 224.60-120(6) requires the cabinet to establish administrative regulations to implement the requirements for financial responsibility of petroleum storage tank owners or operators.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures to administer PSTEAF as required by KRS 224.60-130(1)(a) through (e) and implements the requirements for financial responsibility of petroleum storage tank owners or operators as required by KRS 224.60-120(6).

(2) If 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 after comments does not actually change any language in the administrative regulation, except revision dates on the material incorporated by reference. The material incorporated by reference has been amended after comments to correct cost reimbursement amounts and clarify requirements regarding equipment, rates, what is included in calculated task rates, reports, and a meeting no longer required.

(b) The necessity of the amendment to this administrative regulation: This amendment after comments is necessary to correct material incorporated by reference that establishes procedures to administer the PSTEAF and to implement the requirements for financial responsibility of petroleum storage tank owners or operators.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 224.60-130(1)(a) through (e) requires the establishment of the procedures to administer the PSTEAF. KRS 224.10-100(28) authorizes the cabinet to promulgate administrative regulations not inconsistent with the provisions of law administered by the cabinet. KRS 224.60-120(6) requires the cabinet to establish administrative regulations to implement the requirements for financial responsibility of petroleum storage tank owners or operators.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes procedures to administer the PSTEAF as required by KRS 224.60-130(1)(a) through (e), and implements the requirements for financial responsibility of petroleum storage tank owners or operators as required by KRS 224.60-120(6).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of underground storage tank eligible companies that contract with those owners or operators, certified laboratories that process samples collected at underground storage tank facilities, and certified tank installers/removers. There are 3,216 underground storage tank facilities, 58 eligible companies that contract with those owners or operators, 37 certified laboratories that process samples collected at underground storage tank facilities, and 228 certified tank installers/removers.

(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 have to submit the new forms incorporated in this amendment for reimbursement, contract execution changes, etc. Owners and operators of petroleum storage tanks, eligible companies and partnerships, and certified laboratories will have to comply with the eligibility requirements of this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not have a cost for the entities identified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Corrective action from the release of an underground storage tank would be reimbursed up to $1 Million. The benefits to owners and operators include compliance with both the federal and state regulations.

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

(a) Initially: There is no cost associated with implementing this amendment.

(b) On a continuing basis: There is no cost associated with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of tank fees, the PSTEAF, and grants from the U.S. Environmental Protection Agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees directly, but does establish an entry level for owner or operators that are reimbursed from PSTEAF.

(9) TIERING: Is tiering applied? Tiering is applied. The entry level for petroleum storage tank owners is based on the number of tanks owned.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 state or local governments that own or operate an underground storage tank facility as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100(28), 224.60-120(6), 224.60-130(1)(a) through (e), and 40 C.F.R. 280, Subpart H.

(3) Estimate the effect of this administrative regulation on the 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 administrative regulation will not affect the expenditures and revenues of a state or local government agency as the underground storage tank program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. Currently the division receives $287,700 in tank fees and $24.2 Million PSTEAF annually, and $1,925,333 Leaking Underground Storage Tank (LUST) Prevention and LUST Cleanup biennially in federal grants to administer the underground storage tank program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. However, the division expects to receive $287,700 in tank fees and $24.2 Million PSTEAF annually, and $1,925,333 LUST Prevention and LUST Cleanup biennially in federal grants to administer the underground storage tank program for subsequent years.

(c) How much will it cost to administer this program for the first year? The underground storage tank program is already in effect and costs $25.5 Million to administer as a whole, including reimbursement to owners and operators for eligible corrective action costs.

(d) How much will it cost to administer this program for subsequent years? $25.5 Million, as a whole, including

reimbursement to owners and operators for eligible corrective action costs.

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

Revenues (+/-): $1,925,333(biennially) in federal grant funding (LUST Prevention and LUST Cleanup), $287,700 tank fees, $24.2 Million PSTEAF.

Expenditures (+/-): $24.4 Million, as a whole.

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 280, Subpart H.

2. State compliance standards. KRS 224.60-130(1)(a) through (e), 224.60-120(6).

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. 280, Subpart H.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. This administrative regulation imposes additional or different requirements than those required by the federal rule. The state administered PSTEAF may be used to satisfy financial responsibility required by the federal regulation. Entities will have to comply with the procedures of this administrative regulation as they relate to reimbursement, third-party claims, financial audits, eligible companies and partnerships, and laboratory certification as required by KRS 224.60-120, 224.60-130, 224.60-135, 224.60-140, and 224.60-150.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The differences in this administrative regulation are statutory requirements.

ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Comments)

401 KAR 42:330. Small Owners Tank Removal Account.

RELATES TO: KRS 224.60-105, 224.60-130(1)(a), (b), (j), 224.60-140, 224.60-150, 40 C.F.R. 280 Subpart[~~Part~~] H

STATUTORY AUTHORITY: KRS 224.60-130(1)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

Section 1. Eligibility.

(1) To demonstrate eligibility, an owner shall submit a completed UST[~~SOTRA~~] Application for Assistance for SOTRA, DWM 4293[~~, DEP 6067~~]. An owner shall be eligible for reimbursement from this account if:

(a) The petroleum storage tank owner complies with[~~meets~~] the financial eligibility criteria of $100,000 total income, or less, averaged over the last five (5) years as documented by:

1. The applicant's signed federal income tax returns for the last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible governmental bodies, and all other Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years; or

2. If the applicant is not required to file federal income tax returns, the applicant shall submit in lieu of federal income tax returns:

a. Budget and tax exemption documentation; or

b. Other financial statements sufficient to document income;

(b) The tanks are located at[~~on~~] a facility that is or was involved in the storage[~~retail sale or wholesale distribution~~] of motor fuel;

(c) The tanks are registered with the Division of Waste Management by the owner[~~applicant~~] seeking reimbursement from SOTRA[~~the Small Owners Tank Removal Account (SOTRA),~~] pursuant to KRS 224.60-105 and 401 KAR 42:020;

(d) The owner certifies that:

1. Permanently closed tanks shall not be replaced or upgraded[~~The retail sale or wholesale distribution of motor fuel at the facility from a UST system or systems permanently cease upon permanent closure of the tanks~~]; and

2. All known tanks at the facility shall be permanently closed[~~are being removed or closed in place~~]; and

(e) The owner has owned the tanks for more than one (1) year prior to the date of the application for reimbursement from this account.

(2) A newly discovered underground storage tank (UST) system shall not affect the eligibility of an owner[~~otherwise eligible in accordance with subsection (1) of this section~~].

(3) A tank shall not need to be in use[~~operation~~] prior to its permanent closure[~~removal~~].

(4) An owner shall submit to the cabinet a UST Notice of Intent to Permanently Close Underground Storage Tank System, DWM 4266, incorporated by reference in 401 KAR 42:060[~~A written notice shall be submitted to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement~~].

(5) Federally-owned[~~Federal and state-owned~~] facilities shall not be eligible for reimbursement from SOTRA in accordance with KRS 224.60-115(16)[~~the Small Owners Tank Removal Account~~].

Section 2. Account Use.

(1) Funds in this account shall be used to reimburse eligible petroleum storage tank owners for those reasonable and necessary costs incurred through performance of permanent closure in accordance with[~~actions required in~~] 401 KAR 42:060[~~42:070~~].

(2) The use of this account shall be limited as established[~~specified~~] in KRS 224.60-130(1)(j).

(3)(a) The owner of a facility shall be eligible for reimbursement of the cost of permanent closure, but shall not be eligible for payment of corrective action cost from this account.

(b) If corrective action is required, eligible reimbursement shall be made in accordance with[~~governed by~~] 401 KAR 42:250.

(4)(a) If expenditures from this account exceed $3,000,000 during a[~~any~~] fiscal year, the cabinet shall suspend further reimbursements for that fiscal year[~~from this account~~]. The suspension shall be in effect until the cabinet determines that further reimbursements from this account will not threaten the solvency of the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF).

(b) This determination shall be based upon legislatively enacted budgets and associated appropriations.

(5) The owner shall have one (1) year from the application approval date to perform permanent closure in accordance with 401 KAR 42:060.

Section 3. Application Procedure.

(1) The owner shall file a completed UST[~~SOTRA~~] Application for Assistance for SOTRA, DWM 4293,[~~DEP 6067~~] for participation in this account at least forty-five (45) days prior to the permanent closure of the petroleum storage tank. The owner shall also provide[~~the following information~~]:

(a) Verification of income through the submittal of:

1. Copies of the applicant's signed federal income tax returns for the last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible governmental bodies, and all other Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years; or

2. If the applicant is not required by federal law to file federal income tax returns, the applicant shall submit in lieu of federal income tax returns;

a. Budget and tax exemption documentation; or

b. Other financial statements sufficient to document income;

(b) A copy of the contract between the owner and the primary contractor;

(c) A facility map identifying approximate property boundaries, placement of petroleum storage tank pits, location of other relevant facility features including buildings, canopies, driveways, piping, dispenser islands, paved areas, and the proposed extent of areas to be excavated[~~evacuated~~] in the performance of permanent closure, including dimensions;

(d) Color photographs of the facility and the areas to be impacted by the permanent closure; and

(e) A copy of a deed or other documentation indicating ownership of the tanks, if the tanks have not been registered in the applicant's name[~~, in accordance with 401 KAR 42:020,~~] with the Division of Waste Management for twelve (12) months prior to the SOTRA application being submitted.

(2)[~~The owner shall retain a copy of the SOTRA Application for their records.~~

~~(3)~~](a) In response to the application submitted, the UST Branch[~~cabinet~~] shall issue a letter setting forth the owner's eligibility status and, if eligible, establishing a reimbursable amount in accordance with Section 4 of this administrative regulation[~~the availability of funding for the closure of the petroleum storage tank~~].

(b) Permanent closure of the tank system shall not begin until the UST Branch[~~cabinet~~] has approved the application and established the reimbursable amount. Failure to comply with this requirement shall result in denial of the reimbursement.

Section 4. Permanent Closure Costs.

(1) Costs for the permanent closure and facility restoration shall be established in the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250. The reimbursable amount, issued in a written approval by the UST Branch, shall be based on[~~The rates established for permanent closure costs in this section shall apply to a SOTRA Application for Assistance approved after October 6, 2011. (1)(a) Reimbursement from this account shall be determined from the lesser of two (2) dollars and sixty (60) cents per gallon of tank capacity or the following matrix table~~]:

(a) The formulated task rates established in Section 2.0 of the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250; and

(b) For a specific task that does not have a formulated task rate in the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250, a cost estimate submitted by the owner. The cost estimate shall include:

1. A cost itemization to complete the individual task using those personnel and equipment rates established in Section 5.0 of the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250, applicable to individual components of the task;

2. Three (3) competitive bids from suppliers or manufacturers of corrective action equipment for individual equipment purchase or rental, exceeding $3,000, if applicable, containing a description of the equipment to be purchased or rented provided by the supplier or manufacturer for new equipment purchased; and

3. An estimate for materials to be purchased, if applicable.

(2) The reimbursable amount for Facility Restoration that has not been directed by the UST Branch shall be established by the submittal of an obligation request to the cabinet, with the information required by Section 5.9.2 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, for the completion of facility restoration actions.

(a) Upon an obligation request approval, a written approval of an obligation and guarantee of payment shall be issued in writing by the UST Branch in accordance with KRS 224.60-140(5).

(b) Reimbursement for facility restoration activities shall be made in accordance with Section 5 of this administrative regulation.

(3) The UST Branch shall establish the reimbursable amount in accordance with subsection (1) of this section. The cabinet shall attach to the written approval:

(a) An itemization of the reimbursable amount; and

(b) The UST Claim Request for Directed Actions, DWM 4286, incorporated by reference in 401 KAR 42:250.

(4) The issuance of a written approval by the UST Branch shall, subject to the provisions of Section 5 of this administrative regulation, constitute an obligation and guarantee of payment of the reimbursable amount identified within a written approval, in accordance with KRS 224.60-140(5).

(5) The reimbursable amount established by the UST Branch shall be adjusted to:

(a) Include the formulated task rates for mobilization, per diem, and field equipment; and

(b) Deduct those actions approved but that could not reasonably be completed for reasons beyond the control of the applicant eligible company or partnership.

(6) Optional soil removal outside of the excavation zone in accordance with Section 4.15 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, shall be reimbursable:

(a) If a no further action letter has been issued for the subject facility upon completion of permanent closure activities, without additional corrective action activities being performed; or

(b) In accordance with 401 KAR 42:050, if additional corrective action is necessary.

(7) Facility restoration activities shall be reimbursable:

(a) If a no further action letter has been issued for the subject facility upon completion of permanent closure activities in accordance with KAR 42:060, without additional corrective action activities being performed; and

(b) In accordance with 401 KAR 42:250, if additional corrective action is necessary.[

~~Number of Tanks in Pit~~	~~Size of Largest Tank in Pit (gallons)~~			
	~~Less than 3,100~~	~~3,101 to 5,101~~	~~5,101 to 10,000~~	~~Greater than 10,000~~
~~1~~	~~$3,900~~	~~$4,420~~	~~$6,370~~	~~$7,020~~
~~2~~	~~$6,370~~	~~$7,150~~	~~$9,620~~	~~$11,180~~
~~3~~	~~$8,320~~	~~$9,750~~	~~$12,610~~	~~$15,340~~
~~4~~	~~$10,270~~	~~$11,700~~	~~$15,340~~	~~$18,200~~
~~5~~	~~$12,220~~	~~$13,650~~	~~$17,940~~	~~$21,970~~
~~Each Extra~~	~~$1,950~~	~~$1,950~~	~~$2,340~~	~~$2,860~~

~~(b) In addition to the cost listed in subsection (1)(a) of this section, the cabinet shall reimburse a one (1) time amount of $2,095, for the preparation and submission of a Closure Assessment Report, incorporated by reference in 401 KAR 42:070.~~

~~1. This shall include the cost of preparing a classification guide.~~

~~2. The cabinet shall also reimburse a one (1) time amount of $500 for the mobilization and demobilization of equipment.~~

~~(c) If more than one (1) tank pit is located on a facility, the reimbursement shall be calculated by adding the matrix table cost for each pit, in addition to the costs allowed in subsection (3) of this section.~~

~~(2) The following items shall be included in the cost listed in subsection (1)(a) of this section:~~

~~(a) Tank system removal, cleaning, and disposal or closure-in-place requirements;~~

~~(b) Permanent closure of thirty-five (35) feet of associated piping outside of the tank pit;~~

~~(c) Removal of the pump island and canopy;~~

~~(d) Drumming of cleaning material;~~

~~(e) Backfilling to return the excavation to grade less the reimbursable volume of contaminated backfill disposed or treated at a permitted facility and replaced in accordance with subsection (3) of this section;~~

~~(f) Concrete or asphalt surface removal;~~

~~(g) Equipment and material necessary for the permanent closure;~~

~~(h) Preparation of a permit if required for permanent closure or testing of a tank system;~~

~~(i) Excavation and loading of material;~~

~~(j) Collection of samples, including domestic-use wells, domestic-use springs, and domestic-use cisterns within a 100-meter radius of the UST system; and~~

~~(k) Labor charges relating to paragraphs (a) through (j) of this subsection.~~

~~(3) The costs of the following items shall be allowed, if~~

~~necessary, in addition to the cost established in subsection (1)(a) of this section upon the submittal of a claim in accordance with Section 5 of this administrative regulation:~~

~~(a) Facility restoration. Facility restoration activities shall only be reimbursable under this account if a No Further Action Letter has been issued for the subject facility upon completion of permanent closure activities in accordance with 401 KAR 42:070, without corrective action activities being performed outside of the excavation zone. A cost estimate shall be submitted, through the completion of Section 12 of the SOTRA Reimbursement Worksheet, DEP 0064, and shall be approved by the Underground Storage Tank Branch, in writing, prior to incurring costs. Additional costs related to the repair of subsidence resulting from improper placement of fill material shall not be reimbursable;~~

~~(b) Transportation, disposal, or treatment, and replacement of backfill contaminated above the applicable screening levels established in 401 KAR 42:080;~~

~~(c) Disposal of asphalt surface material;~~

~~(d) Installation of up to four (4) soil borings in accordance with Section 4.4 of the Closure Outline, incorporated by reference in 401 KAR 42:070;~~

~~(e) Transportation and disposal, treatment, or recycling of tank contents or waste;~~

~~(f) Removal, transportation, and disposal or treatment of water from within the excavation zone in accordance with Section 4.1 of the Closure Outline, contaminated above the applicable screening levels established in 401 KAR 42:080;~~

~~(g) Laboratory analysis, as required in accordance with the Closure Outline, incorporated by reference in 401 KAR 42:070, with the exception of laboratory analysis of samples collected in accordance with Section 6 of the Closure Outline; and~~

~~(h) Grain size analysis for facilities accurately classified as Class B in accordance with the Classification Outline, incorporated by reference in 401 KAR 42:080.~~

~~(4) Optional soil removal outside of the excavation zone in accordance with Section 6 of the Closure Outline, incorporated by reference in 401 KAR 42:070 shall be reimbursed in accordance with 401 KAR 42:250.~~

~~(5) Facility restoration for corrective action activities performed outside of the excavation zone shall be reimbursed in accordance with 401 KAR 42:250.~~]

Section 5. Claims. (1) Eligible reimbursement for permanent closure costs associated with a SOTRA Application for Assistance**[approved prior to April 5, 2019,]**[~~October 6, 2011~~] shall be made in accordance with the requirements[~~administrative regulations~~] in effect at the time the SOTRA Application for Assistance was approved.

(2) To receive reimbursement, an owner shall submit a completed UST Claim Request for Directed Actions, DWM 4286, incorporated by reference in 401 KAR 42:250[~~(1)(a) To receive reimbursement, an owner shall submit a completed SOTRA Claim Request, DEP 6068; and~~

~~(b) The owner shall retain a copy of the form for his or her records~~].

(3)[~~(2)(a)~~] In addition to the completed claim form, the owner shall submit supporting documentation of actual cost, including invoices, and weigh tickets[~~the required SOTRA Reimbursement Worksheet, DEP 0064~~].

(4)[~~(b) Documentation of actual cost, including invoices and weigh tickets, shall be attached to the worksheet.~~

~~(3)~~] The UST Branch[~~cabinet~~] shall review a claim request for[~~the following~~]:

(a) The number and size of tanks removed; and

(b) Verification of eligible costs.

(5)[~~(4)~~] To receive reimbursement, an owner shall have paid all annual tank fees as required by KRS 224.60-150.

(6)[~~(5)~~] The cabinet may request additional supporting documentation to verify the reasonableness or necessity of a cost.

(7)[~~(6)~~] If a claim is[~~determined to be~~] deficient[~~by the Underground Storage Tank Branch~~], a written correspondence[~~deficiency letter~~], stating[~~outlining~~] the deficiencies, shall be issued to the applicant. Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the claim to be denied.

(8)[~~(7)~~] Reimbursement shall be contingent upon a determination by the cabinet that the report required has been deemed technically[~~is~~] complete and complies with[~~meets~~] the requirements of 401 KAR 42:060[~~Chapter 42~~].

(9)(a)[~~(8)(a)~~] An entry level shall not be assessed for eligible reimbursement in accordance with this administrative regulation.

(b) An entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement through the Financial Responsibility Account or Petroleum Storage Tank Account in accordance with 401 KAR 42:250.

(10) An applicant may request a reconsideration of a denial of a claim request, or portion thereof, and the cabinet shall review the request, in accordance with the procedures established in 401 KAR 42:250, Section 15.

(11)[~~(9)~~] All claims shall be submitted within two (2) years after issuance of a No Further Action letter by the UST[~~Underground Storage Tank~~] Branch in accordance with KRS 224.60-130(1)(n).

Section 6. Extensions.

(1) The owner[~~or operator~~] of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in a written directive[~~writing pursuant to this administrative regulation~~].

(2) The extension request shall be submitted in writing and received by the UST[~~Underground Storage Tank~~] Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may[~~shall~~] grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

Section 7. Incorporation by Reference.

(1) "UST Application for Assistance for SOTRA", DWM 4293, August 2018[~~The following material~~] is incorporated by reference[~~:~~

~~(a) "SOTRA Application for Assistance", DEP 6067, November 2016;~~

~~(b) "SOTRA Claim Request", DEP 6068, November 2016; and~~

~~(c) "SOTRA Reimbursement Worksheet", DEP 0064, August 2011~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Division of Waste Management's Web site at http://waste.ky.gov/ust.

CHARLES G. SNAVELY, Secretary

APPROVED BY AGENCY: January 10, 2019

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

CONTACT PERSON: Heather Alexander, Environmental Control Supervisor, 300 Sower Blvd., 2nd Floor, phone: (502) 782-6303, fax: (502) 564-4245, email heather.alexander@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather Alexander

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to institute the eligibility requirement and rates for reimbursement from SOTRA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.60-130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility

requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in administration of the statutes and the underground storage tank (UST) program, implemented by the provisions of KRS 224.60-130(1)(j) by establishing SOTRA to reimburse reasonable costs of a petroleum storage tank removal for small owners.

(2) If 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 after comments will not change the requirements or responsibilities of this administrative regulation. Only one amendment after comments was made to this administrative regulation that removed a date that was intended to be included as the effective date of the regulation.

(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment after comments to this administrative regulation is to remove confusion or redundancy as the promulgation process will determine the effective date of the regulation.

(c) How the amendment conforms to the content of the authorizing statutes:: KRS 224.60-130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility requirements and rates for reimbursement from SOTRA.

(d) How the amendment will assist in the effective administration of the statutes: KRS 224.60-130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility requirements and rates for reimbursement from the SOTRA. This amendment is part of the consolidation and streamlining of administrative regulations implementing the underground storage tank program as a part of the Governor's Red Tape Initiative.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect owners and operators of underground storage tank facilities. There are 3,216 UST facilities that are potentially eligible for SOTRA. The SOTRA program is voluntary; therefore the number of entities is dependent upon the level of participation by these entities. The type of entities affected would include individuals, businesses, organizations, state, and local governments that are small owners of USTs. There are approximately thirty (30) SOTRA applications submitted per year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities identified in question (3) will not have to take any actions as it is a voluntary program.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment will not cost entities identified in question (3) any funds as it is a voluntary program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question: Benefits for entities in compliance with SOTRA will include reimbursement for expenses incurred during permanent tank closure.

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

(a) Initially: There is no cost associated with implementing this amendment.

(b) On a continuing basis: There is no cost associated with implementing this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Implementation and enforcement of this administrative regulation would be achieved by a combination of tank fees, the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF), and grants from the U.S. Environmental Protection Agency.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no need for an increase in funding or fees to implement this amendment.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation applies to all entities that are small owners of USTs, including individuals, businesses, organizations, state and local governments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 state or local governments that own or operate an underground storage tank (UST) facility as well as the Division of Waste Management.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.60-130(1)(j).

(3) Estimate the effect of this administrative regulation on the 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 administrative regulation will not affect the expenditures and revenues of a state or local government agency as the UST program is already in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate additional revenue for state or local government as the UST program is already in effect. Currently the division receives $287,700 in tank fees and $24.2 Million Petroleum Storage Tank Environmental Assurance Fund (PSTEAF) annually, and $1,925,333 Leaking Underground Storage Tank (LUST) Prevention and LUST Cleanup biennially in federal grants to administer the UST program.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate additional revenue for state or local government as the underground storage tank program is already in effect. However, the division expects to receive $287,700 in tank fees, $24.2 Million PSTEAF annually, and $1,925,333 LUST Prevention and LUST Cleanup biennially in federal grants to administer the UST program for subsequent years.

(c) How much will it cost to administer this program for the first year? The underground storage tank program is already in effect and costs $25.5 Million to administer as a whole, including reimbursement to owners and operators for eligible corrective action costs and the reimbursement of tank removals under SOTRA.

(d) How much will it cost to administer this program for subsequent years? $25.5 Million, as a whole, including reimbursement to owners and operators for eligible corrective action costs and reimbursement of tank removals under SOTRA.

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

Revenues (+/-): $1,925,333(biennially) in federal grant funding (LUST Prevention and LUST Cleanup), $287,700 tank fees, $24.2 Million PSTEAF.

Expenditures (+/-): $24.4 Million, as a whole.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amended After Comments)

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

RELATES TO: KRS 216B.010, 216B.015, 216B.090, 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).

(4)[(3)] "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 [~~http://chfs.ky.gov/ohp/con~~].

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

(6)[(5)] "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.

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

(8)[(7)] "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[~~Health Policy~~] 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 relocate or transfer licensed acute care beds, not including neonatal Level III or Level IV beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district and the requirements established in this paragraph are met.~~

~~1.a. There shall not be an increase in the total number of licensed acute care beds in that area development district; and~~

~~b. The hospital from which the licensed beds are relocated delicenses those beds.~~

~~2. If neonatal Level II beds are relocated or transferred pursuant to this paragraph:~~

~~a. The receiving hospital shall have an existing licensed Level II, Level III, or Level IV neonatal unit;~~

~~b. A minimum of four (4) beds shall be relocated; and~~

~~c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;~~

~~(c) The proposal involves an application by an existing licensed acute care hospital to:~~

~~1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, Level III beds, or Level IV beds;~~

~~2. Convert and implement the beds on-site at the hospital's existing licensed facility; and~~

~~3. Delicense the same number of psychiatric or chemical dependency beds that are converted;~~

~~(d) The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:~~

~~1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds, Level III beds, or Level IV beds;~~

~~2. Convert and implement the beds on-site at the existing licensed hospital; and~~

~~3. Delicense the same number of converted beds;~~

~~(e)~~] 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[~~which~~] 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;

(c)[~~or (f)~~] 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)[(f)] of this section shall state the limitations specified under subsection (3)(c)[(f)]1. and 2. of this section.

(5) If an application is denied nonsubstantive review status by the Office of Inspector General[Health Policy], 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[Health Policy], 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[Health Policy], 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[Health Policy], 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[Health Policy] 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[which] 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[which] 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.

STEVE DAVIS, Inspector General
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: January 15, 2019

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

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, 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: Steve Davis, 502-564-9592, SteveD.Davis@ky.gov; or Chase Coffey, (502) 564-6746, CHFSregs@ky.gov; and Laura Begin

(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 and/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 will change the existing administrative regulation by revising the identity of the regulating agency to reflect the dissolution of the Office of Health Policy and the Office of Inspector General's adoption of the certificate of need program and by adding a type of ambulance application to the list of type of applications qualified for nonsubstantive review status. Additionally, three (3) categories of nonsubstantive review have been deleted in accordance with 2018 Ky. Acts ch. 143 (House Bill 444), which amended KRS 216B.020 to exempt those categories from certificate of need requirements. The Amended After Comments version amended Section 1 to define "base station" and "satellite location" and amended Section 2(3)(d) to clarify that there shall not be 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 satellite station, or both, located in the county that the applicant is proposing to service.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to address a public health emergency created by lack of access to Class I ambulances in Kentucky's larger counties. According to a recent (July 2018)

report published by the Pegasus Institute, "Certificate of Need: Kentucky's CON Regulations and Their Impact on Ambulance Care," counties above 50,000 residents have 25.65% fewer ambulance providers (all classes) compared to six (6) other states that either border the Commonwealth or are in the same region. As a result of these findings, the Pegasus Institute's top recommendation to the Commonwealth, which is one (1) of only four (4) states with certificate of need requirements for ambulance providers, is that Kentucky immediately suspend its CON requirements for ground ambulances in counties above 50,000 residents and begin phasing out CON laws in rural counties. This administrative regulation is a more conservative response than the recommendation, as it preserves the certificate of need requirement but provides for nonsubstantive review, which is an expedited review process that gives the applicant proposing the service the presumption that the service is needed and transfers the burden of proof to the affected party opposing the application's proposal. The additional changes to delete the three (3) categories of nonsubstantive review are necessary to comply with 2018 Ky. Acts ch. 143 (House Bill 444), which amended KRS 216B.020 to exempt those categories from certificate of need requirements. Amendments made in the Amended After Comments version are necessary to make changes based on comments received during the public comment process as explained in the Statement of Consideration, filed simultaneously with this Amended After Comments version.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by promulgating an administrative regulation conveying nonsubstantive review status to a specific type of certificate of need application that is necessary to improve access to quality health care in Kentucky and by deleting three (3) categories that are now exempt from certificate of need requirements.

(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 revising the identity of the regulating agency to reflect the dissolution of the Office of Health Policy and the Office of Inspector General's adoption of the certificate of need program and by adding a type of ambulance application to the list of type of applications qualified for nonsubstantive review status. The additional changes to delete the three (3) categories of nonsubstantive review are necessary to comply with 2018 Ky. Acts ch. 143 (House Bill 444), which amended KRS 216B.020 to exempt those categories from certificate of need requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants proposing Class I ambulance services and affected parties. In 2018 to date, seven (7) applications proposing Class I ambulance services have been filed. Nineteen (19) of Kentucky's 120 counties have more than 50,000 residents. Of these counties, eleven (11) counties have only one (1) Class I ambulance and three (3) counties (McCracken, Laurel, and Warren) only have one (1) Class I ambulance service that is not owned or operated by a public organization.

(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: Certificate of need applications proposing to establish a Class I ambulance provider serving a county with at least 50,000 residents and only one (1) existing ambulance provider that is not owned or operated by a public organization may be submitted during any batching cycle and request nonsubstantive review status.

(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): If an applicant proposes to establish a Class I ambulance service in a county with a population of at least 50,000 and only one (1) other Class I ambulance provider that is not owned or operated by a public organization with a base station, satellite location or both located in the county and that is also licensed to serve the entire county, then that applicant will benefit from nonsubstantive review, be relieved of the formal application batching cycle, have the presumption of need, and have an expedited review process.

(5) Provide an estimate of how much it will cost the administrative body 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: No new funding will be needed to implement the provision of the amended 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 fee or funding increase 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: The administrative regulation does not establish or increase fees.

(9) TIERING: Is tiering applied? Tiering is used as the CON review criteria for applications proposing a Class I ground ambulance service in a county with a population of at least 50,000 and only one (1) existing ambulance provider that is not owned or operated by a public organization and that has a base station, satellite location or both located in the county and that is also licensed to serve the entire county, will be expedited and less rigorous than the review criteria for applications proposing other ambulance services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Office of Inspector General and may impact any government owned or operated ambulance providers if the public organization is in a county with a population of at least 50,000 and only one (1) other Class I ambulance provider in the county, which ambulance provider is not owned or operated by a public organization, with a base station, satellite location or both located in the county and that is also licensed to serve the entire county.

2. Identify each state or federal statute 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 will generate revenue for a local government only if the government applies to establish a Class I ambulance for a county with a population over 50,000 and with only one (1) Class I provider that is not owned or operated by a public organization with a base station, satellite location or both located in the county and that is also licensed to serve the entire county. The revenue could be generated from fees for ambulance runs as well as a public necessity tax on residents.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? If a local government in a county with a population over 50,000 and with only one (1) Class I provider that is not owned or operated by a public organization and with a base station, satellite location or both located in the county and that is also licensed to serve the entire county, applies for certificate of need authority to establish its own Class I ambulance service and the application is approved, that government owned service may generate revenue from fees for ambulance runs as well as a public necessity tax on residents. The amount of revenue will depend on volume, rate of reimbursement, operational costs, and tax if imposed.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:530. Post-adoption placement stabilization services.

RELATES TO: KRS 199.011, 600.020, 605.100, 605.130, 620.170, 45 C.F.R. 1355.34(b), (c), 1356.22, 42 U.S.C. 673

STATUTORY AUTHORITY: KRS 194A.050(1), 199.472, 605.100(1), 605.130(7)[(4)], 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the cabinet to promulgate, administer, and enforce those administrative regulations necessary to qualify for the receipt of federal funds. To maintain eligibility for full funding under Title IV-E and IV-B of the Social Security Act, under 45 C.F.R. 1355.34(b) and (c), the cabinet shall design services to help children achieve permanency, to include post-legal adoption services. KRS 199.472 mandates that the cabinet establish[establishes] criteria for the adoption of children by administrative regulation. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605, including KRS 605.130(7)[(4)], which requires the cabinet to perform other services necessary for the protection of children, and KRS 605.100(1), which requires the cabinet to arrange for a program of care, treatment, and rehabilitation of the children committed to it. This administrative regulation establishes post-adoption placement stabilization services for children who were adopted from the custody of the cabinet, to the extent funds are available.

Section 1. Definitions.

(1) "Aftercare plan" means a plan of care for a child upon the discontinuance of post-adoption placement stabilization services, which:

(a) Recommends services for the continued care of the child;

(b) Identifies community resources that have been arranged for the child or parent; and

(c) Includes actions that the parent agrees to take.

(2) "Child-caring facility" is defined by KRS 199.011(5)[(6)].

(3) "Commitment" is defined by KRS 600.020(13)[(12)].

(4) "Family team meeting" means a meeting convened to develop services to avoid the dissolution of an adoption in accordance with Section 2(2)(b)4. of this administrative regulation.

(5) "Post-adoption placement stabilization services" or "PAPSS" means coordination, payment, and provision of care and treatment of an adopted child by the cabinet to prevent dissolution of the adoption.

Section 2. Eligibility Requirements for Services.

(1) The cabinet shall consider a request for PAPSS made on behalf of an adopted child if:

(a) The adoptive parent receives adoption assistance for the child in accordance with 922 KAR 1:050 or 922 KAR 1:060; and

(b) Cabinet staff determines that after the provision of other prevention services, such as services provided in subparagraph (2)(b)2. of this section, the adoption of the child remains in jeopardy of dissolution.

(2) If the threshold criteria of subsection (1) of this section are met, the cabinet shall consider a child eligible for PAPSS if:

(a) Upon a child's placement with a child-caring facility or a decision to extend PAPSS, the child is assessed a level of care by the cabinet or its agent and determined to meet criteria for:

1. Level IV as established in 922 KAR 1:360, Section 4(4); or

2. Level V as established in 922 KAR 1:360, Section 4(5); and

(b) The adoptive parent:

1. Receives adoption assistance for the child in accordance with 922 KAR 1:050 or 922 KAR 1:060;

2. Has cooperated with other services to prevent the adoption's dissolution, such as:

a. **Targeted Case Management and other behavioral health[Wrap-around]**[IMPACT Plus] services through **Community Mental Health Centers and other[the]** Kentucky Medicaid Program **behavioral health services providers**;

b. Family Preservation Services[Program] in accordance with KRS 200.575[922 KAR 1:410]; or

c. Crisis stabilization through the Kentucky Medicaid Program;

3. Authorizes the cabinet to:

a. Coordinate PAPSS for the child;

b. Make a referral on behalf of the child to a child-caring facility for the child's placement; and

c. Access confidential medical and treatment information about the child; and

4. Agrees to:

a. Participate in a family team meeting:

(i) To include designated regional cabinet staff, family members, staff of the child-caring facility providing services to the child, or other individuals requested by the family or cabinet staff;

(ii) Within the first thirty (30) days of a child's receipt of PAPSS; and

(iii) As established in Section 4(4) of this administrative regulation;

b. Cooperate with an assessment of the child to determine the child's needs and eligibility for PAPSS as required by paragraph (a) of this subsection[in Section 2(2)(a) of this administrative regulation];

c. Place the child with:

(i) A child-caring facility operating in accordance with 922 KAR 1:360; or

(ii) An out-of-state, licensed child care institution upon authorization by the cabinet for payment to the child care institution in accordance with Section 3(1) of this administrative regulation;

d. Participate in the child's treatment to support reunification with the child; and

e. A renegotiation[temporary discontinuance] of the child's adoption assistance to one (1) dollar, provided in accordance with 922 KAR 1:050 or 922 KAR 1:060, during the period of time the child receives PAPSS.

Section 3. Payment.

(1) To the extent funds are available, the cabinet shall pay a reimbursement rate for PAPSS consistent with the child's assessed level of care as established in Section 2(2)(a) of this administrative regulation unless:

(a) The child's child care institution does not have an agreement with the cabinet in accordance with 922 KAR 1:360; and

(b) Approval for a different rate is obtained from the

commissioner or designee.

(2) During the time period in which a child receives PAPSS, the cabinet shall temporarily reimburse for the renegotiated[~~discontinue~~] adoption assistance in accordance with:

(a) Section 2(2)(b)4.e. of this administrative regulation; and

(b) 922 KAR 1:050 or 922 KAR 1:060.

Section 4. Timeframes for PAPSS.

(1) The cabinet shall discontinue payment for PAPSS after the child has received PAPSS for sixty (60) calendar days, unless an additional time period of PAPSS has been approved in accordance with subsections (2) and (3) of this section.

(2) After the child has received PAPSS for sixty (60) calendar days, to the extent funds are available, the:

(a) Commissioner or designee may approve the child for an additional thirty (30) calendar days, for a total of ninety (90) calendar days of PAPSS, if the:

1. Child continues to meet the requirements specified in Section 2(2)(a) of this administrative regulation; and

2. Adoptive parent continues to meet the requirements specified in Section 2(2)(b) of this administrative regulation; or

(b) Cabinet may continue PAPSS to a child if the:

1. Child continues to meet the requirements specified in Section 2(2)(a) of this administrative regulation;

2. Child's assessed needs require PAPSS beyond an additional thirty (30) calendar days; and

3. Adoptive parent:

a. Voluntarily commits the child to the cabinet in accordance with KRS 620.170 and 45 C.F.R. 1356.22; and

b. Continues to meet the requirements specified in Section 2(2)(b) of this administrative regulation.

(3) To the extent funds are available,[;] the cabinet may provide PAPSS to a child beyond ninety (90) calendar days in a twelve (12) month period, if the:

(a) Child continues to meet the requirements specified in Section 2(2)(a) of this administrative regulation; and

(b) Adoptive parent meets the requirements of subsection (2)(b)3. of this section.

(4) If a child receives PAPSS, the cabinet shall call at least one (1) family team meeting for the child. The meeting may be called:

(a) At thirty (30) calendar day intervals; or

(b) More frequently than one (1) time in a thirty (30) day period with the consent of the adoptive parent.

Section 5. Continuation of PAPSS Through Voluntary Commitment.

(1) If an adoptive parent voluntarily commits a child to the cabinet for the child's continued benefit of PAPSS and continues to meet criteria established in Section 2(2)(b) of this administrative regulation, the cabinet shall seek no child support from the adoptive parent.

(2) Any extension to the voluntary commitment of the child to the cabinet shall be in accordance with KRS 620.170 and 45 C.F.R. 1356.22.

Section 6. Discontinuation and Aftercare. The cabinet may develop an aftercare plan for the adoptive parent and child, if the:

(1) Cabinet discontinues PAPSS; and

(2) Adoptive parent assists in the aftercare plan's development.

Section 7. Appeals.

(1) An adoptive parent shall be granted an administrative hearing in accordance with 922 KAR 1:320 if the cabinet fails to:

(a) Use reasonable promptness in its:

1. Response to a request for PAPSS; or

2. Referral of an eligible child to a child-caring facility for approved PAPSS; or

(b) Call a family team meeting for a child during the:

1. Sixty (60) calendar days a child receives PAPSS; or

2. Period of time a child receives an extension to PAPSS in accordance with Section 4[~~2~~](2) and (3) of this administrative regulation.

(2) Private child-caring facilities shall have appeal rights in accordance with 922 KAR 1:360, Sections 14 and 15.

(3) An adoptive parent may request a review by the commissioner if criteria of 922 KAR 1:320, Section 4(5) or 10(2)[~~8(2)~~] are met.

Section 8. Out-of-State Request for PAPSS. The cabinet shall consider out-of-state requests for a child adopted from the custody of the cabinet on a case-by-case basis, to include considerations regarding the:

(1) Needs of the child;

(2) Consent of the parent; and

(3) Extent of funds available.

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

APPROVED BY AGENCY: January 10, 2019

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

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, 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 Person: Chase Coffey, Phone (502) 564-6746
Email CHFSregs@ky.gov; and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for the implementation of post adoption placement stabilization services (PAPSS) for children who were adopted from the custody of the cabinet to the extent funds are available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under the Social Security Act and to help children achieve and maintain permanency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorized statutes by allowing the cabinet to qualify for federal funds and establishing procedures for the implementation of PAPSS.

(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 PAPSS in a manner that is consistent with federal and state requirements, available funding, and the interests of families and children being served.

(2) If 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 ensures that adoption assistance contracts are renegotiated due to the provision of PAPSS in accordance with federal law. The amendment also clarifies instances of a child being authorized for payment with an out-of-state child care institution. The amendment makes technical corrections in accordance with KRS Chapter 13A. The administrative regulation was further amended in response to a comment received to clarify what was originally meant by "wrap-around services."

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure federal compliance and prudent stewardship of available departmental resources in the provision of post-adoption assistance and supports to children and families involved in a public agency adoption.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by better aligning with the needs of adopted children and overarching federal requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its refinement of PAPSS in accordance with federal standards and the interests of

adoptive families and children.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 1,065 unique children adopted from foster care in Kentucky in 2017. Any child who was adopted from foster care is eligible for PAPSS.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment clarifies current practice within the administrative regulation. There is no new action required on the part of adoptive parents.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional cost for adoptive families.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of the amendment, there will be greater clarity regarding the conditions for PAPSS.

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

(a) Initially: The amendment to this administrative regulation is not anticipated to create new costs for the department. With increasing numbers of public agency adoptions, the demand for PAPSS will have to be monitored to ensure the agency remains within existing appropriations.

(b) On a continuing basis:The amendment to this administrative regulation is not projected to result in new costs. The administrative body will continually monitor its costs to make any adjustments necessary to maintain PAPSS within existing appropriations.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this administrative regulation is state general funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The administrative regulation requires no increase in fees or funding.

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

(9) TIERING: Is tiering applied? Tiering is not applied. PAPSS is implemented in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
45 C.F.R. 1355.34(b), (c), 1356.22, 42 U.S.C. 673

2. State compliance standards. KRS 194A.050(1), 199.472, 605.100(1), 605.130(7), 605.150

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 1355.34(b), (c), 1356.22, 42 U.S.C. 673

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services 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 194A.050(1), 199.472, 605.100(1), 605.100(1), 605.130(7), 605.150, 45 C.F.R. 1355.34(b), (c), 1356.22

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate any revenue for the cabinet in the first year. Providing additional supports to adoptive families in order to prevent children from re-entering foster care supports the overall well-being of that child and decreases the public cost of caring for the child if the child reenters foster care or if the adoption dissolves.

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

(c) How much will it cost to administer this program for the first year? The administration of this program is projected to fall within available state appropriations.

(d) How much will it cost to administer this program for subsequent years? The administration of this program is projected to fall within available state appropriations.

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

PROPOSED AMENDMENTS

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Amendment)

32 KAR 1:050. Political organization[~~committee~~] registration.

RELATES TO: KRS 121.015(3), (4), 121.170
STATUTORY AUTHORITY: KRS 121.015(3), (4), 121.120(1)(g), (4), 121.170(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. KRS 121.015(3)(b)5. requires the Registry to determine by administrative regulation what constitutes a minor political party for purposes of committee registration. As defined in KRS 121.015(4), a "contributing organization" is subject to contribution limits and required to file periodic reports of campaign finances under KRS 121.180(6). This administrative regulation defines "minor political party" and "executive committee" for purposes of Kentucky's Campaign Finance Regulation (KRS Chapter 121), specifies the form to be used for registration by [~~political~~] committees and contributing organizations, and incorporates the form by reference.

Section 1. Definitions.
(1) "Executive committee" means an organizational unit or affiliate recognized within the document governing a political party, that raises and spends funds to promote political party nominees, and performs other activities commensurate with the day-to-day operation of a political party, including voter registration drives, assisting candidate fundraising efforts, holding state conventions or local meetings, and nominating candidates for local, state and federal office.
(2) "Minor political party" means an association, committee, organization, or group having constituted authority for its governance and regulation, which nominates or selects a candidate for election to any federal or statewide-elected state office in Kentucky, whose name appears on an election ballot as the candidate of the association, committee, organization, or group, and does not have a recognized caucus campaign committee within the Kentucky House or Senate, as defined in KRS 121.015(3)(b)1.-4.
(3) "Political organization" means any committee or contributing organization, as those terms are defined in KRS 121.015(3) and (4).

Section 2. Political Organization[~~Committee~~] Registration. The "Political Organization[~~Committee~~] Registration" form, KREF 010, revised 01/2019[~~06/2011,~~] shall be the official form to be used for the registration of campaign committees, caucus campaign committees, political issues committees, permanent committees,[~~and~~] inaugural committees, executive committees, and contributing organizations.

Section 3[~~2~~]. Incorporation by Reference.
(1) "Political Organization[~~Committee~~] Registration" form, KREF 010, revised 01/2019[~~06/2011~~], is incorporated by reference.
(2) This material may inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRAIG C. DILGER, Chairman
APPROVED BY AGENCY: January 8, 2019
FILED WITH LRC: January 14, 2019 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 28, 2019, at 10:00 a.m. Eastern Time at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.
CONTACT PERSON: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email Emily.Dennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation amends and updates the current political committee registration form to include contributing organization and executive committee registrants. The administrative regulation also defines the terms "political organization," "minor political party," and "executive committee."
(b) The necessity of this administrative regulation: KRS 121.120(1)(g), KRS 121.120(4), KRS 121.170(1) and KRS 121.015(3)(b)(5) require the Registry to promulgate this administrative regulation. 2018 House Bill 157 amended KRS 121.015(3)(b) to permit a minor political party with a recognized state executive committee in Kentucky to form caucus campaign committees. This administrative regulation defines the term "minor political party" and "executive committee" to clarify the statutory definition of caucus campaign committee, as amended by 2018 House Bill 157. In addition, the revised registration form will provide a means for the registration of executive committees and contributing organizations.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121; KRS 121.120(4), as it prescribes a form for the registration of committees and contributing organization; and KRS 121.015(3)(b)5., as it sets forth how a minor political party may register a caucus campaign committee.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the reporting requirements under KRS 121.180, as it provides a means for the registration of committees and contributing organizations and defines terms necessary to determine how a minor political party may register a caucus campaign committee.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment updates the latest version of the political committee registration form and defines terms in compliance with 2018 House Bill 157.
(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms. KRS 121.170(1) requires registration by committees, and KRS 121.180 requires election finance statements to be filed on a periodic basis by committees and contributing organizations. KRS 121.015(3)(b)5. defines caucus campaign committee to include subdivisions of the state executive committee of a minor political party, which serve the same function as Democratic and

Republican caucus campaign committees in the House and the Senate, as determined by administrative regulations promulgated by the registry. Amendment to the administrative regulation is necessary to define the terms "executive committee" and "minor political party" and to provide a means for registration of executive committees and contributing organizations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) by promulgating an administrative regulation to carry out the provisions of KRS Chapter 121. The administrative regulation also conforms to KRS 121.120(4) by prescribing a necessary form for the registration of committees and contributing organizations and conforms to KRS 121.015(3)(b)5. by defining terms necessary to determine how a minor political party may register a caucus campaign committee.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will bring the committee registration form into compliance with changes in KRS 121.015 due to the passage of 2018 House Bill 157 and will further assist in the effective administration of the reporting requirements specified in KRS 121.180 by providing a means for registration of executive committees and contributing organization.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All contributing organizations and committees required to register with the Registry will be affected by this administrative regulation. To the extent the public, media, and other interest groups depend on the Registry's disclosure function, they will also 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: No action will be required of the regulated entities. The Registry will provide the new form, both in hard copy format and electronically, to the regulated entities. All training materials will be updated to reflect the new form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated to be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change to the administrative regulation will provide a clear means for a minor political party to register a caucus campaign committee, as provided in 2018 House Bill 157, and provides a means for registration by executive committees and contributing organizations.

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

(a) Initially: Initial costs to implement the administrative regulation are estimated to be no more than $5,000.

(b) On a continuing basis: Ordinary printing costs are anticipated in the Registry's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Registry budget funding will be used for implementation and enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this administrative regulation apply equally to all contributing organizations and committees required to register and file reports with the Registry.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Commonwealth of Kentucky - General Government – Registry of Election Finance

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g) and (4), 121.015(3) and (4), 121.170, and 121.210(4)

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? An additional cost of less than $5,000 to the Registry of Election Finance is anticipated in year one, for the printing of revised forms and necessary revisions to guidebooks which will be made available in electronic format.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None.

Expenditures (+/-): + $5,000 in year one/ no additional costs in subsequent years.

Other Explanation: N/A

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Amendment)

32 KAR 1:070. Waiver from filing candidate election finance statement.

RELATES TO: KRS 121.180(9)

STATUTORY AUTHORITY: KRS 121.120(1)(g), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. KRS 121.120(4) requires the registry to promulgate administrative regulations and prescribe forms for the making of reports under KRS Chapter 121. This administrative regulation specifies the form to be used by a candidate or slate of candidates to request a waiver from filing election finance statements and incorporates the waiver form by reference.

Section 1. A candidate or slate of candidates[~~Candidates~~] shall use the "Political Organization[~~Committee~~] Registration" form, incorporated by reference in 32 KAR 1:050, to request a "Waiver from Filing Candidate Election Finance Statement". Upon filing a "Waiver from Filing Candidate Election Finance Statement", a candidate or slate of candidates shall be relieved of the duty personally to file election finance statements and keep records of receipts and expenditures, so long as the candidate or slate of candidates meets the conditions set forth in KRS 121.180(9).

Section 2. Incorporation by Reference.

(1) "Waiver from Filing Candidate Election Finance Statement",

KREF 011, revised 01/2019[~~05/2005~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRAIG C. DILGER, Chairman

APPROVED BY AGENCY: January 8, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 28, 2019, at 10:00 a.m. Eastern Time at the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Emily Dennis, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 573-2226, fax (502) 573-5622, email Emily.Dennis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Emily Dennis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends and updates the current waiver from filing candidate election finance statement form. The updated form is reformatted, includes lines on which the candidate can include an electronic mail address, and has signature lines for both the candidate for Governor and candidate for Lieutenant Governor in the event a gubernatorial slate chooses to register a campaign committee.

(b) The necessity of this administrative regulation: KRS 121.120(1)(g), 121.120(4), and 121.180(9) require the Registry to promulgate this administrative regulation. KRS 121.180(9) relieves a candidate or slate of candidates of the duty personally to file reports and keep records of receipts and expenditures if the candidate or slate of candidates states in writing that he or she agrees to certain conditions with respect to campaign funds received by the campaign of the candidate or slate. This regulation prescribes the form for a candidate to exercise the waiver from filing candidate election finance statements, as required by KRS 121.120(1)(g) and (4).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation specifically conforms to the provisions of KRS 121.120(1)(g), as it promulgates an administrative regulation to carry out the provisions of Chapter 121, and KRS 121.120(4), as it prescribes a form for candidates and slates to file in order to be relieved personally of the duty to file reports and keep records of receipts and expenditures as set forth in KRS 121.180(9).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the reporting requirements under KRS 121.180, as it provides a means for a candidate or slate of candidates to request a waiver from filing candidate election finance statements, as provided by KRS 121.180(9).

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the latest version of the waiver from filing candidate election finance statement form. The amended form includes signature lines for both members of a gubernatorial slate and provides blanks for a candidate or slate of candidates to include an electronic mail address for contact purposes.

(b) The necessity of the amendment to this administrative regulation: KRS 121.120(4) requires the Registry to adopt official forms. KRS 121.180(9) permits a candidate or slate of candidates to be relieved of the duty personally to file election finance statements and keep records of receipts and expenditures, provided that certain conditions are met as set forth in the statute. The candidate or slate must indicate in writing or on a form provided by the Registry that he, she, or they (in the case of a slate) will conform to certain conditions spelled out in KRS 121.180(9) in order to be personally exempt from the reporting and recordkeeping requirements of the campaign finance regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment specifically conforms to the provisions of KRS 121.120(1)(g) as the Registry is authorized to promulgate administrative regulations to carry out the provisions of KRS Chapter 121. The administrative regulation also conforms to KRS 121.120(4), by prescribing a necessary form for a candidate or slate of candidates to state in writing the intent to comply with the requirements of KRS 121.180(9). Finally, the regulation incorporates the terms of KRS 121.180(9), thereby providing a means for a candidate or slate of candidates to agree to the conditions of the statute permitting a candidate to be exempt from reporting and recordkeeping requirements so long as these conditions are met by the candidate or slate of candidates.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the waiver from filing candidate election finance statement form so that a slate of candidates only has to file one (1) waiver form instead of two (2) waiver forms. The amended form also provides a means for a candidate or slate of candidates to provide electronic mail address information so that the Registry may more quickly and efficiently contact the campaign regarding regulatory requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All candidates and slate of candidates who authorize a campaign committee are required to complete this form to request a waiver from filing election finance statements as required by KRS 121.180(9).

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No action will be required of the regulated entities. The Registry will provide the new form, both in hard copy format and electronically, to the regulated entities. All training materials will be updated to reflect the new form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated to be incurred by regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The change to the administrative regulation will provide a slate of candidates the means to file a single form to request a waiver from filing candidate election finance statement and allows candidates and slates of candidates a means to provide the Registry with an electronic mail address so the Registry may more efficiently contact candidates and slates.

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

(a) Initially: Initial costs to implement the administrative regulation are estimated to be no more than $5,000.

(b) On a continuing basis: Ordinary printing costs are anticipated in the Registry's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Registry budget funding will be used for implementation and enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amendment to an existing administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes no fees either directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this administrative regulation apply equally to all candidates who choose to request a waiver from reporting and recordkeeping requirements under KRS 121.180(9).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Commonwealth of Kentucky - General Government – Registry of Election Finance

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 121.120(1)(g) and (4), and 121.180(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? No revenue will be generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? An additional cost of less than $5,000 to the Registry of Election Finance is anticipated in year one, for the printing of revised forms and necessary revisions to guidebooks which will be made available in electronic format.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated in subsequent years, as these costs constitute ongoing administrative costs consistent with the agency's function.

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

Revenues (+/-): None.

Expenditures (+/-): + $5,000 in year one/ no additional costs in subsequent years.

Other Explanation: N/A

FINANCE AND ADMINISTRATION CABINET
Kentucky Teachers' Retirement System
(Amendment)

102 KAR 1:060. Refunds.

RELATES TO: KRS 161.470, 161.700, 161.520

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the[~~Kentucky~~] Teachers' Retirement System TRS[(~~KTRS~~)] to promulgate all administrative regulations for the administration of funds of the retirement system and for the transaction of business. KRS 161.470(6) provides that members of TRS[~~KTRS~~] may receive a refund of their contributions, less contributions to the medical insurance fund, upon withdrawal from service. KRS 161.520 provides, if a member dies, the member's accumulated contributions may be refunded to a surviving spouse, designated beneficiary or to the member's estate. This administrative regulation provides the administrative procedures necessary to carry out the provisions of these statutes[~~this statute~~].

Section 1. Definitions.

(1) "Alternate payee" is defined by KRS 161.220(26).

(2) "Qualified domestic relations order" or "QDRO" is defined by KRS 161.220(25).

Section 2. Refunds shall be made on the basis of permanent withdrawal from service in a covered position. A refund shall not be made if the member is under contract for employment in a covered position.

Section 3. Partial refunds of member contributions shall only be permitted when a member cancels service credit and obtains credit for the service in a state or municipal retirement system outside Kentucky as provided in 102 KAR 1:045.

Section 4. Administrative Provisions.

(1) Following permanent withdrawal from service, a member may contact TRS[~~KTRS~~] and request a refund application. A refund shall not be processed earlier than sixty (60) days after the member's termination date.

(2) Upon receipt of a request for a refund, TRS[~~KTRS~~] shall review the member's account. If the member is eligible for service retirement, the member shall not refund the account unless:

(a) Denial of the refund will prohibit the member from qualifying for Social Security benefits; or

(b) The member will be using the refund to obtain credit in another retirement plan.

(3) If the member is eligible for service retirement as provided in KRS 161.600, TRS[~~KTRS~~] shall provide the member with instructions on how to apply for service retirement.

(4) If the member is eligible for a refund, TRS[~~KTRS~~] shall forward the following:

(a) A TRS[~~KTRS~~] Refund Application for Withdrawal of Account Balance form;

(b) A Direct Rollover Statement;

(c) A Refund Tax Notice; and

(d) A Special Tax Notice Regarding Plan Payments.

(5) If the member worked for multiple TRS[~~KTRS~~] employers, Section B only of the application may be duplicated, as needed.

(6) TRS[~~KTRS~~] may accept a photocopy or facsimile of Section B of the application from the employer.

(7) If the member has not made any contributions to TRS[~~KTRS~~] within the last two (2) fiscal years, Section B of the application shall not be completed.

(8) The member may choose one (1) of the following payment options:

(a) Refund paid directly to the member;

(b) Refund rolled into a qualified plan or IRA; or

(c) Partial payment to the member and the remainder of the refund rolled into a qualified plan or IRA. If the member chooses the rollover option, a minimum of $200 shall be rolled into a qualified plan or IRA.

(9) If the member chooses to have all or a portion of the refund rolled into a qualified plan or IRA, the member shall forward the Direct Rollover Statement to the qualified plan or IRA for completion.

(10) The member shall file the signed application with TRS[~~KTRS~~].

(11) The member shall also provide TRS[~~KTRS~~] with a photocopy of the member's:

(a) Signed Social Security card; and

(b) Valid driver's license.

(12) TRS[~~KTRS~~] shall not process the refund until the retirement system receives the member's completed application, signed Social Security card, valid driver's license, and if necessary, Direct Rollover Statement. TRS[~~KTRS~~] shall compare information provided by the employer in Section B of the application to the

information previously provided by the employer in the annual statement or most recent payroll report to confirm the information. If there is a discrepancy between the information in Section B of the application and the information in the annual statement or most recent payroll report, TRS[~~KTRS~~] shall contact the employer to reconcile the information.

(13) A refund shall be processed at either the beginning or the middle of each month, whichever is the applicable date following receipt of the properly completed application.

(14) If the member requested a direct refund of the account balance, TRS[~~KTRS~~] shall mail the member:

(a) The refund check; and

(b) A letter that shall include a breakout of the gross, taxable, and net amount of the refund.

(15) If the member requests a partial or full rollover of the account balance, TRS[~~KTRS~~] shall mail the refund check directly to the qualified plan or IRA. The member shall receive a letter that shall confirm payment of the refund to the qualified plan or IRA.

(16) If a QDRO requires a portion of a member's refund to be paid to an alternate payee, the QDRO shall be submitted to TRS[~~KTRS~~] for approval as required by KRS 161.700 and 102 KAR 1:320.

(a) Following approval of the QDRO by TRS[~~KTRS~~] and entry by a court of competent jurisdiction, if the member is eligible for, and requests a refund, TRS[~~KTRS~~] shall forward the documents listed in subsection (4) of this section to the member.

(b) TRS[~~KTRS~~] shall forward to the alternate payee the following:

1. The Qualified Domestic Relations Order (QDRO)/Application for Withdrawal of Account Balance form (QDRO/Application);

2. The Qualified Domestic Relations Order (QDRO)/Direct Rollover Statement;

3. A Refund Tax Notice; and

4. A Special Tax Notice Regarding Plan Payments.

(c) The alternate payee shall file the QDRO/Application form with a copy of the Alternate Payee's signed Social Security card. If the alternate payee chooses to have all or a portion of his or her refund rolled into one (1) of the options set forth in subsection (8) of this section, the alternate payee shall forward the Qualified Domestic Relations Order (QDRO)/Direct Rollover Statement to the qualified plan or IRA for completion.

(d) TRS[~~KTRS~~] shall respond to the alternate payee as required by either subsection (14) or (15) of this section.

(17) Upon the death of an active, contributing member, a refund of the deceased member's account balance may be paid to:

(a) A surviving spouse who meets the requirements of KRS 161.520(2)(b); or

(b) The beneficiary designated by the deceased member; or

(c) The deceased member's estate.

(18) Upon the death of a retired member who Chose Option I, the Straight Life Annuity, a refund of contributions remaining in the deceased member's retirement account shall be made to the deceased member's designated beneficiary or estate.

(19) If a surviving spouse meets the requirements of KRS 161.520(3)(b)1 or 2 and wishes to waive the surviving spouse benefit, he or she shall execute a waiver prescribed by TRS.

(20) TRS shall forward either:

(a) A Refund Application for Deceased Member Account (Spouse or Non-Spouse Beneficiary) Form 12SP; or

(b) A Refund Application for Deceased Member Account – Estate, Form 12.

(21) A spouse or designated beneficiary may choose, if permitted by federal tax law, one (1) of the payment options set forth in Section 4(8) of this administrative regulation.

(22) Photocopies of the spouse or designated beneficiary's signed Social Security card and valid driver's license shall be attached to the appropriate completed form. The refund shall be processed pursuant to Section 4(13), (14), and (15) of this administrative regulation.

(23) TRS shall not process a refund to a deceased member's estate earlier than ninety (90) days following the death of a member.

(24) TRS[~~KTRS~~] shall record the date of the refund on the member's account and designate the member's account status as refunded.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Refund Application for Withdrawal of Account Balance", 2016;

(b) "Direct Rollover Statement", 2016;

(c) "Refund Tax Notice", 2016;

(d) "Special Tax Notice Regarding Plan Payments", 2016;

(e) "Qualified Domestic Relations Order (QDRO)/Application for Withdrawal of Account Balance", 2016; and

(f) "Qualified Domestic Relations Order (QDRO)/Direct Rollover Statement", 2016;

(g) "Refund Application for Deceased Member Account (Spouse or Non-Spouse Beneficiary)" Form 12SP, January, 2019;

(h) "Refund Application for Deceased Member Account – Estate" Form 12, January, 2019;

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

RON SANDERS, Chairperson

APPROVED BY AGENCY: December 17, 2018

FILED WITH LRC: January 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, February 27, 2019, at 9:00 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, February 20, 2019, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who 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 the proposed administrative regulation until the end of the calendar day on Thursday, February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provides the administrative procedures necessary to refund contributions of a member upon the member's withdrawal from TRS covered service or following the member's death.

(b) The necessity of this administrative regulation: This administrative regulation sets forth the administrative procedures for obtaining a refund of the member's contributions upon withdrawal from service in a TRS covered position or following the member's death.

(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 (1) setting forth the steps necessary for filing and processing an application for refund, and (2) incorporating the forms required by TRS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the detailed procedures for filing an application for refund as required by KRS 161.470 and

161.520.

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

(a) How the amendment will change this existing administrative regulation: The amendments (1) set forth the steps which must be taken by a member's surviving spouse, designated beneficiary or the member's estate and TRS to process an application for refund, and (2) incorporates the forms required by TRS.

(b) The necessity of the amendment to this administrative regulation: To set forth the procedures for requesting and processing an application for refund following the death of a member and incorporate the forms required by TRS.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments set forth the precise procedures to be followed to request and process an application for refund following the death of a member.

(d) How the amendment will assist in the effective administration of the statutes: Surviving spouses, designated beneficiaries and representatives of the deceased member's estate, will be advised of the procedures, information and documentation necessary for the processing of an application for refund.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Surviving spouses, designated beneficiaries and representatives of the deceased member's estate requesting an application for refund.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Surviving spouses, designated beneficiaries and representatives of the deceased member's estate will have to contact TRS to obtain the appropriate application and provide the requisite proof of identification.

(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 other than copying costs and postage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Surviving spouses, designated beneficiaries and representatives of the deceased member's estate will be aware of the process to obtain a refund of the member's account balance.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? (1) Active, contributing members Teachers' Retirement System; (2) alternate payees of either active, contributing or retired members who shall receive portions of account refunds pursuant to a Qualified Domestic Relations Order to Divide TRS Benefits; or (3) the surviving spouse, designated beneficiary, or representative of a deceased member or member's estate.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310, KRS 161.470 and 161.520.

3. Estimate the effect of this administrative regulation on the 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? Administrative costs will depend upon the number of refund applications received and cannot be quantified at this time.

(d) How much will it cost to administer this program for subsequent years? Future administrative costs will depend upon the number of refund applications received and cannot be quantified 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(Amendment)

102 KAR 1:320. Qualified domestic relations orders.

RELATES TO: KRS 161.220, 161.700,[-] 161.716, 403.190, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS 161.310(1), 161.700(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the Board of Trustees of the Teachers' Retirement System (TRS) to promulgate administrative regulations for the administration of the funds of the retirement system. KRS 161.700(4) requires the Board of Trustees of TRS to promulgate administrative regulations setting forth the requirements, procedures, and forms for the approval and processing of qualified domestic relations orders impacting the benefits of participants of the retirement system. This administrative regulation establishes these requirements.

Section 1. Definitions.

(1) "Alternate payee" is defined by KRS 161.220(26).

(2) "Benefits" means a monthly service or disability retirement allowance or refund payable at the request of a participant covered by TRS who terminates employment in a TRS covered position prior to becoming eligible to receive a retirement allowance.

(3) "Member" is defined by KRS 161.220(4).

(4) "Participant" is defined by KRS 161.220(24).

(5) "Qualified domestic relations orders" or "QDRO" is defined by KRS 161.220(25).

Section 2. (1) A QDRO shall state the following:

(a) The member's name, TRS member identification number, and last-known mailing address;

(b) The alternate payee's name and last known mailing address;

(c) Whether the order applies to:

1. An active account from which the member is not currently receiving a retirement allowance; or

2. A retired account from which the member is currently

receiving a retirement allowance and the date on which the member retired the account;

(d) The date of marriage;

(e) The date of decree of dissolution of marriage;

(f) That the order is for the purpose of property division;

(g) Whether the alternate payee shall receive:

1. Recurring monthly payments under Option A, Option B, or Option C; and

2. For an active, contributing participant, a share of a termination refund of the contributions posted to the participant's account as either:[(h) The amount of the participant's monthly retirement allowance or termination refund to be paid by TRS to the alternate payee as either;

a.[1.] A fixed dollar amount; or

b. A[2. The] percentage calculated under Section 7[(1) or](2) of this administrative regulation or as determined by either the Court or the parties;

(h)[(i)] When payments shall begin;

(i)[(j)] When payments shall cease;

(j)[(k)] That the alternate payee shall be paid in the same form as the participant;

(k)[(l)] If the alternate payee spouse shall share in the participant's cost of living adjustments if the QDRO awards a fixed dollar amount to the alternate payee;

(l)[(m)] Who shall be responsible for payment of the TRS processing fee; and

(m)[(n)] All information required on the Qualified Domestic Relations Order to Divide Teachers' Retirement System Benefits.

(2) A QDRO shall be:

(a) Approved by TRS as to enforceability and compliance with the requirements of KRS 161.700 and this administrative regulation;

(b) Approved and submitted by the participant and alternate payee or their legal counsel;

(c) Signed by the judge of a court of competent jurisdiction;

(d) Filed with the clerk of the court; and

(e) Certified by the clerk of the court.

Section 3. Administrative Provisions.

(1) Upon entry of a final divorce decree, the participant shall forward a copy of the decree to TRS and:

(a) If the participant is a retired member, request:

1. A Change of Option Following Termination of Marriage form, if the participant wants to change his or her retirement option, which shall be done within sixty (60) days of the final divorce decree;

2. A Change of Retirement Beneficiary form, if the participant had chosen retirement Option I or Option II and does not want to change his or her retirement option, but wants to name a new beneficiary;

3. A Designation of Beneficiary for TRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate; or

4. A W-4P Withholding Certificate for Pension or Annuity Payments[,] or "W-4P", if the participant wants to change the amount of federal tax withheld from his or her retirement benefit; or

(b) If the participant is an active member, he or she shall request:

1. A Designation of Beneficiary for TRS Retirement Account Balance form, if the participant wants to designate a beneficiary other than his or her estate; or

2. A Designation of Beneficiary for TRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate.

(2) Thirty (30) days prior to filing the QDRO with TRS, the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee, or third party, including the party's legal counsel, shall provide a completed TRS Authorization for Release of Information form with the request.

(3) For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, TRS may, for the current fiscal year, provide the unaudited salary information electronically submitted to TRS by the participant's employer upon receipt of the written request and release.

(4) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, TRS shall not project future earnings or future service. TRS shall provide:

(a) The participant's total accrued service credit, including service credit purchased during the marriage, and the member account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and for which an employer annual report has been received by TRS and for which the member has not received a refund; and

(b) An estimate of the monthly retirement allowance the participant would receive if the participant retired without a statutory reduction of the basic retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of dissolution of marriage or receipt of the request for information.

(5) If the participant has retired, TRS shall provide the amount of the participant's monthly retirement allowance, the participant's accumulated account balance at retirement, the total retirement allowance received to date, and the participant's total accrued service credit, including any service credit purchased during the marriage. The parties, their legal counsel, or the court may use the information to decide what portion of the participant's account is marital. TRS shall not decide whether, or if, any portion of the participant's account is marital and potentially subject to division.

(6) The participant, alternate payee, or legal counsel shall submit a Qualified Domestic Relations Order to Divide Teachers' Retirement System Benefits form to TRS for review forty-five (45) days prior to filing the QDRO with the court. If more than one (1) of the participant's accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each TRS account.

(7) TRS shall not review the QDRO unless it is accompanied by the following:

(a) The TRS Administrative Regulatory Compliance form, or the draft QDRO, which has been approved by the:

1. Participant or legal counsel; and

2. Alternate payee or legal counsel;

(b) A $300 nonrefundable processing fee, by certified check or on the attorney's trust account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;

(c) The TRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;

(d) Copies of the participant's and alternate payee's signed Social Security cards;

(e) TRS Authorization for Direct Deposit form; and

(f) Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including TRS Military Service Certification and Affidavit form, with a copy of the discharge papers.

(8) Within twenty (20) days of receipt of the QDRO, TRS shall notify the participant and alternate payee in writing whether the QDRO meets TRS requirements. If the QDRO meets TRS requirements, TRS shall approve the QDRO and circulate an original, signed QDRO for signature by the participant and alternate payee for submission to the court. If the participant or alternate payee is represented by legal counsel, the approved QDRO shall instead be provided to their legal counsel for signature by counsel and submission to the court. TRS shall forward a W-4P Withholding Certificate for Pension or Annuity Payments form to the alternate payee.

(9) If the QDRO does not meet TRS requirements, TRS shall notify the participant and alternate payee in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel. The amended QDRO

shall be submitted to TRS for review and approval prior to filing with the court.

(10) TRS shall reject any QDRO entered by a court that has not been reviewed or approved by TRS prior to its submission to the court. TRS shall notify the participant, the alternate payee, or their legal counsel, and the court in writing, identifying those provisions that are not in compliance and the amendments needed to bring the QDRO into compliance before it shall be accepted by TRS.

(11) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to TRS with a $150 nonrefundable processing fee for review and approval.

(12) Following approval by the court, the participant, alternate payee, or legal counsel shall file a certified copy of the QDRO with TRS.

(a) The QDRO shall not become effective until the certified copy is received by TRS.

(b) Upon receipt of the certified copy, TRS shall designate the participant's account for implementation of the QDRO.

(c) While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established.

(d) If the participant is a retired member, payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by TRS, if the alternate payee has supplied a correctly executed W-4P form. If the alternate payee either fails to return the W-4P or does not correctly execute the form, TRS shall apply the IRS default option of married with three (3) exemptions, which results in no withholding of federal tax. If the Alternate Payee chooses a different option and then provides a correctly executed W-4P, future payments shall be adjusted.

(e) If the participant is an active member, payments to the alternate payee shall commence in the calendar month in which the participant begins to receive a monthly annuity, if the alternate payee has provided his or her current address, a correctly executed W-4P and banking information as required by subsection (15) of this section. If the alternate payee either fails to return the W-4P or does not correctly execute the form, TRS shall proceed in the same manner as described in paragraph (d) of this subsection.

(f) If the participant is an active member who withdraws from service prior to eligibility for retirement and requests a refund of his or her accumulated account balance, the provisions of 102 KAR 1:060, setting forth the requirements for processing payment of the refund to the participant and the alternate payee, shall be followed. If the parties fail to designate the alternate payee's share of a refund in the QDRO, TRS shall refund the entire participant's account to the participant in accordance with the provisions of this administrative regulation and 102 KAR 1:060, and TRS and its staff shall have no liability for making the refund in this manner.

(13) If TRS is enforcing a QDRO that is subsequently amended or terminated by the court, then either the participant, alternate payee, or legal counsel shall submit a certified copy of the amended QDRO or order of termination to TRS for processing.

(14) The participant, alternate payee, or legal counsel shall not submit a QDRO that is not final and under consideration by an appellate court.

(15) The alternate payee shall be responsible for notifying TRS of any change in name, mailing address, or banking information.

(a) TRS shall provide a Name or Change of Address form or Authorization for Direct Deposit form upon request.

(b) TRS shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when an annuity benefit subject to the QDRO becomes payable.

(c) Other than sending a notice as established in paragraph (b) of this subsection, TRS shall have no duty or responsibility to search for, or locate, the alternate payee.

(d) If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify TRS of an address change or if the bank notifies TRS that the alternate payee's account has been closed, within sixty (60) days of the return of the notification to the alternate payee or receipt of notification from the bank, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address or bank account information is provided by the alternate payee.

(e) TRS shall have no liability to the alternate payee with respect to amounts paid to the participant.

(16) The participant shall be responsible for notifying TRS in writing of an event that causes benefit payments to the alternate payee spouse, child, or other dependent to cease.

(a) The participant shall provide TRS with a certified copy of the alternate payee's death certificate or marriage certificate. TRS shall suspend payments due the alternate payee provided that submission of proof of the death or marriage of the alternate payee, if marriage terminates payments under the terms of the QDRO, is received by the beginning of the month following receipt of the participant's written notification.

(b) The alternate payee shall also be responsible for notifying TRS in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the alternate payee's right to receive any payments.

(c) TRS shall not be responsible for payments made to the alternate payee until it is given timely written notice and documentation of any event terminating those payments.

Section 4. A QDRO may apply to a participant's:

(1) Retirement allowance;

(2) Disability retirement allowance; or

(3) Termination refund.

Section 5. A QDRO shall not apply to a participant's:

(1) Survivor annuity that becomes payable after the member's death;

(2) Survivor benefits that become payable after an active contributing member's death;

(3) Accounts that are not vested at the time of the dissolution of marriage;

(4) Life insurance benefit;

(5) Refund as a result of an error;

(6) Refund of an active or retired account in response to a member's death;

(7) Health insurance; and

(8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires, or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and Payment.

(1)(a) If the participant has retired, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable TRS service earned during the marriage, including service credit purchased during the marriage; and

2. The denominator of which shall be the participant's total full and fractional years of TRS service credit through the date of retirement.

(b) The resulting fraction shall be converted to a percentage that shall be divided by two (2).

(c) Option C may be utilized if the duration of the retired participant and the alternate payee's marriage was less than the participant's total full and fractional years of TRS service at the date of retirement. The parties or their legal counsel shall report the marital years in Option C of the QDRO.

(2)(a) For an active account, the portion of the participant's benefits payable to the alternate payee as a percentage of the

participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable TRS service earned during the marriage, including service credit purchased during the marriage, as reported by the parties or their legal counsel in Option C of the QDRO; and

2. The denominator of which shall be the participant's total full and fractional years of TRS service credit as determined by TRS at the time that the participant retires either by service retirement or disability retirement or requests a refund of his or her account balance.

(b) The resulting fraction shall be converted to a percentage that shall be divided by two (2).

(3) If the participant is or will be receiving a disability retirement allowance, the participant's total annuity benefit for purposes of this administrative regulation shall be calculated under the service retirement formula established under KRS 161.661(5), even if the entitlement period described under KRS 161.661(3) and (4) has not expired.

(4) If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's disability retirement allowance that is subsequently discontinued, the alternate payee shall not receive a benefit. Further, if a participant remains disabled at the end of his or her entitlement period, pursuant to KRS 161.661(5), the disability benefits shall be recalculated and may result in a lower monthly payment to both the participant and the alternate payee.

(5) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, the participant's total annuity benefit shall be calculated without inclusion of the discounts required under KRS 161.620(1)(b) and (d).

(a) If at retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, TRS shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts.

(b) TRS shall increase the amount paid to the alternate payee in amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

(6) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, and the participant at issuance of the QDRO is not eligible for calculation of his total annuity benefit based on his three (3) highest salaries as provided under KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(7) The participant may select any retirement option.

Section 8. Any person who attempts to make TRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to TRS for its costs and legal fees.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Teachers' Retirement System Authorization for Release of Information[/~~QDRO~~]", July 2016;

(b) "Qualified Domestic Relations Order to Divide Teachers' Retirement System Benefits", January 2019[~~July 2016~~];

(c) "Teachers' Retirement System Administrative Regulatory Compliance[~~, Qualified Domestic Relations Order~~]", July 2016;

(d) "Teachers' Retirement System Confidential Information[/~~QDRO~~]", July 2016;

(e) "Teachers' Retirement System Authorization for Direct Deposit[/~~QDRO~~]", July 2016;

(f) "Teachers' Retirement System Military Service Certification and Affidavit[/~~QDRO~~]", July 2016;

(g) "Teachers' Retirement System Name or Change of Address[/~~QDRO~~]", July 2016;

(h) "Change of Option Following Termination of Marriage", July 2016;

(i) "Change of Retirement Beneficiary", July 2016;

(j) "Designation of Beneficiary for TRS Life Insurance Benefit", July 2016;

(k) "Designation of Beneficiary for TRS Retirement Account Balance", July 2016; and

(l) "Withholding Certificate for Pension or Annuity Payments" or "W-4P", 2016.

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

(3) W-4P may also be obtained at www.irs.gov/pub/irs-pdf/fw4p.pdf.

RON SANDERS, Chairperson

APPROVED BY AGENCY: December 17, 2018

FILED WITH LRC: January 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, February 27, 2019, at 9:00 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, February 20, 2019, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Thursday, February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the requirements, procedures and forms for the approval and processing of qualified domestic relations orders (QDRO) by Teachers' Retirement System (TRS).

(b) The necessity of this administrative regulation: This administrative regulation establishes and ensures compliance with the requirements of KRS 161.700.

(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 (1) setting forth the procedures and timelines to be followed in filing a QDRO with TRS, (2) setting the filing fees, (3) providing the formula for calculating the amount to be paid to the alternate payee, and (4) incorporating the forms required by TRS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by informing TRS participants, their alternate payees, legal counsel and the courts what is required to expedite approval and implementation of a QDRO.

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

(a) How the amendment will change this existing administrative regulation: The amendments (1) clarify which option will be utilized

to pay the alternate payee recurring monthly payments, (2) for an active, contributing participant, require the parties to state whether the alternate payee will receive a share in a participant's termination refund as either a set dollar amount or a percentage, and (3) put the parties on notice that if they fail to designate the alternate payee's share in a termination refund, TRS shall have no liability for refunding accumulated contributions to the participant.

(b) The necessity of the amendment to this administrative regulation: To place the parties on notice of the necessity of not only choosing an option for the recurring monthly annuity payments, but for ensuring that when the participant is in active, contributing status, an option is chosen the alternate payee's share of a termination refund.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments to the administrative regulation and the QDRO form clarify that in a divorce involving an active, contributing participant, an option for both a recurring monthly payment and the share of a termination refund must be chosen.

(d) How the amendment will assist in the effective administration of the statutes: TRS will not be left in the untenable position of how to process a refund application if the parties have chosen an option for a recurring monthly payment but failed to designate what portion of a termination refund an alternate payee shall receive, thus delaying processing of both the QDRO and the refund request.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Participants and alternate payees of participants of TRS who subject to a QDRO.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Participants, alternate payees and their legal counsel will have to choose options for both recurring monthly benefits and, for an active, contributing participant, a share of a termination refund.

(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 other than costs already incurred as part of the individual's legal fees in obtaining a divorce and property settlement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Alternate payees will be permitted access to participant's retirement benefits and termination refunds.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: Continuing costs will be determined by the number of QDROs filed with TRS and cannot be quantified at this point.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of TRS incurred in processing QDROs will be paid via the processing 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: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Active, contributing members of Teachers' Retirement System and alternate payees of active, contributing members who shall receive portions of account refunds pursuant to a QDRO.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.700, 161.310 and 161.470.

3. Estimate the effect of this administrative regulation on the 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? The cost in terms of staff time for processing QDROs has increased since TRS began accepting QDROs as the number of QDROs has increased. Continuing costs will be determined by the number of QDROs filed with TRS and cannot be quantified at this point.

(d) How much will it cost to administer this program for subsequent years? Future cost in terms of staff time for processing QDROs is dependent upon the number of orders applications received and cannot be quantified 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 (+/-): N/A
Expenditures (+/-): N/A
Other Explanation:

GENERAL GOVERNMENT CABINET
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.

(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 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. 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 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, 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 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. Is to be taken no more frequently than once 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. 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 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 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 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, gabapentin, 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 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.

(1) In an emergency, including in a hospital emergency department or similar outpatient urgent care 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, if:

(a) The physician has determined that the use or 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[~~3~~]. 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.

RANDEL C. GIBSON, D.O., President

APPROVED BY AGENCY: January 11, 2019

FILED WITH LRC: January 14, 2019 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, February 28, 2019 at 9:00 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 Thursday, February 21, 2019, 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: 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:

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)

201 KAR 27:005. Definitions for 201 KAR Chapter 27.

RELATES TO: KRS 229.011,[~~229.021,~~] 229.031,[~~229.051, 229.071, 229.081, 229.091,~~] 229.111, 229.131, 229.155, 229.171(1)[,~~229.180(1), EO 2016-270~~]

STATUTORY AUTHORITY: KRS 229.171(1)[~~, 229.180~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) authorizes the commission[~~authority~~] to exercise sole jurisdiction over all unarmed combat[~~boxing, kickboxing, mixed martial arts, and wrestling~~] shows, exhibitions, and licensees in the commonwealth.[~~Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission.~~] This administrative regulation establishes the definitions used in 201 KAR Chapter 27.

Section 1. Definitions.

(1) "Battle royal" means more than two (2) contestants in a boxing, kickboxing, mixed martial arts, or[~~elimination event~~] competing in a "last man standing wins" format.

(2) "Bout" means a single competition or exhibition of unarmed combat pitting two (2) opponents against one another in which the contestants strive earnestly and in good faith to win, are judged, and a winner declared.

(3) "Boxing" is defined by KRS 229.011(2)[~~229.011(3)~~].

(4) "Card" means a series of bouts, matches, or exhibitions scheduled or occurring as part of a single program.

(5) "Commission" is defined by KRS 229.011(3)[~~means the body formerly known as the "Authority", defined by KRS 229.011(2) and created by EO 2016-270~~].

(6) "Contestant" means any person engaging in a show of unarmed combat coming under the commission's jurisdiction.

(7)[~~"Elimination event" means a boxing show in which the winner of each bout continues to box against additional opponents in a tournament format until an overall winner is determined.~~

~~(8)~~] "Exhibition" is defined by KRS 229.011(4).

(8)[~~(9)~~] "Healthcare professional" means any person licensed in Kentucky as a physician, chiropractor, podiatrist, nurse practitioner, physician assistant, registered nurse, physical therapist, paramedic, emergency medical technician, or athletic trainer.

(9)[~~(10)~~] "Inspector" means any person assigned by the executive director of the commission or the executive director's designee to supervise shows coming under the commission's jurisdiction.

(10)[~~(11)~~] "Judge" means an official[~~, other than a referee,~~] licensed by the commission to score bouts and cast[~~have~~] a vote in determining the winner of any bout.

(11)[~~(12)~~] "Kickboxing" is defined by KRS 229.011(5).

(12)[~~(13)~~] "Manager":

(a) Means a person who:

1. Undertakes to represent the interest of another person, in procuring, arranging, or conducting a professional bout or exhibition in which the person is to participate as a contestant;

2. Directs or controls the professional unarmed combat activities of a contestant;

3. Receives or is entitled to receive ten (10) percent or more of the gross purse or gross income of any professional contestant for services relating to participation of the contestant in a professional bout or exhibition; or

4. Receives compensation for service as an agent or representative of a bout; and

(b) Does not mean an attorney licensed to practice in this state if his or her participation in these activities is restricted solely to legal representation of the interests of a contestant as his or her client.

(13)[~~(14)~~] "Match" means a single event or exhibition in wrestling pitting two (2) or more opponents against one another.

(14)[~~(15)~~] "Medical advisory panel" means the Kentucky Boxing and Wrestling Medical Advisory Panel created by KRS 229.260[~~EO 2016-270~~].

(15)[~~(16)~~] "Mixed martial arts" is defined by KRS 229.011(6).

(16)[~~(17)~~][~~"Professional" is defined by KRS 229.011(8).~~

~~(18)~~] "Promoter" means any individual, corporation, association, partnership, or club that is licensed[~~has been issued a license~~] to promote or conduct professional boxing, wrestling, mixed martial

arts,[~~elimination event,~~] or kickboxing shows within the commonwealth and who is responsible for the arranging, organizing, matchmaking, and booking of a show.

(17)[~~(19)~~] "Ring official" means any person who performs an official function during a bout, match, or exhibition, including an announcer, judge, healthcare professional, referee, or timekeeper.

(18)[~~(20)~~] "Second" means any person aiding, assisting, or advising a contestant during a show.

(19)[~~(21)~~] "Serious physical injury" means physical injury that creates a substantial risk of death or causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(20)[~~(22)~~] "Show" is defined by KRS 229.011(9).

(21)[~~(23)~~] "Technical knockout" means the ending of a bout by the referee or physician on the grounds of one (1) contestant's inability to continue, the opponent being declared the winner.

(22)[~~(24)~~] "Trainer" means any person who participates in the guidance and instruction of any contestant so as to make that individual proficient or qualified to engage in unarmed combat, if the training occurs within this commonwealth.

(23)[~~(25)~~] "Unarmed combat" means engaging in boxing, kickboxing, wrestling, or mixed martial arts[~~, or an elimination event~~].

(24)[~~(26)~~] "Wrestling event staff" means anyone other than a wrestler or referee permitted to be inside the six (6) foot barrier around the ring during a wrestling event.

JASON P. SMITH, Vice-Chairman
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 19, 2018

FILED WITH LRC: January 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 AM at 656 Chamberlin Ave, Suite B, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on February 28, 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: Cindy Stinnett, Executive Director, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601; phone 502-564-0085, Fax 502-696-3938, Email kbwc@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cindy Stinnett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for terms used in the regulatory scheme of the Kentucky Boxing and Wrestling Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure common understanding and usage of specific terms throughout the regulatory scheme of the Kentucky Boxing and Wrestling Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the commission's authority established in KRS 229.171 to promulgate administrative regulations to perform its functions pursuant to KRS Chapter 229.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures common understanding and usage of specific terms throughout the regulatory scheme of the Kentucky Boxing and Wrestling Commission.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates references to related statutes that have been repealed and updates several definitions for added clarity.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because several of the statutes previously referenced in the "relates to" provision of the administrative regulation have since been repealed.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the commission's authority established in KRS 229.171 by defining terms necessary to perform its functions pursuant to KRS Chapter 229.

(d) How the amendment will assist in the effective administration of the statues: By providing definitions for commonly used terms, this amendment ensures common understanding among the Commission, regulated entities, and consumers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the approximately 1,250 licensees of the commission, as well as any potential licensees.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any action to comply with this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Use of the definitions in this administrative regulation will ensure consistent terminology and understanding across the industry.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation or enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. The definitions apply equally to all persons.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.171

3. Estimate the effect of this administrative regulation on the 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 state or local government.

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

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Boxing and Wrestling Commission
(Amendment)

201 KAR 27:008. License requirements and fees.

RELATES TO: KRS 229.025, 229.035, 229.065,[~~229.021, 229.051, 229.071, 229.081, 229.091,~~] 229.171, Chapter 311, 15 U.S.C. 6305,[~~EO 2016-270~~]

STATUTORY AUTHORITY: KRS 229.025, 229.035, 229.065, [~~229.021, 229.071, 229.081, 229.091,~~] 229.171,[~~229.180,~~] 15 U.S.C. 6305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) vests[~~authorizes~~] the commission with[~~authority to exercise~~] sole control, authority, and jurisdiction over all unarmed combat[~~boxing, kickboxing, mixed martial arts, and wrestling~~] shows to be conducted, held, or given within[~~, exhibitions, and licensees in~~] the commonwealth. KRS 229.025 grants the commission the authority to establish license fees through administrative regulations and prohibits participation in an unarmed combat show in any capacity without holding a license issued by the commission.[~~Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission. KRS 229.021, 229.071, and 229.081 require that a person shall not engage in certain activities regulated by the authority without a license. KRS 229.071(4), 229.081, and 229.091 authorize the authority the power to establish license fees. KRS 229.091(1) requires that every licensee shall be subject to administrative regulations promulgated by the authority.~~] 15 U.S.C. 6305 requires the commission to issue an identification card to each professional boxer who registers with the commission[~~is a resident of the commonwealth~~]. This administrative regulation establishes license requirements and fees for persons who conduct activities regulated by the commission.

Section 1. General Provisions.

(1) A person shall not participate in an unarmed combat[~~a boxing, kickboxing, professional mixed martial arts, amateur mixed martial arts, wrestling, or an elimination event~~] show or exhibition unless the person is licensed by the commission.

(2) Each license shall be separate. A person shall not use a license in one (1) capacity or sport to serve in a different capacity or sport, except:

(a) A manager may act as a second; and

(b) A contestant may act as a second.

(3)(a) A promoter license shall be valid for one (1) year from the date of issuance.

(b) All other licenses shall be valid from January 1 through December 31.

(4) Information provided on or with a license application shall be complete and correct. Any false statement of a material matter shall be grounds for:

(a) Denial of a license; or

(b) If the license has been issued, suspension, probation, or revocation of the license.

(5) The commission may require an applicant to appear before the commission to answer questions or provide documents in conjunction with an application for a license if:

(a) The person has not been licensed by the commission within the previous five (5) years;

(b) The person has a history of violations in any jurisdiction;

(c) The applicant has not fully completed the required application; or

(d) The applicant's written submissions have not met the applicant's burden of proof to prove his or her qualifications for a license.

(6) A licensee shall be governed by KRS Chapter 229 and 201 KAR Chapter 27 and shall be subject to any event-related orders given by the commission or an inspector.

Section 2. Licenses, Applications, and Fees.

(1) The applicant shall complete the appropriate application as established in the table in subsection (2) of this section. The application shall be signed by the applicant under penalty of perjury.

(2) The following applications and non-refundable annual fees shall be required before any person may be licensed:

(a) Boxing and kickboxing licenses:

Boxing and Kickboxing License Type	License Application Required	License Fee
Boxer	Contestant Application	$25
Kickboxer	Contestant Application	$25
Manager	Non-Contestant Application	$25
Trainer	Non-Contestant Application	$25
Second	Non-Contestant Application	$25
Referee	Non-Contestant Application	$25
Judge	Non-Contestant Application	$25
Timekeeper	Non-Contestant Application	$25

(b) Mixed martial arts licenses:

Mixed Martial Arts License Type	License Application Required	License Fee
Professional mixed martial artist	Contestant Application	$25
Amateur mixed martial artist	Contestant Application	$25
Manager	Non-Contestant Application	$25
Trainer	Non-Contestant Application	$25
Second	Non-Contestant Application	$25
Referee	Non-Contestant Application	$25
Judge	Non-Contestant Application	$25
Timekeeper	Non-Contestant Application	$25

(c) Wrestling licenses:

Wrestling License Type	License Application Required	License Fee

Wrestler	Contestant Application	$25
Referee	Non-Contestant Application	$25
Wrestling event staff	Non-Contestant Application	$25

(d)[~~Elimination event license:~~

~~Elimination Event License Type~~	~~License Application Required~~	~~License Fee~~
~~Elimination Event Contestant~~	~~Contestant Application~~	~~$10~~

~~(e)~~] Promoter license:

Promoter License Type	License Application Required	License Fee
Promoter	Promoter Application	$300

(e)[~~(f)~~] Medical Provider licenses:

Medical Provider License Type	License Application Required	License Fee
Physician	Medical Provider Application	$25
Healthcare Professional	Medical Provider Application	$25

Section 3. Health Physical and Application Timing Requirements.

(1) The following applicants for licensure shall submit the form Physical Report to demonstrate the results of a physical that was completed by a physician not more than ninety (90) days before the licensing application is submitted:

(a) Boxer;

(b) Kickboxer;

(c) Professional mixed martial artist;

(d) Amateur mixed martial artist;

(e) Boxing and kickboxing referee; and

(f) Mixed martial arts referee.

(2) An applicant for licensure as a wrestler or wrestling referee shall submit the form Physical Report to demonstrate the results of a physical that was completed by a physician not more than (90) days before the licensing application is submitted if the applicant:

(a) Has not held a wrestler license in the past two (2) years;

(b) Is forty-five (45) years of age or older; or

(c) Has had an in-patient surgical procedure or overnight hospital stay in the past one (1) year.

(3) An applicant who is subject to subsection (1) or subsection (2) of this section shall submit his or her physical and bloodwork[~~license application~~] to the commission no less than two (2) business[~~fifteen (15) calendar~~] days prior to the applicant's first event.

Section 4. Determination of Ability to Obtain a License as a Contestant.

(1) An applicant for a license as a boxer, kickboxer, or professional mixed martial artist shall demonstrate [~~that the applicant has~~] the ability to:

(a) Be competitive in the sport; and

(b) Compete without the risk of serious physical injury.

(2) An applicant for a license as a wrestler or an amateur mixed martial artist shall demonstrate that the applicant has the ability to compete without the risk of serious physical injury.

(3)(a) Individual consideration from a member of the medical advisory panel shall be required if an applicant for licensure as a boxer, kickboxer, professional mixed martial artist, or amateur mixed martial artist:

1. Is thirty eight (38)[~~thirty-five (35)~~] or more years old;

2. Has accrued six (6) consecutive losses;

3. Has lost more than twenty-five (25) fights in his or her career;

4. Has fought in 350 or more career rounds;

5. Has lost more than five (5) bouts by knockout in his or her career; or

6. Has been inactive for more than thirty (30) months.

(b) A member of the medical advisory panel may order additional[~~further~~] medical testing if the medical evidence before it is inconclusive or incomplete.

(c) The medical advisory panel or member of the panel shall report its recommendation to the commission within forty-five (45) days of being referred a physical[~~an application~~].

Section 5. Medical Provider License. (1) An applicant for a physician license shall be a physician licensed pursuant to KRS Chapter 311.

(2) A person licensed or seeking licensure as a physician or healthcare professional shall maintain an active license in his or her field of practice and certification to administer cardiopulmonary resuscitation.

Section 6. Promoter License. An applicant for licensure as a promoter shall obtain a $10,000[~~$5,000~~] Surety bond. To obtain a surety the applicant shall complete and have notarized the Promoter Bond Form.

Section 7. Change from Amateur Status to Professional Status.

(1) The commission shall consider the applicant's previous fighting experience in deciding whether [~~or not~~] to permit a person licensed as an amateur to become a professional. This consideration shall include the:

(a) Number of sanctioned bouts the applicant has competed in;

(b) Number of sanctioned rounds the applicant has competed in;

(c) Date of the applicant's bouts;

(d) Applicant's performance in previous bouts, including the applicant's win-loss record; and

(e) Level of competition the applicant has competed against.

(2) A person shall not be licensed as a professional unless the person has fought in a minimum of three (3) bouts.

(3) A licensee who seeks to change his or her status from amateur to professional shall submit his or her license application to the commission no less than fifteen (15) calendar days prior to the applicant's first professional event.

Section 8. Boxer's Federal Identification Card.

(1) To obtain a boxer's federal identification card, an applicant shall complete and submit to the commission a Boxer's Federal Identification Card Application.

(2) The fee for a boxer's federal identification card shall be ten (10) dollars, which shall be submitted with the Boxer's Federal Identification Card Application.

(3) The boxer's federal identification card shall be valid for four (4) years from the date issued.

Section 9. Change of address. A licensee shall provide his or her new address to the commission within thirty (30) days of a change in address.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Contestant Application", October 2016;

(b) "Non-Contestant Application", October 2016;

(c) "Promoter Application", October 2016;

(d) "Medical Provider Application", October 2016;

(e) "Physical Report", January 2019[~~October 2016~~];

(f) "Promoter Bond Form", January 2019[~~October 2016~~]; and

(g) "Boxer's Federal Identification Card Application", October 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at http://kbwa.ky.gov/Pages/Appsforms.aspx.

JASON P. SMITH, Vice-Chairman
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 19, 2018

FILED WITH LRC: January 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 a.m. at 656 Chamberlin Ave, Suite B, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on February 28, 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: Cindy Stinnett, Executive Director, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601; phone 502-564-0085 fax 502-696-3938; email kbwc@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cindy Stinnett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure requirements and fees for those seeking initial or renewal licensure with the Kentucky Boxing and Wrestling Commission ("KBWC").

(b) The necessity of this administrative regulation: This regulation is necessary to establish licensure requirements and fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.025, which requires participants in unarmed combat to be licensed, as well as KRS 229.171, which grants the Commission authority to control and manage shows and exhibitions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes fees that provide the funds to pay for the regulatory oversight provided by the KBWC in administering KRS Chapter 229 and 201 KAR Chapter 27. It also sets requirements that provide for the safety of participants.

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

(a) How the amendment will change this existing administrative regulation: This amendment reduces the time frame required for submission of a physical and blood work to the commission from fifteen (15) days to two (2) days, raises the age for certain individual license consideration from thirty-five (35) to thirty-eight (38) years, allows for an individual member of the commission's medical advisory panel to consider applications, order further testing, and make recommendations to the commission, and raises the required surety bond for a licensed promoter from $5,000 to $10,000.

(b) The necessity of the amendment to this administrative regulation: This amendment will improve and expedite the application process for commission licensees by streamlining applications and allowing for an individual member of the commission's medical advisory panel to take certain actions and make recommendations.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation conforms with KRS 229.025, which requires participants in unarmed combat to be licensed, as well as KRS 229.171, which grants the Commission authority to control and manage shows and exhibitions.

(d) How the amendment will assist in the effective administrative of the statues: This amendment enables the commission to provide better services to its licensees under KRS Chapter 229.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the KBWC, boxing, kickboxing, professional mixed martial arts, amateur mixed martial arts, and wrestling contestants, non-contestants, managers of contestants, and promoters. The Commission grants around 1,250 licenses in a year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed unarmed combat participants will not have to take additional actions to comply with this administrative regulation. Licensed promoters will be required to increase the amount of their surety bond from $5,000 to $10,000.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensed unarmed combat participants will not have any additional costs to comply with this administrative regulation. Licensed promoters will be required to increase the amount of their surety bond from $5,000 to $10,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Unarmed combat license applicants may enjoy more prompt consideration of their applications by permitting individual members of the medical advisory panel to consider certain applications. Applicants will also benefit from a less restrictive timeline for submitting physical and bloodwork to the commission for consideration.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

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

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? There is no additional cost associated with the implementation and enforcement of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding are required for the implementation of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because all licensing requirements are for the health and safety of the licensees and fees are consistent between the license types.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.025, 229.171, 15 U.S.C. 6305

3. Estimate the effect of this administrative regulation on the 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 amendment will not generate additional revenue for state or local government in the first year.

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

(c) How much will it cost to administer this program for the first

year? The KWBC does not anticipate any net change in the cost to administer the amendment to the administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer the amendment to the administrative regulation in subsequent years.

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

Revenues: Neutral.

Expenditures: Neutral.

Other Explanation: None.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 15 U.S.C. 6304; 6305(a), (b)

2. State compliance standards. Those wishing to participate in boxing must submit an application to obtain a boxing identification card that is valid for four years. The boxer must also submit an application for licensure and a physical from a physician who certifies that the boxer is physically fit to compete. Moreover, no boxing match may occur unless a physician is continuously ringside and an ambulance and resuscitation equipment is on-site. Boxers must also be provided with health insurance.

3. Minimum or uniform standards contained in the federal mandate. 15 U.S.C. 6304 requires that every boxer undergo a physical examination and be certified by a physician to be physically fit to compete safely in a match. The law also requires an ambulance or resuscitation equipment to be onsite at all boxing matches and for a physician to be present at ringside. Finally, health insurance is required for each boxer. 15 U.S.C. 6305 requires a boxer to register with the boxing commission in the boxer's state of residence. That state must issue a federal boxing identification card to the boxer.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)

201 KAR 27:011. General requirements for boxing and kickboxing shows.

RELATES TO: KRS[~~229.021,~~] 229.031, 229.055, 229.111,[~~229.071, 229.081, 229.091, 229.101,~~] 229.131, 229.155, 229.171, 15 U.S.C. 6304, 6305(a), (b),[~~EO 2016-270~~]

STATUTORY AUTHORITY: KRS [~~229.021, 229.071, 229.091(1),~~] 229.171,[~~229.180,~~] 15 U.S.C. 6304

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) vests the Kentucky Boxing and Wrestling Commission with[~~authorizes the authority to exercise~~] sole direction, management, control, and jurisdiction over all unarmed combat[~~boxing, kickboxing, mixed martial arts, and wrestling~~] shows, exhibitions, and licensees in the commonwealth.[~~Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission.~~] This administrative regulation establishes the requirements for boxing and kickboxing shows, and for participants in boxing and kickboxing shows.

Section 1. Show Date.

(1) A promoter shall request a show date by completing and submitting to the commission the Show Notice Form.

(2) The Show Notice Form shall be submitted to the commission for approval no less than thirty (30) calendar days before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Approval is effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at http://ins.kbwa.ky.gov/ecal.asp; or

(b) Providing written notice that the event is approved.

Section 2. Program and Changes.

(1) If a contestant is unable to participate in a show for which the contestant has a contract, the contestant shall immediately notify the promoter and the commission. Repeated and unexcused absences may be issued a violation.

(2) The proposed card for a show shall be filed with the commission at least five (5) business days prior to the show date. Notice of a change in a program or substitution in a show shall be immediately filed with the commission.

(3) If the commission determines that a proposed bout may not be reasonably competitive, the bout may be denied. The commission's determination shall be based upon the contestants' previous fighting experience, including:

(a) The number of bouts the contestants have competed in;

(b) The number of rounds the contestants have competed in;

(c) The date of the contestants' bouts;

(d) The contestants' performance in previous bouts, including the contestants' win-loss record;

(e) The level of competition the contestants have faced; and

(f) The contestants' medical histories.

4. The final approved card for a show shall comprise a minimum of five (5) complete bouts, no later than two (2) business days prior to the show date.

Section 3. Compensation.

(1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, ring officials shall be paid one-half (1/2) the compensation agreed upon prior to the bout.

(2) Before the commencement of a show or exhibition, the promoter shall tender to the inspector payment to each ring official. The schedule of compensation for a ring official shall be at least as follows:

(a) Judge: seventy-five (75) dollars each;

(b) Timekeeper: seventy-five (75) dollars;

(c) Physician: $350;

(d) Referee: $100 each; and

(e) Bout assistant: seventy-five (75) dollars each.

(3) Each contestant's compensation agreement shall be in writing and submitted to the commission for approval not less than two (2) calendar days prior to the date of the proposed show.

Section 4. Pre-Fight.

(1) A contestant shall weigh in stripped at a time set by the commission, which shall not be more than thirty-six (36) hours before the first scheduled bout of the show.

(a) A contestant shall produce one (1) form of picture identification at the weigh-in.

(b) The inspector and the promoter or a representative of the promoter conducting the show shall be in attendance to record the official weights.

(2) A contestant shall check in with the commission at least one (1) hour prior to the event start time. A contestant shall produce one (1) form of picture identification at check-in.

(3) A contestant shall attend a pre-fight meeting as directed by the commission.

(4)(a) A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector.

(b) The promoter shall supply a separate locker room for males and females.

(5) A contestant shall submit an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results to the commission at least forty-eight (48)[~~twenty-four (24)~~] hours prior to the event.

(a) The results of these tests shall be no more than 365[~~180~~]days old.

(b) A person with a positive test result shall not compete.

(6) A contestant shall undergo a pre-fight physical conducted by a physician within eight (8) hours of the show. Prior to undergoing the physical, a contestant shall submit a completed Pre-Fight Medical Questionnaire under penalty of perjury.

(7) A contestant shall report to and be under the general supervision of the inspector in attendance at the show and shall comply with instructions given by the inspector.

Section 5. The Ring.

(1) The area between the ring and the first row of spectators on all four (4) sides and the locker room area shall be under the exclusive control of the commission. Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission without inspector approval.

(2) An event held outdoors if the heat index is at or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entire ring.

(3)(a) A ring shall have a canvas mat or similar material, unless the event is held outdoors in which case only canvas shall be used.

(b) A bout may be held in a mixed martial arts cage if the bout is in conjunction with a mixed martial arts event.

(4) There shall be an area of at least six (6) feet between the edge of the ring floor and the first row of spectator seats on all four (4) sides of the ring. A partition, barricade, or some type of divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the ring; and

(b) Along the sides of the entry lane for contestants to enter the ring.

(5) Ring specifications shall be as established in this subsection.

(a) A bout shall be held in a four (4) sided roped ring.

1. The floor of the ring inside the ropes shall not be less than sixteen (16) feet square.

2. The floor of the ring shall extend beyond the ropes for a distance of not less than one (1) foot.

3. The floor of the ring shall be elevated not more than six (6) feet above the arena floor.

4. The ring shall have steps to enter the ring on two (2) sides.

(b) The ring shall be formed of ropes.

1. There shall be a minimum of three (3) ropes extended in a triple line at the following heights above the ring floor:

a. Twenty-four (24) inches;

b. Thirty-six (36) inches; and

c. Forty-eight (48) inches.

2. A fourth rope may be used if the inspector finds that it will not pose a health or safety concern.

3. The ropes shall be at least one (1) inch in diameter.

4. The ropes shall be wrapped in a clean, soft material and drawn taut.

5. The ropes shall be held in place with two (2) vertical straps on each of the four (4) sides of the ring.

6. The ropes shall be supported by ring posts that shall be:

a. Made of metal or other strong material;

b. Not less than three (3) inches in diameter; and

c. At least eighteen (18) inches from the ropes.

(c) The ring floor shall be padded or cushioned with a clean, soft material that:

1. Is at least one (1) inch thick and uses slow recovery foam matting;

2. Extends over the edge of the platform;

3. Is covered with a single canvas stretched tightly; and

4. Is, at the commencement of the event, clean, sanitary, dry, and free from:

a. Grit;

b. Dirt;

c. Resin; and

d. Any other foreign object or substance.

(d) A ring rope shall be attached to a ring post by turnbuckles padded with a soft vertical pad at least six (6) inches in width.

Section 6. Equipment.

(1) A bell or horn shall be used by the timekeeper to indicate the time.

(2) In addition to the ring and ring equipment, the promoter shall supply:

(a) A public address system in good working order;

(b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the ring and the ring floor;

(c) Items for each contestant's corner, to include:

1. A stool or chair;

2. A clean bucket;

3. Towels; and

4. Rubber gloves;

(d) A complete set of numbered round-cards, if needed;

(e) Gloves for each boxer or kickboxer; and

(f) A scale used for weigh-in, which shall be approved as accurate in advance by the inspector.

Section 7. Contestant Equipment and Attire.

(1) A contestant shall be clean and neatly attired in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) A contestant shall not use a belt that:

(a) extends above the waistline of the contestant; or

(b) contains any metal substance during a bout.[~~The belt shall not extend above the waistline of the contestant.~~]

(3) A contestant shall wear shoes during a bout. The shoes shall not be fitted with spikes, cleats, hard soles, or hard heels.

(4) A contestant shall wear a properly fitted:

(a) Groin protector; and

(b) Double-arch mouthpiece.

(5) If a contestant has long hair, the hair shall be secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.

(6) If cosmetics are used, a contestant shall use a minimum of cosmetics.

(7) Boxing gloves[~~shall meet the requirements established in this subsection~~].

(a) Contestants shall wear boxing gloves that shall be of the same weight for each contestant and:

1. Dry, clean, and sanitary;

2. Furnished by the promoter;

3. Of equal weight, not to exceed twelve (12) ounces per glove;

4. A minimum of eight (8) ounces per glove for a contestant weighing no more than 154 pounds;

5. A minimum of ten (10) ounces per glove for a contestant weighing over 154 pounds; and

6. Thumbless or thumb-attached.

(b) Gloves shall be new for main events and for bouts and exhibitions scheduled for ten (10) or more rounds.

(c) Gloves shall be approved or denied in accordance with this administrative regulation by the commission prior to a bout.

(d) Gloves for all main events shall be dry and free from defects and shall be put on in the ring or locker room while supervised by the inspector.

(e) Breaking, roughing, or twisting of gloves shall not be permitted.

(f) The laces on gloves shall be tied on the back of the wrist and taped.

(g) Kickboxing contestants shall wear padded kickboxing boots. The padding shall be sufficient to protect the kickboxer and his or her competitor.

(8) Bandages[~~shall meet the requirements established in this subsection~~].

(a) For boxing and kickboxing, only soft cotton or linen bandages shall be used for the protection of the boxer or kickboxer's hands.

(b) Bandages shall not be more than two (2) inches in width and twelve (12) yards in length for each hand.

(c) If adhesive tape is used:

1. Medical adhesive tape not more than one (1) inch in width shall be used to hold bandages in place;

2. Adhesive tape shall not be lapped more than one-eighth (1/8) of one (1) inch;

3. Adhesive tape not to exceed one (1) layer shall be crossed

over the back of the hand for its protection; and

4. Three (3) strips of adhesive tape, lapping not to exceed one-eighth (1/8) of one (1) inch, may be used for protection of the knuckles.

(d) Hand wraps shall be applied in the dressing room in the presence of an inspector or ring official. The inspector or ring official shall sign the hand wrap and the tape around the strings of the gloves.

Section 8. Weight Classes.

(1) The class weights permitted in boxing and kickboxing bouts shall be as follows:

CLASS	WEIGHT
Flyweight	Up to 112 lbs.
Bantamweight	Up to 118 lbs.
Jr. Featherweight	Up to 122 lbs.
Featherweight	Up to 126 lbs.
Jr. Lightweight	Up to 130 lbs.
Lightweight	Up to 135 lbs.
Jr. Welterweight	Up to 140 lbs.
Welterweight	Up to 147 lbs.
Jr. Middleweight	Up to 154 lbs.
Middleweight	Up to 160 lbs.
Light Heavyweight	Up to 175 lbs.
Cruiserweight	Up to 195 lbs.
Heavyweight	Over 195 lbs.

(2) After the weigh-in, a contestant shall not change weight in excess of eight (8) percent prior to the bout.

(3) After the weigh-in, a contestant shall not re-hydrate by the use of intravenous fluids unless approved by the inspector for medical purposes. A contestant may be subject to a random urine specific gravity test to determine compliance with this subsection.

Section 9. Fight Length.

(1) Bouts and rounds shall:

(a) Be three (3) minutes in duration; and

(b) Have a one (1) minute rest period between rounds.

(2) A bout shall consist of no less than four (4) and no more than twelve (12) rounds. A championship bout shall be twelve (12) rounds in length.

(3) A contestant who has not fought within the last twelve (12) months shall not be scheduled to box or kickbox more than ten (10) rounds without commission approval.

Section 10. Judging and Scoring.

(1) Scoring shall be as established in this subsection.

(a) Each round shall be accounted for on the scorecard, using the ten (10) point system. Scoring shall be expressed in ratio of merit and demerit.

(b) Score cards shall be:

1. Signed;

2. Handed to the referee in the ring; and

3. Filed by the referee with the inspector.

(c) The decision shall then be announced from the ring.

(2) Decisions shall be rendered as established in this subsection.

(a) If a bout lasts the scheduled limit, the winner of the bout shall be decided by:

1. A majority vote of the judges, if three (3) judges are employed to judge the bout; or

2. A majority vote of the judges and the referee, if two (2) judges are employed to judge the bout.

(b) Decisions shall be based primarily on boxing or kickboxing effectiveness, with points awarded for display of the following attributes, and points deducted for an opposite showing:

1. Clean, forceful hitting;

2. Aggressiveness;

3. Defensive work; and

4. Ring generalship.

(c) The requirements governing knockdowns shall be as established in this paragraph.

1. If a contestant is knocked to the floor by the contestant's opponent, or falls from weakness or other causes, the contestant's opponent shall:

a. Immediately retire to the farthest neutral corner of the ring; and

b. Remain there until the referee completes the count or signals a resumption of action.

2. The timekeeper shall commence counting off the seconds and indicating the count with a motion of the arm while the contestant is down.

3. The referee shall pick up the count from the timekeeper.

4. If a contestant fails to rise to his or her feet before the count of ten (10), the referee shall declare the contestant the loser by waving both arms to indicate a knockout.

5. If a contestant who is down rises to his or her feet during the count, the referee may step between the contestants long enough to assure that the contestant just arisen is in condition to continue the bout.

6. If a contestant who is down arises before the count of ten (10) is reached, and again goes down from weakness or the effects of a previous blow without being struck again, the referee shall resume the count where he or she left off.

7. A standing eight (8) count shall be used at the discretion of[~~by~~] the referee.

8. If a contestant is knocked down three (3) times during a round, the bout shall be stopped. The contestant scoring the knockdowns shall be the winner by a technical knockout.

9. If a round ends before a contestant who was knocked down rises, the count shall continue, and if the contestant fails to arise before the count of ten (10), the referee shall declare the contestant knocked out.

(3) A contestant shall be considered down if:

(a) Any part of the contestant's body other than his or her feet is on the ring floor;

(b) The contestant is hanging helplessly over the ropes and in the judgment of the referee, is unable to stand; or

(c) The contestant is rising from the down position.

(4) Failure to resume a bout.

(a) If a contestant fails to resume the bout for any reason after a rest period, or leaves the ring during the rest period and fails to be in the ring when the bell rings to begin the next round, the referee shall count the contestant out the same as if the contestant were down in that round.

(b) If a contestant who has been knocked out of or has fallen out of the ring during a bout fails to return immediately to the ring and be on his or her feet before the expiration of ten (10) seconds, the referee shall count the contestant out as if the contestant were down.

Section 11. Fouls.

(1) The following shall be considered fouls:

(a) Hitting below the belt;

(b) Hitting an opponent who is down or who is getting up after having been down;

(c) Holding an opponent and deliberately maintaining a clinch;

(d) Holding an opponent with one (1) hand and hitting with the other;

(e) Butting with the head or shoulder or using the knee;

(f) Hitting with the inside, or butt, of the hand, the wrist, or the elbow;

(g) Hitting, or flicking, with the glove open or thumbing;

(h) Wrestling, or roughing, against the ropes;

(i) Purposely going down without having been hit;

(j) Deliberately striking at the part of an opponent's body over the kidneys;

(k) Using a pivot blow or rabbit punch;

(l) Biting of the opponent;

(m) Using abusive or profane language;

(n) Failing to obey the referee;

(o) Engaging in any unsportsmanlike trick or action that causes injury to another person;

(p) Hitting after the bell has sounded at the end of the round; or

(q) Backhand blows except in kickboxing.

(2)(a) A contestant who commits a foul may be disqualified and the decision awarded to the opponent by the referee.

(b) The referee shall immediately disqualify a contestant who commits a deliberate and willful foul that prevents the opponent from continuing in the bout.

(c) The referee may take one (1) or more points away from a contestant who commits an accidental foul.

(3) A contestant committing a foul may be issued a violation by an inspector.

(4)(a) If a bout is temporarily stopped by the referee due to fouling, the referee, with the aid of the physician, if necessary, shall decide if the contestant who has been fouled is in physical condition to continue the bout.

(b) If in the referee's opinion the contestant's chances have not been seriously jeopardized as a result of the foul, the referee shall order the bout resumed after a reasonable time set by the referee, but not exceeding five (5) minutes.

(5)(a) If a contestant is unable to continue as the result of an accidental foul and the bout is in one (1) of the first three (3) rounds, the bout shall be declared a technical draw.

(b) If an accidental foul occurs after the third round, or if an injury sustained from an accidental foul in the first three (3) rounds causes the bout to be subsequently stopped, the bout shall be scored on the basis of the judges' scorecards.

(6) If a bout is ended by reason of fouling or failure to give an honest demonstration of skill, as determined by an inspector or referee, the compensation of the offending contestant shall be withheld by the promoter.

Section 12. Prohibitions.

(1) The following shall be prohibited:

(a) Battle royal type events; and

(b) Use of excessive grease or other substance that may handicap an opponent.

(2) A contestant shall not engage at a show in boxing or sparring with a member of the opposite sex.

Section 13. Non-Contestant Participants.

(1) A promoter shall provide a minimum of two (2) security guards on the premises for each show.

(2) All ring officials shall be selected, licensed, and assigned to each show by the commission. For each show, a minimum of the following shall be required:

(a) A minimum of three (3) judges and a maximum of five (5) judges;

(b) One (1) timekeeper;

(c) One (1) physician, except two (2) physicians shall be assigned to a bout designated a championship bout by a national sanctioning body recognized by the commission; and

(d) One (1) referee, unless the card has more than thirty (30) rounds, in which case a minimum of two (2) referees shall be required.

Section 14. Judges.

(1) A judge shall arrive at least one (1) hour prior to the start of a show.

(2) At the beginning of a bout, the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants.

(3) At the conclusion of the bout, the judges shall render their decision based on the requirements of Section 10 of this administrative regulation.

(4) Upon request of the referee, the judges shall assist in determining:

(a) Whether or not a foul has been committed;

(b) Whether or not each contestant is competing in earnest; and

(c) Whether or not there is collusion affecting the result of the bout.

Section 15. Timekeeper.

(1) The timekeeper shall be seated outside the ring near the bell and shall take the cue from the referee to commence or take time out.

(2) The timekeeper shall be equipped with a whistle and a stop watch. Prior to the first bout, the inspector shall ensure that the whistle and stopwatch function properly.

(3) Ten (10) seconds before the start of each round, the timekeeper shall give notice by sounding the whistle.

(4) The timekeeper shall indicate the starting and ending of each round by striking the bell with a metal hammer.

(5) If a bout terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the bout.

(6) Ten (10) seconds prior to the end of each round, the timekeeper shall give warning by striking a gavel three (3) times.

Section 16. Physicians and Healthcare Requirements.

(1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

(2) The physician shall have general supervision over the physical condition of each contestant at all times while on the premises of a show or exhibition.

(3) The physician's pre-bout duties:[~~shall be established in this subsection.~~]

(a) A physician shall make a thorough physical examination of each contestant within eight (8) hours prior to a bout.

1. The physician's examination shall include a review of the Pre-Fight Medical Questionnaire of each contestant.

2. The physician shall deliver to the inspector the Pre-Fight Examination form that documents the results of the examination prior to the contestant entering the ring.

(b) The physician shall ensure that all equipment required by subsection (5) of this section is present before the start of the first bout or exhibition.

(c) The physician shall prohibit a contestant from competing if the physician believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.

(4) The physician's duties during the bout or exhibition:[~~shall be established in this subsection.~~]

(a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.

(b) The physician shall observe the physical condition of each contestant during a bout.

(c) The physician shall administer medical aid if needed or requested.

(d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.

(5) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a boxing or kickboxing show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:

(a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;

(b) Spine board;

(c) Cervical collar;

(d) Oxygen apparatus or equipment; and

(e) First aid kit.

(6) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(7) The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver to the inspector the form Post-Fight Examination that documents the results of the examination.

Section 17. Announcers.

(1) The announcer shall have general supervision over all announcements made to spectators.

(a) The announcer shall announce the name of contestants, their weight, decisions at the end of each bout, and any other

matters as are necessary.

(b) A person other than the official announcer shall not make an announcement, unless deemed necessary by an inspector:

(2) If a bout is stopped before its scheduled termination, the announcer shall immediately confer with the referee and judges and then shall immediately announce the decision.

(3) The announcer shall not enter the ring during the actual progress of a bout.

Section 18. Referees.

(1) The referee shall be the chief official of the show, be present in the ring at all times, and have general supervision over each contestant, manager, and second during the entire event.

(2)(a) The referee shall have the authority to disqualify a contestant who commits a foul and award the decision to the opponent.

(b) The referee shall immediately disqualify a contestant who commits an intentional or deliberate foul that causes serious physical injury to an opponent.

(3) The referee's duties and responsibilities shall be as established in this subsection.

(a) The referee shall, before starting a bout, ascertain from each contestant the name of the contestant's chief second. The referee shall hold the chief second responsible for the conduct of the chief second's assistants during the progress of the bout.

(b) The referee shall call the contestants together in the ring immediately preceding a bout for final instructions. During the instructional meeting, each contestant shall be accompanied in the ring by the contestant's chief second only.

(c) The referee shall inspect the person, attire, and equipment of each contestant and make certain that no foreign substances that are prohibited by KRS Chapter 229 or 201 KAR Chapter 27 have been applied on a contestant's body or equipment or used by a contestant.

(d) The referee shall stop a bout at any time if the referee has grounds to believe either contestant is:

1. Unable to protect himself or herself from possible injury;

2. Not competing in earnest; or

3. Colluding with another person to affect the results of the bout.

(e) The referee may take one (1) or more points away from a contestant who commits an accidental foul, and the referee may permit a rest period not exceeding five (5) minutes for the contestant who was fouled.

(f) The referee shall not touch a contestant during the bout except upon failure of a contestant to obey the referee's orders or to protect a contestant.

(g) The referee shall decide all questions arising during a bout that are not otherwise specifically covered by KRS Chapter 229 or 201 KAR Chapter 27.

Section 19. Trainers and Seconds.

(1) A trainer or second shall be equipped with a first aid kit and the necessary supplies for proper medical attendance upon the contestant.

(2) There shall be no more than three (3) persons total serving as a trainer or second in any bout and only two (2) shall be allowed in the ring at the same time.

(3) A trainer and a second shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round and shall remove all equipment from the ring. Equipment shall not be placed on the ring floor until after the bell has sounded at the end of the round or period.

(4) A trainer and a second shall wear surgical gloves at all times while carrying out their duties.

Section 20. Medical Prohibitions.

(1) A contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete in unarmed combat again if, after subjecting the boxer or kickboxer to a thorough examination by a physician licensed by the commission, the medical advisory panel determines the action is necessary to protect the health and welfare of the contestant.

(2) A contestant who has suffered five (5) consecutive defeats by knockout or medical stoppage shall not be allowed to compete in unarmed combat until the contestant has been evaluated and subsequently cleared for further competition by the medical advisory panel.

(3) A contestant who has been knocked out shall be prohibited from all competition for a minimum of sixty (60) days.

(4) Any contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days if the contestant's health or safety would be jeopardized without the prohibition.

(5)[~~A contestant shall serve a mandatory seven (7) day rest period from competition after competing in an event. Day one (1) of the rest period shall commence on the first day following the bout in which the contestant competed.~~

~~(6)~~](a) A female boxer or kickboxer shall submit proof she is not pregnant prior to her bout. The proof may be either:

1. An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the bout that shows she is not pregnant; or

2. From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.

(b) A female boxer or kickboxer shall be prohibited from competing if:

1. She is pregnant; or

2. She fails to comply with this subsection.

Section 21. Insurance.

(1) A promoter shall provide insurance for a contestant for any injuries sustained in the boxing or kickboxing show.

(2) The minimum amount of coverage per contestant shall be $5,000 health and $5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.

(4) The deductible expense under the policy for a contestant shall not exceed $1,000.

Section 22. Other Provisions.

(1) A promoter shall maintain an account with the recognized national database as identified by the commission and submit contestant's names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

(2) All shows shall be video recorded and retained by the promoter for at least for one (1) year. Upon request of the commission, the promoter shall provide the video recording of a show to the commission.

(3) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located.

(4) Alcohol shall be prohibited inside the six-foot area alongside the ring.

Section 23. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Show Notice Form", October 2016;

(b) "Pre-Fight Medical Questionnaire", October 2016;

(c) "Pre-Fight Examination", October 2016; and

(d) "Post-Fight Examination", October 2016.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 656 Chamberlin Avenue, suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at http://kbwa.ky.gov/Pages/Appsforms.aspx.

JASON P. SMITH, Vice-Chairman

K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 19, 2018

FILED WITH LRC: January 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 a.m. at 656 Chamberlin Ave, Suite B,

Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on February 28, 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: Cindy Stinnett, Executive Director, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601; phone 502-564-0085; fax 502-696-3938, email kbwc@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cindy Stinnett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and rules for kickboxing shows authorized by the Kentucky Boxing and Wrestling Commission.

(b) The necessity of this administrative regulation: This regulation is necessary to establish boxing and kickboxing show requirements and to carry out the commission's mandate to ensure licensees have the ability to compete without the risk of serious physical injury.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 229.171, which grants the commission authority to regulate unarmed combat shows and exhibitions. KRS 229.171 also authorizes the commission to promulgate rules and regulations it considers necessary or expedient for the performance of its functions as provided in KRS Chapter 229. KRS 229.055 authorizes the commission to impose time limits on rounds and requires show promoters to file contracts with the commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements and rules that will govern boxing and kickboxing shows authorized by the commission pursuant to KRS Chapter 229 and 201 KAR Chapter 27. It also sets requirements that provide for the safety of participants.

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

(a) How the amendment will change this existing administrative regulation: This amendment requires boxing and kickboxing licensees to provide the Commission with HIV antibody, Hepatitis B antigen, and Hepatitis C antigen tests at least forty-eight (48) hours prior to participation in an event, up from twenty-four (24) hours. The results of such tests must now be no more than 365 days old, previously limited to 180 days. The amendment also modifies the use of a standing eight (8) count to be at the referee's discretion, establishes a minimum of three (3) and maximum of five (5) judges, and eliminates the mandatory seven (7) day rest period following competition in an event. The amendment also requires the final approved card for a show to comprise a minimum of five (5) complete bouts, no later than two (2) business dates prior to the show date.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to enable the Commission to provide better services and safety for its licensees.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with KRS 229.171, which grants the Commission authority to control and manage shows and exhibitions.

(d) How the amendment will assist in the effective administrative of the statues: This amendment enables the commission to provide better services to its licensees under KRS Chapter 229.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts commission licensees and applicants seeking to participate in boxing and kickboxing shows. The Commission grants approximately 1,250 total licenses in a year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Boxing and kickboxing participants will have to submit their test results 48 hours prior to an event rather than 24. However, the results may now be as old as 365 days instead of 180 days. Referees will now have discretion regarding the use of a standing 8 count, and participants will no longer be subject to an automatic 7-day rest period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensed unarmed combat participants will not have any additional costs to comply with this administrative regulation – the same tests are required, but they must be submitted to the commission an additional 24 hours in advance of participation in an event.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendments enhance the safety of fighters and increase referee discretion to the benefit of all licensees and participants in boxing and kickboxing shows.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

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

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? There is no additional cost associated with the implementation and enforcement of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding are required for the implementation of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because all licensing requirements are for the health and safety of the licensees and fees are consistent between the license types.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.025, 229.171, 15 U.S.C. 6305

3. Estimate the effect of this administrative regulation on the 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 amendment will not generate additional revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation amendment will not generate additional revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? The KWBC does not anticipate any net change in the cost to administer the amendment to the administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer the amendment to the administrative regulation in subsequent years.

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

Revenues: Neutral.

Expenditures: Neutral.

Other Explanation: None.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 15 U.S.C. 6304; 6305(a), (b)

2. State compliance standards. Those wishing to participate in boxing must submit an application to obtain a boxing identification card that is valid for four years. The boxer must also submit an application for licensure and a physical from a physician who certifies that the boxer is physically fit to compete. Moreover, no boxing match may occur unless a physician is continuously ringside and an ambulance and resuscitation equipment is on-site. Boxers must also be provided with health insurance.

3. Minimum or uniform standards contained in the federal mandate. 15 U.S.C. 6304 requires that every boxer undergo a physical examination and be certified by a physician to be physically fit to compete safely in a match. The law also requires an ambulance or resuscitation equipment to be onsite at all boxing matches and for a physician to be present at ringside. Finally, health insurance is required for each boxer. 15 U.S.C. 6305 requires a boxer to register with the boxing commission in the boxer's state of residence. That state must issue a federal boxing identification card to the boxer.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification or the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)

201 KAR 27:016. General requirements for~~[all]~~ mixed martial arts matches, shows, or exhibitions.

RELATES TO: KRS~~[229.021,]~~ 229.031,~~[229.071, 229.081, 229.091, 229.101,]~~ 229.111, 229.131, 229.171,~~[229.180, EO 2016-270]~~

STATUTORY AUTHORITY: KRS~~[229.021,]~~ 229.031,~~[229.071, 229.081, 229.091, 229.101,]~~ 229.111, 229.131, 229.171,~~[229.180]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) vests the Kentucky Boxing and Wrestling Commission with~~[authorizes the authority to exercise]~~ sole direction, management, control, and jurisdiction over all unarmed combat~~[boxing, kickboxing, mixed martial arts, and wrestling]~~ shows, exhibitions, and licensees in the commonwealth.~~[Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission.]~~ This administrative regulation establishes the requirements for mixed martial arts shows and for participants in mixed martial arts shows.

Section 1. Show Date.

(1) A promoter shall request a show date by completing and submitting to the commission the Show Notice Form, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(a).

(2) The Show Notice Form shall be submitted for approval no less than thirty (30) calendar days before the requested show date.

(3) A promoter shall not advertise a show until the date has been approved by the commission. Approval is effective upon the commission:

(a) Placing the event on the Calendar of Events available on the commission's Web site at http://ins.kbwa.ky.gov/ecal.asp; or

(b) Providing written notice that the event is approved.

Section 2. Program and Changes.

(1) If a contestant is unable to participate in a show for which the contestant has a contract, the contestant shall immediately notify the promoter and the commission. Repeated and unexcused absences or cancelation shall result in a violation.

(2) The proposed card for a show shall be filed with the commission at least five (5) business days prior to the show date. Notice of a change in a program or substitution in a show shall be immediately filed with the commission.

(3) If the commission determines that a proposed bout may not be reasonably competitive, the bout may be denied. Bout approval does not exempt contestant from individual physical approval as required by 201 KAR 27:009, section 3. The commission's determination shall be based upon the contestants' previous fighting experience, including:

(a) The number of bouts the contestants have competed in;

(b) The number of rounds the contestants have competed in;

(c) The date of the contestants' bouts;

(d) The contestants' performance in previous bouts, including the contestants' won-loss record;

(e) The level of competition the contestants have faced; and

(f) The contestants' medical histories.

(4) The final approved card for a show shall comprise a minimum of five (5) complete bouts, no later than two (2) business days prior to the show date.

Section 3. Compensation.

(1) If a show or exhibition is cancelled with less than twenty-four (24) hours' notice to the commission, ring officials shall be paid one-half (1/2) the compensation agreed upon prior to the bout.

(2) Before the commencement of a show or exhibition, the promoter shall tender to the inspector payment to each ring official. The schedule of compensation for a ring official shall be at least as established in this section.

(a) A judge shall be paid $150 unless the show card has twelve (12) or fewer bouts, in which case each judge's pay shall be $100;

(b) A timekeeper shall be paid $100 unless the show card has twelve (12) or fewer bouts, in which case the timekeeper's pay shall be seventy-five (75) dollars;

(c) A physician shall be paid $350;

(d) A referee shall be paid $150; and

(e) A bout assistant shall be paid seventy-five (75) dollars.

(3) Each contestant's compensation agreement shall be in writing and submitted to the commission for approval not less than two (2) calendar days prior to the date of the proposed show.

Section 4. Pre-Fight.

(1) A contestant shall weigh in stripped at a time set by the commission, which shall not be more than thirty-six (36) hours before the first scheduled bout of the show.

(a) A contestant shall produce to the inspector one (1) form of picture identification at the weigh-in.

(b) The inspector and the promoter or a representative of the promoter conducting the show shall be in attendance to record the official weights.

(2) A contestant shall check in with the commission at least one (1) hour prior to the event start time. A contestant shall produce one (1) form of picture identification at check-in.

(3) A contestant shall attend a pre-fight meeting as directed by the commission.

(4)(a) A contestant shall remain in the locker room area until it is time to compete unless approved by the inspector.

(b) The promoter shall supply a separate locker room for males and females.

(5) A contestant shall submit an original or certified copy of his or her HIV Antibody, Hepatitis B Antigen, and Hepatitis C Antibody test results to the commission at least forty-eight (48)[~~twenty-four (24)~~] hours prior to the event.

(a) The results of these tests shall be no more than 365[~~180~~] days old.

(b) A person with a positive test result shall not compete.

(6) A contestant shall undergo a pre-fight physical conducted by a physician. Prior to undergoing the physical, a contestant shall submit a completed Pre-Fight Medical Questionnaire, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(b), under penalty of perjury.

(7) A contestant shall not assume or use the name of another and shall not change his or her ring name nor be announced by any name other than that appearing on his or her license, except upon approval of the inspector.

(8) A contestant shall report to and be under the general supervision of the inspector in attendance at the show and shall be subject to instructions given by the inspector.

Section 5. The Cage.

(1) The area between the cage and the first row of spectators on all sides and the locker room shall be under the exclusive control of the commission.

(2) Commission staff and licensees shall be the only people allowed inside the areas under the control of the commission.

(3) There shall be an area of at least six (6) feet between the edge of the cage floor and the first row of spectator seats on all sides of the cage. A partition, barricade, or similar divider shall be placed:

(a) Between the first row of the spectator seats and the six (6) foot area surrounding the cage; and

(b) Along the sides of the entry lane for contestants to enter the cage and the spectator area.

(4) A bout or exhibition of mixed martial arts shall be held in a fenced area meeting the requirements established in this subsection.

(a) The fenced area shall be circular or have equal sides and shall be no smaller than twenty (20) feet wide and no larger than thirty-two (32) feet wide.

(b) The floor of the fenced area shall be padded with closed-cell foam, with at least a one (1) inch layer of foam padding, with a top covering of a single canvas or a synthetic material stretched tightly and laced to the platform of the fenced area, unless the event is held outdoors, in which case only canvas shall be used.

(c) The platform of the fenced area shall not be more than six (6) feet above the floor of the building and shall have steps suitable for the use of the contestants.

(d) Fence posts shall be made of metal, shall not be more than six (6) inches in diameter, and shall extend from the floor of the building to between five (5) and seven (7) feet above the floor of the fenced area, and shall be properly padded.

(e) The fencing used to enclose the fenced area shall be made of a material that shall prevent a contestant from falling out of the fenced area or breaking through the fenced area onto the floor of the building or onto the spectators, and the fencing shall be coated with vinyl or a similar covering to minimize injuries to a contestant.

(f) Any metal portion of the fenced area shall be properly covered and padded and shall not be abrasive to the unarmed combatants.

(g) The fenced area shall have at least one (1) entrance.

(h) There shall not be a protrusion or obstruction on any part of the fence surrounding the area in which the contestants are to be competing.

(i) Any event held outdoors while the heat index is or exceeds 100 degrees Fahrenheit shall be conducted under a roof or cover that casts shade over the entire cage.

(j) A cage shall have a canvas mat or a synthetic material, unless the event is held outdoors, in which case only canvas shall be used.

Section 6. Equipment.

(1) A bell or horn shall be used by the timekeeper to indicate the time.

(2) In addition to the cage and cage equipment, the promoter shall supply:

(a) A public address system in good working order;

(b) Chairs for judges and timekeepers elevated sufficiently to provide an unobstructed view of the cage and the cage floor;

(c) Items for each contestant's corner, to include:

1. A stool or chair;
2. A clean bucket;
3. Towels;
4. Rubber gloves; and

(d) A complete set of numbered round-cards, if needed.

(3) A scale used for any weigh-in shall be approved as accurate in advance by the inspector.

Section 7. Contestant Equipment and Attire.

(1) A contestant shall be clean and neatly clothed in proper ring attire, and the trunks of opponents shall be of distinguishing colors.

(2) A contestant shall not use a belt that contains a metal substance during a bout. The belt shall not extend above the waistline of the contestant.

(3) A contestant shall not wear shoes or any padding on his or her feet during the bout.

(4) A contestant shall wear a properly fitted:

(a) Groin protector; and

(b) Double-arch mouthpiece.

(5) If a contestant has long hair, the hair shall be secured by a soft, non-abrasive material so that the hair does not interfere with the vision or safety of either contestant.

(6) If cosmetics are used, a contestant shall use a minimum of cosmetics.

Section 8. Weight Classes.

(1) The classes for contestants competing in bouts or exhibitions of mixed martial arts and the weights for each class shall be as established in the following schedule:

CLASS	WEIGHT
Flyweight	Up to 125 lbs.
Bantamweight	Up to 135 lbs.
Featherweight	Up to 145 lbs.
Lightweight	Up to 155 lbs.
Welterweight	Up to 170 lbs.
Middleweight	Up to 185 lbs.
Light Heavyweight	Up to 195[~~205~~] lbs.
Heavyweight	Up to 230[~~265~~] lbs.
Super Heavyweight	Over 230[~~265~~] lbs.

(2) After the weigh-in, a contestant shall not change weight in excess of eight (8) percent prior to the bout.

(3) After the weigh-in, a contestant shall not re-hydrate by the use of intravenous fluids unless approved by the inspector for medical purposes. A contestant may be subject to a random urine specific gravity test to determine compliance with this subsection.

Section 9. Fight Length. Unless the commission approves an exception upon finding that the health and safety of the contestants will not be compromised:

(1) A non-championship bout or exhibition of mixed martial arts shall not exceed three (3) rounds in duration;

(2) A championship bout of mixed martial arts shall not exceed five (5) rounds in duration;

(3) The length of a round in a professional bout or exhibition of mixed martial arts shall be a maximum of five (5) minutes in duration, and a period of rest following a round shall be one (1) minute in duration; and

(4) The length of a round in an amateur bout or exhibition of mixed martial arts shall be a maximum of three (3) minutes in duration, and a rest period following a round shall be ninety (90)

seconds in duration.

Section 10. Judging and Scoring.

(1) Each judge of a bout or exhibition of mixed martial arts shall score the bout or exhibition and determine the winner through the use of the system established in this section.

(a) The better contestant of a round shall receive ten (10) points, and the opponent shall receive proportionately less.

(b) If the round is even, each contestant shall receive ten (10) points.

(c) Fraction of points shall not be given.

(d) Points for each round shall be awarded immediately after the end of the period of unarmed combat in the round.

(2) After the end of the bout or exhibition, the announcer shall pick up the scores of the judges from the commission's representative.

(3) The majority opinion shall be conclusive and, if there is no majority, the decision shall be a draw.

(4)(a) Once the commission's representative has checked the scores, he or she shall inform the announcer of the decision.

(b) The announcer shall then inform the audience of the decision.

(5) Unjudged exhibitions shall be permitted with the prior approval of the commission.

(6) A bout of mixed martial arts shall end in:

(a) Submission by:

1. Physical tap out; or

2. Verbal tap out;

(b) Technical knockout by the referee or physician stopping the bout;

(c) Decision via the scorecards, including:

1. Unanimous decision;

2. Split decision;

3. Majority decision; or

4. Draw, including:

a. Unanimous draw;

b. Majority draw; or

c. Split draw;

(d) Technical decision;

(e) Technical draw;

(f) Disqualification;

(g) Forfeit; or

(h) No contest.

Section 11. Fouls.

(1) The following acts shall constitute fouls in mixed martial arts:

(a) Butting with the head;

(b) Eye gouging;

(c) Biting;

(d) Hair pulling;

(e) Fishhooking;

(f) Groin attacks;

(g) Putting a finger into any orifice or into any cut or laceration on an opponent;

(h) Small joint manipulation;

(i) Striking to the spine or the back of the head;

(j) Striking downward using the point of the elbow;

(k) Throat strikes including grabbing the trachea;

(l) Clawing, pinching, or twisting the flesh;

(m) Grabbing the clavicle;

(n) Kicking the head of a grounded opponent;

(o) Kneeing the head of a grounded opponent;

(p) Stomping the head of a grounded opponent;

(q) Kicking to the kidney with the heel;

(r) Spiking an opponent to the canvas on his or her head or neck;

(s) Throwing an opponent out of the fenced area;

(t) Holding the shorts of an opponent;

(u) Spitting at an opponent;

(v) Engaging in unsportsmanlike conduct;

(w) Holding the fence;

(x) Using abusive language in the fenced area;

(y) Attacking an opponent on or during the break;

(z) Attacking an opponent who is under the care of the referee;

(aa) Attacking an opponent after the bell has sounded the end of the period of unarmed combat;

(bb) Intentionally disregarding the instructions of the referee;

(cc) Timidity, such as intentionally or consistently dropping the mouthpiece or faking an injury;

(dd) Interference by a contestant's corner staff; and

(ee) The throwing by a contestant's corner staff of objects into the cage during competition.

(2) If a contestant fouls his or her opponent during a bout or exhibition of mixed martial arts, the referee may penalize the contestant by deducting points from his or her score, regardless of whether or not the foul was intentional. The referee shall determine the number of points to be deducted in each instance and shall base his or her determination on the severity of the foul and its effect upon the opponent.

(3) If the referee determines that it is necessary to deduct a point or points because of a foul, he or she shall warn the offender of the penalty to be assessed.

(4) The referee shall, as soon as is practical after the foul, notify the judges and both contestants of the number of points, if any, to be deducted from the score of the offender.

(5) Any point or points to be deducted for any foul shall be deducted in the round in which the foul occurred and shall not be deducted from the score of any subsequent round.

(6)(a) If a bout or exhibition of mixed martial arts is stopped because of an accidental foul, the referee shall determine if the contestant who has been fouled is able to continue.

(b) If the contestant's chance of winning has not been seriously jeopardized as a result of the foul, and if the foul does not involve a concussive impact to the head of the contestant who has been fouled, the referee may order the bout or exhibition continued after a recuperative interval of not more than five (5) minutes.

(c) Immediately after separating the contestants, the referee shall inform the commission's representative of his or her determination that the foul was or was not accidental.

(7) If the referee determines that a bout or exhibition of mixed martial arts shall not continue because of an injury suffered as the result of an accidental foul, the bout or exhibition shall be declared a no bout if the foul occurs during:

(a) The first two (2) rounds of a bout or exhibition that is scheduled for three (3) rounds or less; or

(b) The first three (3) rounds of a bout or exhibition that is scheduled for more than three (3) rounds.

(8) If an accidental foul renders a contestant unable to continue the bout or exhibition, the outcome shall be determined by scoring the completed rounds, including the round in which the foul occurs, if the foul occurs after:

(a) The completed second round of a bout or exhibition that is scheduled for three (3) rounds or less; or

(b) The completed third round of a bout or exhibition that is scheduled for more than three (3) rounds.

(9) If an injury inflicted by an accidental foul later becomes aggravated by fair blows and the referee orders the bout or exhibition stopped because of the injury, the outcome shall be determined by scoring the completed rounds and the round during which the referee stops the bout or exhibition.

(10) A contestant committing an intentional foul may be issued a violation by an inspector.

Section 12. Prohibitions. The following shall be prohibited:

(1) Battle royal type events; and

(2) Use of excessive grease or other substance that may handicap an opponent.

Section 13. Non-Contestant Participants.

(1) A promoter shall provide a minimum of two (2) security guards on the premises for each show.

(2) Judges, physicians, referees, and timekeepers shall be selected, licensed, and assigned to each show by the commission. The following shall be required:

(a) Three (3) judges;

(b) One (1) timekeeper;

(c) One (1) physician, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) physicians shall be required; and

(d) One (1) referee, unless more than eighteen (18) bouts are scheduled, in which case a minimum of two (2) referees shall be required.

Section 14. Judges.

(1) A judge shall arrive at least one (1) hour prior to the start of a show.

(2) At the beginning of a bout, the judges shall locate themselves on opposite sides of the ring and shall carefully observe the performance of the contestants.

(3) At the conclusion of the bout, the judges shall render their decision based on the requirements of Section 10 of this administrative regulation.

(4) Upon request of the referee, the judges shall assist in determining whether or not:

(a) A foul has been committed;

(b) Each contestant is competing in earnest; and

(c) There is collusion affecting the result of the bout.

Section 15. Timekeeper.

(1) The timekeeper shall be seated outside the ring near the bell and shall take the cue to commence or take time out from the referee.

(2) The timekeeper shall be equipped with a whistle and a stop watch. Prior to the first bout, the inspector shall ensure that the whistle and stopwatch function properly.

(3) Ten (10) seconds before the start of each round, the timekeeper shall give notice by sounding the whistle.

(4) The timekeeper shall indicate the starting and ending of each round by sounding a horn or striking the bell with a metal hammer.

(5) If a bout terminates before the scheduled limit, the timekeeper shall inform the announcer of the exact duration of the bout.

(6) Ten (10) seconds prior to the end of each round, the timekeeper shall give warning by striking a gavel three (3) times.

Section 16. Physicians and Healthcare Requirements.

(1) There shall be at least one (1) physician licensed by the commission at ringside at all times during a bout. A bout shall not begin or continue if a physician is not at ringside.

(2) The physician shall have general supervision over the physical condition of each contestant at all times while on the premises of a show or exhibition.

(3) The physician's pre-bout duties shall be established in this subsection.

(a) A physician shall make a thorough physical examination of each contestant within eight (8) hours prior to a bout.

1. The physician's examination shall include a review of the Pre-Fight Medical Questionnaire of each contestant.

2. The physician shall deliver to the inspector the form Pre-Fight Examination, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(c), that documents the results of the examination prior to the contestant entering the ring.

(b) The physician shall ensure that all equipment required by subsection (5) of this section is present before the start of the first bout or exhibition.

(c) The physician shall prohibit a contestant from competing if the physician believes the contestant is physically unfit for competition or impaired by alcohol or a controlled substance.

(4) The physician's duties during the bout or exhibition shall be as established in this subsection.

(a) The physician shall remain at ringside during the progress of any bout or exhibition unless attending to a person.

(b) The physician shall observe the physical condition of each contestant during a bout or match.

(c) The physician shall administer medical aid if needed or requested.

(d) The physician shall order the referee to pause or end a bout or exhibition if necessary to prevent serious physical injury to a contestant.

(5) The physician shall have at ringside medical supplies necessary to provide medical assistance for the type of injuries reasonably anticipated to occur in a mixed martial arts show. The physician shall not permit a referee to begin a bout if the medical supplies are not present. At a minimum, these medical supplies shall include:

(a) A clean stretcher and blanket, placed under or adjacent to the ring throughout each bout;

(b) Spine board;

(c) Cervical collar;

(d) Oxygen apparatus or equipment; and

(e) First aid kit.

(6) The promoter shall ensure that a certified ambulance with an emergency medical technician is on the premises of a show at all times. A show shall not begin or continue if the ambulance and emergency medical technician are not on the premises.

(7) The physician shall make a thorough physical examination of each contestant after each bout. The physician shall deliver the form Post-Fight Examination, which is incorporated by reference in 201 KAR 27:011, Section 23(1)(d) that documents the results of the examination.

Section 17. Announcers.

(1) The announcer shall have general supervision over all announcements made to spectators.

(a) The announcer shall announce the name of contestants, their weight, decisions at the end of each match or bout, and any other matters as are necessary.

(b) A person other than the official announcer shall not make an announcement, unless deemed necessary by an inspector.

(2) If a match or bout is stopped before its scheduled termination, the announcer shall immediately confer with the referee and judges and then shall immediately announce the decision.

(3) The announcer shall not enter the ring during the actual progress of a match or bout.

Section 18. Referees.

(1) The referee shall be the chief official of the show, be present in the ring at all times, and have general supervision over each contestant, manager, and second during the entire event.

(2) The referee shall have the authority to disqualify a contestant who commits a foul and award the decision to the opponent. The referee shall immediately disqualify a contestant who commits an intentional or deliberate foul that causes serious physical injury to an opponent.

(3) The referee's duties and responsibilities shall be as established in this subsection.

(a) The referee shall, before starting a bout or match, ascertain from each contestant the name of the contestant's chief second. The referee shall hold the chief second responsible for the conduct of the chief second's assistants during the progress of the bout or match.

(b) The referee shall call the contestants together in the ring immediately preceding a bout or match for final instructions. During the instructional meeting, each contestant shall be accompanied in the ring by the contestant's chief second only.

(c) The referee shall inspect the person, attire, and equipment of each contestant and make certain that no foreign substances that are prohibited by KRS Chapter 229 or 201 KAR Chapter 27 have been applied on a contestant's body or equipment or used by a contestant.

(d) The referee shall stop a bout or match at any time if the referee has reasonable grounds to believe either contestant is:

1. Unable to protect himself or herself from possible injury;

2. Not competing in earnest; or

3. Colluding with another person to affect the results of the bout.

(e) The referee may take one (1) or more points away from a contestant who commits an accidental foul, and the referee may permit a rest period not exceeding five (5) minutes for the

contestant who was fouled.

(f) The referee shall not touch a contestant during the bout or match except upon failure of a contestant to obey the referee's instructions or to protect a contestant.

(g) The referee shall decide all questions arising during a bout or match that are not otherwise specifically covered by KRS Chapter 229 or 201 KAR Chapter 27.

Section 19. Trainers and Seconds.

(1) A trainer or second shall be equipped with a first aid kit and the necessary supplies for proper medical attendance upon the contestant.

(2) There shall be no more than three (3) persons total serving as a trainer or second in any bout and only two (2) shall be allowed in the ring at the same time.

(3) A trainer and a second shall leave the ring at the timekeeper's ten (10) seconds whistle before the beginning of each round and shall remove all equipment from the ring. Equipment shall not be placed on the ring floor until after the bell has sounded at the end of the round or period.

(4) A trainer and a second shall wear surgical gloves at all times while carrying out their duties.

Section 20. Medical Prohibitions.

(1) A contestant who has been repeatedly knocked out and severely beaten shall be retired and not permitted to compete again if, after subjecting the contestant to a thorough examination by a physician licensed by the commission, the medical advisory panel determines action is necessary to protect the health and welfare of the contestant.

(2) A contestant who has suffered five (5) consecutive defeats by knockout or medical stoppage shall not be allowed to compete again until the contestant has been evaluated and subsequently cleared for further competition by the medical advisory panel.

(3) A contestant who has been knocked out shall be prohibited from all competition for a minimum of sixty (60) days.

(4) Any contestant who has suffered a technical knockout may be prohibited from competition for up to thirty (30) days if the contestant's health or safety would be jeopardized without the prohibition.

(5)[~~A contestant shall receive a mandatory seven (7) day rest period from competition after competing in an event. Day one (1) of the rest period shall commence on the first day following the bout in which the contestant competed.~~

~~(6)~~](a) A female mixed martial artist shall submit proof she is not pregnant prior to her bout. The proof may be either:

1. An original or certified copy of the result of a medical test taken no more than one (1) week before the day of the match that shows she is not pregnant; or

2. From an over-the-counter home pregnancy test taken while on the premises of the show that tests for human chorionic gonadotropin.

(b) A female mixed martial artist shall be prohibited from competing if:

1. She is pregnant; or

2. She fails to comply with this subsection.

Section 21. Insurance.

(1) A promoter shall provide insurance for a contestant for any injuries sustained in the mixed martial arts event.

(2) The minimum amount of coverage per contestant shall be $5,000 health and $5,000 accidental death benefits.

(3) A certificate of insurance coverage shall be provided to the commission no less than two (2) business days before the event.

(4)(a) The deductible expense under the policy for a professional mixed martial artist shall not exceed $1,000.

(b) The deductible expense for an amateur mixed martial artist shall not exceed $500.

Section 22. Other Provisions.

(1) A contestant shall not compete against a member of the opposite gender.

(2) Each show shall be video recorded and retained by the promoter for at least one (1) year. Upon request of the commission, the promoter shall provide the video recording of a show to the commission.

(3) A promoter shall maintain an account with the recognized national database as identified by the commission and shall submit contestants names to that database upon approval of the show date. The promoter shall be responsible for the costs associated with the use of this service.

(4) A bout or exhibition of mixed martial arts shall be conducted pursuant to the official rules for the particular art unless the official rules conflict with KRS Chapter 229 or 201 KAR Chapter 27.

(a) If an official rule conflicts with KRS Chapter 229 or a requirement in 201 KAR Chapter 27, the statute or administrative regulation shall prevail.

(b) The sponsoring organization or promoter shall file a copy of the rules that shall apply at the show with the commission along with the thirty (30) day show notice required in Section 1 of this administrative regulation.

(5) A contestant shall report to and be under the general supervision of an inspector in attendance at the show and shall be subject to instructions given by an inspector.

(6) More than two (2) fifteen (15) minute intermissions shall not be allowed at any show.

Section 23. Prohibitions and Restrictions.

(1) The following shall be prohibited:

(a) Battle royal type events;

(b) Use of excessive grease or other substance that may handicap an opponent; and

(c) Elbow strikes to the head if the bout is an amateur bout.

(2) Knees to the head shall be permitted, but shall only be used and delivered from a standing position.

(3) A professional mixed martial arts contestant found to be competing during an amateur mixed martial arts show shall have his or her license suspended for a period of not less than one (1) year.

(4) A promoter who allows a professional to compete against an amateur shall have his or her license suspended for a period of not less than one (1) year.

(5) Smoking shall be prohibited inside the gymnasium, room, or hall in which the ring is located.

(6) Alcohol shall be prohibited inside the six (6) foot area alongside the ring.

JASON P. SMITH, Vice-Chairman
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 19, 2018

FILED WITH LRC: January 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 a.m. at 656 Chamberlin Ave, Suite B, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on February 28, 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: Cindy Stinnett, Executive Director, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601; phone 502-564-0085, fax 502-696-3938, email kbwc@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cindy Stinnett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and rules for mixed martial arts shows authorized by the Kentucky Boxing and Wrestling Commission.

(b) The necessity of this administrative regulation: This regulation is necessary to establish mixed martial arts show requirements and to carry out the commission's mandate to ensure licensees have the ability to compete without the risk of serious physical injury.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 229.171, which grants the commission authority to regulate unarmed combat shows and exhibitions. KRS 229.171 also authorizes the commission to promulgate rules and regulations it considers necessary or expedient for the performance of its functions as provided in KRS Chapter 229. KRS 229.055 authorizes the commission to impose time limits on rounds and requires show promoters to file contracts with the commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements and rules that will govern mixed martial arts shows authorized by the commission pursuant to KRS Chapter 229 and 201 KAR Chapter 27. It also sets requirements that provide for the safety of participants.

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

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that the approval of a bout does not signify approval of every participant; such approval remains contingent upon individual physicals. The amendment requires mixed martial arts licensees to provide the Commission with HIV antibody, Hepatitis B antigen, and Hepatitis C antigen tests at least forty-eight (48) hours prior to participation in an event, an increase from the current twenty-four (24) hours. The results of such tests must now be no more than 365 days old, previously limited to 180 days. The amendment also updates permissible weight for the light heavyweight, heavyweight, and super heavyweight classes and eliminates the mandatory seven (7) day rest period following competition in an event. The amendment also requires the final approved card for a show to comprise a minimum of five (5) complete bouts, no later than two (2) business days prior to the show date.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the Commission to provide better services and safety for its licensees under KRS Chapter 229.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with KRS 229.171, which grants the Commission authority to control and manage shows and exhibitions.

(d) How the amendment will assist in the effective administrative of the statues: This amendment enables the commission to provide better services to its licensees under KRS Chapter 229.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts commission licensees and applicants seeking to participate in mixed martial arts shows. The Commission grants approximately 1,250 total licenses in a year.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Mixed martial arts participants will have to submit their test results 48 hours prior to an event rather than 24. However, the results may now be as old as 365 days instead of 180 days. Additionally, participants will no longer be subject to an automatic 7-day rest period.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensed unarmed combat participants will not have any additional costs to comply with this administrative regulation – the same tests are required, but they must be submitted to the commission an additional 24 hours in advance of participation in an event.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The proposed amendments enhance the safety of fighters and increase referee discretion to the benefit of all licensees and participants in mixed martial arts shows.

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

(a) Initially: There is no initial cost to implement this administrative regulation.

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

(6) What is the source of the funding to be used for implementation and enforcement of this administrative regulation? There is no additional cost associated with the implementation and enforcement of this amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding are required for the implementation of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There is no increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because all licensing requirements are for the health and safety of the licensees and fees are consistent between the license types.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.025, 229.171, 15 U.S.C. 6305

3. Estimate the effect of this administrative regulation on the 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 amendment will not generate additional revenue for state or local government in the first year.

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

(c) How much will it cost to administer this program for the first year? The KWBC does not anticipate any net change in the cost to administer the amendment to the administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? The KWBC does not anticipate any net change in the cost to administer the amendment to the administrative regulation in subsequent years.

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

Revenues: Neutral.

Expenditures: Neutral.

Other Explanation: None.

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Amendment)

201 KAR 27:020. Tickets.

RELATES TO: KRS 229.031,[~~229.041,~~] 229.171,[~~229.180, EO 2016-270~~]

STATUTORY AUTHORITY: KRS 229.031,[~~229.041,~~] 229.171[~~, 229.180~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(1) vests the Kentucky Boxing and Wrestling Commission with[~~authorizes the authority to exercise~~] sole direction, management, control, and jurisdiction over all unarmed combat [~~boxing, kickboxing, mixed martial arts, and wrestling~~] shows, exhibitions, and licensees in the commonwealth. KRS 229.031(1) requires a tax of the greater of twenty-five (25) dollars or five (5) percent of[~~upon~~] the gross receipts from the sale of all tickets to the show collected by a person conducting an event under the jurisdiction of the commission, and authorizes the commission to examine or cause to be examined[~~authority. KRS 229.041 authorizes the authority to inspect~~] a person's books and records to ensure compliance with the tax.[~~Executive Order 2016-270, effective May 16, 2016, abolished the Kentucky Boxing and Wrestling Authority and established the Kentucky Boxing and Wrestling Commission.~~] This administrative regulation establishes requirements and procedures governing the sale of tickets to events and shows in the commonwealth.

Section 1. General Requirements.

(1) Any person admitted to a show or exhibition shall have a ticket except:

(a) Commission staff, a commission member, or a member of the medical advisory panel on official business;

(b) The promoter of the show and the promoter's employees;

(c) An employee of the venue at which the show is being held if the employee is working the event;

(d) A ring official who is working the show;

(e) A member of the press covering the show;

(f) A contestant who is competing in the show;

(g) A second, trainer, or manager acting on behalf of a contestant who will be competing in the show; and

(h) A police officer, firefighter, paramedic, or emergency medical technician while on duty.

(2)(a) A schedule of ticket prices shall be posted conspicuously at the front of the ticket office where the show or exhibition is taking place.

(b) A ticket shall not be sold for a price greater than that charged at the place of admission or printed on the ticket.

Section 2. Complimentary Tickets.

(1) The number of complimentary tickets shall not exceed four (4) percent of the total of paid admission tickets.

(2) The commission may approve an exception to subsection (1) of this section if the complimentary tickets will be given to or for a charitable organization, educational purpose, emergency responders, or military personnel.

Section 3. Changes to Program or Card.

(1) Any change or substitution to the card shall be posted in a conspicuous place at the ticket office when the change is made.

(2) Any change to an advertised card shall be:

(a) Posted at the ticket window and at the entrance to the facility immediately; and

(b) Announced to the spectators at least five (5) minutes before the first bout or match.

(3) The posting and the announcement of the change shall include a statement that a ticket purchaser may receive a refund of the ticket purchase price if the request is made before commencement of the first bout or match.

Section 4. Rain Check. Each purchaser of an admission ticket shall be given their choice of a refund or a voucher that shall be redeemed by the promoter on presentation by the purchaser if the show does not take place.

Section 5.[~~Ticket Audit. (1) Pursuant to [KRS 229.041, the commission may request an audit of the tickets used for a show or exhibition to validate the tax paid pursuant to KRS 229.031.~~

~~(2) The promoter shall retain the following for a period of one (1) year from the date of a show or exhibition unless otherwise ordered by the commission:~~

~~(a) All unsold tickets or a certified record from a vendor that states the number of unsold tickets; and~~

~~(b) A receipt, invoice, or other evidence that demonstrates in detail the number of tickets ordered for an event and a description of the tickets.~~

~~(3) The promoter shall be responsible for the cost of a ticket audit if the commission determines that the amount of the tax paid pursuant to KRS 229.031 is underpaid by five (5) percent or more.~~

~~Section 6.~~] Event Report.

(1) Within fifteen (15) days[~~seventy-two (72) hours~~] of the conclusion of an unarmed combat[~~a boxing, kickboxing, mixed martial arts, wrestling, or elimination event~~] show, the promoter shall, pursuant to KRS 229.031(1), complete and submit to the commission the form Event Report.

(2) The Event Report shall be accompanied by a check or money order for the amount of the tax required by KRS 229.031(1).

(3) The Event Report shall be signed under penalty of perjury.

Section 6[~~7~~]. Incorporation by Reference.

(1) "Event Report", October 2016, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Boxing and Wrestling Commission office at 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., and is available online at http://kbwa.ky.gov/Pages/Appsforms.aspx.

JASON P. SMITH, Vice-Chairman
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 19, 2018

FILED WITH LRC: January 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 a.m. at 656 Chamberlin Ave, Suite B, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on February 28, 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: Cindy Stinnett, Executive Director, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601; phone 502-564-0085, fax 502-696-3938; email kbwc@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cindy Stinnett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth rules governing the sale of tickets to unarmed combat shows and exhibitions, as well as the reporting of such sales and accompanying tax payments.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify expectations with respect to ticket sales, reporting, and accompanying tax payments

by the entities the Kentucky Boxing and Wrestling Commission regulates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 229.031 requires persons conducting unarmed combat shows to furnish certain ticket records and a tax payment to the commission. This administrative regulation further clarifies related requirements and sets forth a process for compliance with the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed instructions and a process for regulated entities to comply with KRS 229.031, which requires certain recordkeeping and the payment of taxes to the commission.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects outdated cross-references and extends the time period for completion of a required Event Report from seventy-two hours to fifteen (15) days.

(b) The necessity of the amendment to this administrative regulation: This amendment is needed to correct outdated cross-references and facilitate more accurate reporting by regulated entities; extending the reporting period from seventy-two hours to fifteen (15) days should improve rates of compliance and accurate reporting.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 229.031, which sets forth ticket recording and tax payment requirements; this amendment lays out in greater detail the required process and incorporates the form required for submission to satisfy the statute.

(d) How the amendment will assist in the effective administration of the statues: This amendment provides improved clarity and extends the time allowed for reporting by regulated entities, which will facilitate compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All persons conducting unarmed combat shows or exhibitions in the Commonwealth and the Kentucky Boxing and Wrestling Commission will be affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All persons conducting unarmed combat shows or exhibitions will be required to post detailed schedules of ticket prices, changes to the program card, and submit an Event Report to the commission, accompanied by a check or money order for the appropriate amount of tax.

(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 a person conducting unarmed combat shows or exhibitions will depend on the number of tickets sold, which is the basis for the applicable tax.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Persons conducting unarmed combat shows or exhibitions and complying with this administrative regulation will avoid penalties set forth by KRS 229.031(4) and KRS 229.200.

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

(a) Initially: There will be no additional initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional ongoing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary for the implementation of this administrative regulation. Existing commission staff will continue to be responsible for enforcement.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increases in fees or funding are necessary to implement this amendment to the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees. The taxes to be collected pursuant to this administrative regulation are set forth in statute by KRS 229.031(1).

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all persons holding similar permits for the conduct of an unarmed combat show.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What 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 Boxing and Wrestling Commission will be impacted by this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.031, KRS 229.171.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amount of tax revenue generated for the state government by this administrative regulation in the first year will depend on the number of event tickets sold. This administrative regulation is not expected to generate revenue for 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 amount of tax revenue generated for the state government by this administrative regulation in subsequent years will depend on the number of event tickets sold. This administrative regulation is not expected to generate revenue for local government.

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

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

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

Revenues (+/-): Total state revenues will be determined by event tickets sold

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation requires reporting and payment of tax pursuant to such reporting of ticket sales, which will fluctuate depending on event and ticket totals.

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:095. Importation of cervid carcasses and parts.

RELATES TO: KRS 150.180, 150.280, 150.290

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.720(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the department to promulgate administrative regulations governing the buying, selling, or transporting of wildlife. KRS 150.720(2) authorizes the department and the Department of Agriculture to hold a person responsible for

all costs incurred in the investigation, response, and eradication of a disease if the person imports a diseased animal into the Commonwealth. This administrative regulation establishes procedures for the importation and possession of[~~whole~~] cervid carcasses or carcass part[~~from states or Canadian provinces that have known cases of chronic wasting disease~~].

Section 1. Definitions.

(1) "Cervid" means a member of the family Cervidae.

(2)[~~"Chronic wasting disease" or "CWD" means a fatal disease affecting the brain of cervids which belongs to a group of diseases called transmissible spongiform encephalopathies.~~

~~(3)~~] "Clean" means having no meat matter or tissue attached to the carcass part.

(3)[~~(4)~~] "Import"[~~"Importation"~~] means to transport[~~the transportation of~~] a cervid carcass or carcass part into Kentucky[~~the Commonwealth~~].[~~(5) "Infected area" means a state or Canadian province that has a known case of chronic wasting disease.~~

~~(6) "Whole" means the entire carcass whether eviscerated or not, prior to the carcass being processed.~~]

Section 2. Importation[~~and Possession~~].

(1) A person shall not import[~~or possess~~] a[~~whole~~] cervid carcass or carcass part that has[~~from an infected area without first converting the carcass or part, pursuant to subsection (2) and (3) of this section~~.

~~(2) A person may import a cervid carcass or a carcass part from an infected area if the carcass or carcass part does not have~~] any part of the spinal column or head[~~attached~~];

(2)[~~(3)~~] A person importing a legally taken cervid carcass or carcass part may possess the items listed in paragraphs (a) through (f) of this subsection.[~~following inedible parts of a legally taken cervid carcass from an infected area:~~]

(a) Antlers;

(b) Antlers that are attached to a clean skull plate;

(c) A clean skull;

(d) Clean upper canine teeth;

(e) A finished taxidermy product;[~~or~~]

(f) The hide; or

(g) Quartered or deboned meat.

(3)[~~(4)~~] A licensed taxidermist or deer processor who accepts[~~may accept~~] a cervid head with an intact skull, spinal column, or spinal column part originating from another state or country shall[~~an infected area if the taxidermist or deer processor~~]:

(a) Contact[~~Contacts~~] the law enforcement division of the department within forty-eight (48) hours after receiving the cervid head, spinal column, or spinal column part;

(b) Provide[~~Provides~~] to the department the hunter's:

1. Name; and

2. Address; and

(c) Transfer[~~Transfers~~] all spinal column parts and the skull with the intact brain to the department once the skull plate has been removed.

FRANK JEMLEY III, Acting Commissioner
REGINA STIVERS, Deputy Secretary
For DON PARKINSON, Secretary
APPROVED BY AGENCY: December 17, 2018
FILED WITH LRC: December 17, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2019 at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes procedures for the importation and possession of cervid carcasses or carcass parts from other states or countries.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prevent the importation of cervid parts most likely to be contaminated with the agent that causes Chronic Wasting Disease (CWD).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish the requirements for the transportation of wildlife. KRS 150.720(2) authorizes the department to hold individuals responsible for violating administrative regulations regarding the importation of diseased animals into the state.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of the statutes by helping to protect the state's deer and elk herds from CWD.

(2) If 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 prohibits the importation of cervid carcasses and high-risk carcass parts from all states and countries.

(b) The necessity of the amendment to this administrative regulation: CWD may persist in the environment for years before clinical symptoms develop in cervids or the disease is discovered. By prohibiting the importation of cervid carcasses and high-risk carcass parts, the likelihood that infectious materials enter the state is greatly reduced.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All deer and elk hunters from Kentucky who transport legally taken deer and elk from other states or countries will be affected. The number of affected hunters is unknown. Currently deer processors are unlicensed by the department and the number of processors in Kentucky is also unknown. There are approximately 350 licensed taxidermists within Kentucky.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunters who hunt in other states or countries will not be allowed to import a carcass or carcass parts from these areas unless the entire spinal column and head are removed prior to importation. A processor or taxidermist who accepts a whole carcass or carcass parts from another state or country must report this to the department within 48 hours, provide the department with the name and address of the hunter, and transfer possession of high-risk cervid parts to the department.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no direct benefits to the entities identified in question (3), only the secondary benefit of protecting the deer herd in Kentucky.

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

(a) Initially: There will be no initial cost to the agency to implement this regulation.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because all individuals, taxidermists, and deer processors are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Wildlife and Law Enforcement will be affected by this regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) and 150.720(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? No revenue will be generated for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated in subsequent years.

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

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

TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:172. Deer hunting seasons, zones, and requirements.

RELATES TO: KRS 150.010, 150.177, 150.180, 150.411(3), 150.990, 237.110

STATUTORY AUTHORITY: KRS 150.025(1), 150.170, 150.175, 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.170 authorizes exemptions for certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits to be issued by the department. KRS 150.390(1) prohibits the taking of deer in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. This administrative regulation establishes deer hunting seasons and zones, bag limits, legal methods of taking, and checking and recording requirements for deer hunting.

Section 1. Definitions.

(1) "Additional deer permit" means a permit that allows the holder to take up to two (2) additional deer beyond those allowed by the statewide permit in the following combinations:

(a) One (1) antlered deer and one (1) antlerless deer; or

(b) Two (2) antlerless deer.

(2) "Adult" means a person who is at least eighteen (18) years of age.

(3) "Air gun" means a pneumatic gun fired by a charge of compressed air.

(4) "Antlered deer" means a male or female deer, excluding male fawns, with a visible antler protruding above the hairline.

(5) "Antlerless deer" means a male or female deer with no visible antler protruding above the hairline.

(6) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(7) "Arrow" means the projectile fired from a bow or crossbow.

(8) "Centerfire" means a type of gun that detonates a cartridge by the firing pin striking a primer in the middle of the end of the cartridge casing.

(9) "Crossbow" means a bow with a string designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(10) "Deer" means a member of the species Odocoileus virginianus.

(11) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(12) "License year" means the period from March 1 through the last day of February.

(13) "Modern gun" means an air gun, rifle, handgun, or shotgun that is loaded from the rear of the barrel.

(14) "Muzzle-loading gun" means a rifle, shotgun, or handgun that is loaded from the discharging end of the barrel or discharging end of the cylinder.

(15) "Novice deer hunter" means a person who has not harvested more than two (2) deer in Kentucky in the last ten (10) years.

(16) "Shed" means an antler that has naturally been cast off the skull as a part of the annual growth and replacement process.

(17) "Special deer hunt" means a one (1) or two (2) day deer hunt sponsored and overseen by the department on private land that:

(a) Allows a novice deer hunter to use a modern gun outside of modern gun deer season; and

(b) Shall be made available only to a:

1. Kentucky resident;

2. Person enrolled as a resident or non-resident student in a public or non-public postsecondary institution located in Kentucky; or

3. Member of the United States military or his or her spouse or children stationed at a military base in Kentucky.

(18)[~~(17)~~] "Statewide deer hunting requirements" means the season dates, zone descriptions, bag limits, and other requirements for deer hunting established in this administrative regulation.

(19)[~~(18)~~] "Statewide deer permit" means a permit, which, in conjunction with appropriate licenses, seasons, and methods,

allows the holder to take:

(a) One (1) antlered deer and no more than three (3) antlerless deer; or

(b) No more than four (4) antlerless deer.

(20)[~~(19)~~] "Youth" means a person under the age of sixteen (16) by the date of the hunt.

(21)[~~(20)~~] "Youth deer permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to take:

(a) One (1) antlered deer and no more than three (3) antlerless deer; or

(b) No more than four (4) antlerless deer.

(22)[~~(21)~~] "Zone" means an area consisting of counties designated by the department within which deer hunting season dates and limits are set for the management and conservation of deer in Kentucky.

Section 2. License and Deer Permit Requirements.

(1) Unless license exempt, as established in KRS 150.170, a person shall carry a valid:

(a)[~~proof of purchase of a valid~~] Kentucky hunting license while hunting; and

(b)[~~valid~~] Deer permit while hunting.

(2) Unless license exempt, as established in KRS 150.170, a youth shall carry a valid:

(a)[~~proof of purchase of A valid~~] Kentucky youth hunting license while hunting; and

(b)[~~A valid~~] Youth deer permit while hunting.

Section 3. Hunter Restrictions.

(1) A deer hunter shall not:

(a) Take a deer except during daylight hours;

(b) Use dogs, except leashed tracking dogs, to recover a wounded deer;

(c) Take a deer that is swimming;

(d) From a vehicle, boat, or on horseback, take a deer, except that a hunter with a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform; and

(e) Possess or use a decoy or call powered by electricity from any source.

(2) A person shall only use the equipment established in paragraphs (a) through (e) of this subsection to take a deer:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger; and

2. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzle-loading gun;

(d) A shotgun loaded with a shell containing single projectile ammunition designed to expand upon impact; or

(e) An air gun:

1. Of .35 caliber or larger;

2. Charged by an external tank; and

3. Loaded with single projectile ammunition designed to expand upon impact.

(3) A person shall only use a weapon that complies with the appropriate season established in Section 5 of this administrative regulation to take a deer.

(4) A crossbow shall contain a working safety device.

(5) A person shall not use a magazine capable of holding more than ten (10) rounds to take a deer.

Section 4. Hunter Orange Clothing Requirements.

(1) During the modern gun deer season, muzzle-loader season, and any youth gun season, a person hunting any species during daylight hours and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest except while hunting waterfowl or mourning dove.

(2) During an elk firearm season, as established in 301 KAR 2:132, a person hunting any species and any person accompanying a hunter within the elk restoration zone, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except while hunting waterfowl or mourning dove.

(3) The hunter orange portions of a garment worn to fulfill the requirements of this section:

(a) May display a small section of another color; and

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(4) A camouflage-pattern hunter orange garment worn without additional solid hunter orange on the head, back, and chest shall not meet the requirements of this section.

Section 5. Statewide Season Dates.

(1) A deer hunter may use archery equipment to hunt deer statewide from the first Saturday in September through the third Monday in January.

(2) A deer hunter may take deer with a modern gun statewide beginning the second Saturday in November for sixteen (16) consecutive days.

(3) A deer hunter may use a muzzle-loading gun to hunt deer statewide:

(a) For two (2) consecutive days beginning the third Saturday in October;

(b) For nine (9) consecutive days beginning the second Saturday in December; and

(c) During any season in which a modern gun may be used to take deer.

(4) A deer hunter may use a crossbow to hunt deer statewide[~~:~~

~~(a)~~] from the third Saturday in September through the third Monday in January[~~October 1 through the end of the third full weekend in October;~~

~~(b) From the second Saturday in November through December 31; and~~

~~(c) During any season in which a gun may be used to take deer~~].

(5) A youth or a legal resident hunter sixty-five (65) years or older may hunt with a crossbow from the first Saturday in September through the third Monday in January.

(6) There shall be a youth gun season for two (2) consecutive days beginning on the second Saturday in October, in which a youth deer hunter shall comply with this administrative regulation and all other statewide deer hunting requirements.

(7) There shall be a free youth weekend for two (2) consecutive days beginning on the Saturday after Christmas during which a youth:

(a) Shall not be required to have a hunting license or deer permit; and

(b) Shall comply with this administrative regulation and all other statewide deer hunting requirements.

Section 6. Zones.

(1) Zone 1 shall consist of Anderson, Ballard, Boone, Bracken, Bullitt, Caldwell, Calloway, Campbell, Carlisle, Carroll, Christian, Crittenden, Franklin, Fulton, Gallatin, Grant, Graves, Green, Hardin, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jefferson, Kenton, Larue, Livingston, Lyon, Marshall, Mason, McClean, McCracken, Mercer, Muhlenberg, Nelson, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Todd, Trigg, Trimble, Union, Washington, Webster, and Woodford Counties.

(2) Zone 2 shall consist of Adair, Allen, Barren, Bath, Bourbon, Boyd, Boyle, Breckinridge, Butler, Carter, Casey, Clark, Daviess, Edmonson, Fayette, Fleming, Grayson, Greenup, Hancock, Jessamine, Lawrence, Lewis, Lincoln, Logan, Madison, Marion, Meade, Metcalf, Monroe, Montgomery, Nicholas, Ohio, Taylor, and Warren Counties.

(3) Zone 3 shall consist of Cumberland, Elliott, Estill, Garrard, Johnson, Laurel, Morgan, Powell, Pulaski, Rowan, Simpson, Wayne, and Wolfe Counties.

(4) Zone 4 shall consist of Bell, Breathitt, Clay, Clinton, Floyd, Harlan, Jackson, Knott, Knox, Lee, Leslie, Letcher, Magoffin, Martin, McCreary, Menifee, Owsley, Perry, Pike, Rockcastle,

Russell, and Whitley Counties.

Section 7. Season and Zone Limits.

(1) A person shall not take more deer than what each zone allows, as established in this section.

(2) A person shall not take more than one (1) antlered deer per license year, regardless of permit type used or zone hunted, except as established in 301 KAR 2:111, 2:178, or 3:100.

(3) A person may take an unlimited number of antlerless deer in Zone 1 if the person has purchased the appropriate additional deer permits.

~~(3) A person shall not take more than one (1) antlered deer per license year, regardless of the permit type used, except as established in 301 KAR 2:111, 2:178, and 3:100.~~]

(4) A person may take up to a total of four (4) deer in Zone 2.

(5) In Zone 3, a person may take up to a total of four (4) deer, except that a firearm or air gun shall not be used to take a total of more than one (1) antlerless deer.

(6) In Zone 4, a person may take one antlerless deer, but only during:

(a) Archery season, except that a person shall not take an antlerless deer during modern gun season, the October muzzleloader season, or the first six (6) days of the December muzzleloader season;

(b) Crossbow season, except that a person shall not take an antlerless deer during modern gun season, the October muzzleloader season, or the first six (6) days of the December muzzleloader season;

(c) Any youth weekend; or

(d) The last three (3) days of the December muzzleloader season.

Section 8. Supervision of Youth Gun Deer Hunters.

(1) An adult shall:

(a) Accompany a person under sixteen (16) years old; and

(b) Remain in a position to take immediate control of the youth's gun.

(2) An adult accompanying a youth hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.

Section 9. Harvest Recording.

(1) Immediately after taking a deer, and prior to moving the carcass, a person shall record, in writing:

(a) The species taken;

(b) The date taken;

(c) The county where taken; and

(d) The sex of the deer taken on one (1) of the following:

1. The hunter's log section on the reverse side of a license or permit;

2. The hunter's log produced in a hunting guide;

3. A hunter's log printed from the Internet;

4. A hunter's log available from any KDSS agent; or

5. An index or similar card.

(2) The person shall retain and possess the completed hunter's log while the person is in the field during the current hunting season.

Section 10. Checking a Deer.

(1) A person shall check a harvested deer before 11:59 p.m. on the day the deer is recovered by:

(a) Calling (800) 245-4263 and providing the requested information; or

(b) Completing the online check-in process at fw.ky.gov.

(2) A person who has checked in a deer shall record the confirmation number on a hunter's log.

(3) If a hunter removes the hide or head of a harvested deer before the deer is checked in, then the hunter shall retain the deer parts established in paragraphs (a) and (b) of this subsection:

(a) For antlered deer, the:

1. Head with antlers; or

2. Testicles, scrotum, or penis attached to the carcass; or

(b) For antlerless deer, the:

1. Head; or

2. Udder or vulva attached to the carcass.

(4) If a hunter transfers possession of a harvested deer, or if the harvested deer is out of the hunter's possession, the hunter shall attach to the carcass a hand-made tag that contains the following information:

(a) The confirmation number;

(b) The hunter's name; and

(c) The hunter's telephone number.

(5) A person shall not provide false information while:

(a) Completing the hunter's log;

(b) Checking a deer; or

(c) Creating a carcass tag.

Section 11. Transporting and Processing Deer.

(1) A person shall:

(a) Not transport an unchecked deer out of Kentucky;

(b) Have proof that a deer or parts of deer brought into Kentucky were legally taken; or

(c) Not sell deer hides except to a licensed:

1. Fur buyer;

2. Fur processor; or

3. Taxidermist.

(2) A taxidermist or an individual who commercially butchers deer shall not accept a deer carcass or any part of a deer without a valid disposal permit issued by the department pursuant to KRS 150.411(3) or a proper carcass tag as established in Section 10 of this administrative regulation.

(3) An individual who commercially butchers deer shall keep accurate records of the hunter's name, address, confirmation number, and date received for each deer in possession and retain the records for a period of one (1) year.

Section 12. Special Deer Hunt Program.

(1) A special deer hunt shall:

(a) Consist of a minimum of ten (10) novice deer hunters selected on a first-come, first-served basis;

(b) Take place on private land with the permission of the landowner;

(c) Only be overseen and sponsored by department employees; and

(d) Take place during the archery deer season.

(2) A special deer hunt participant shall possess a valid hunting license and deer permit, except if the participant is license-exempt, as established in KRS 150.170.

Section 13. Antlers[~~Antler Traps~~]. (1) A person shall not use a device that is designed to entangle or trap the antlers of a deer.

(2) A shed of a deer shall be legal to possess.

FRANK JEMLEY III, Acting Commissioner
DON PARKINSON, Secretary

APPROVED BY AGENCY: January 7, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2019 at 9:00 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Mark Cramer, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's

Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mark Cramer

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes deer hunting seasons and zones, methods of take, bag limits, harvest recording procedures, and checking requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly manage Kentucky's deer population while providing reasonable and ample recreational opportunity for deer hunters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish hunting seasons, bag limits, and the methods of taking wildlife. KRS 150.170 exempts certain people from hunting license and permit requirements. KRS 150.175 authorizes the kinds of licenses and permits that are issued by the department. KRS 150.390 prohibits the taking of deer in any manner contrary to any provisions of Chapter 150 and KAR Title 301.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the seasons, zones, limits, and other requirements authorized by the statutes.

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

(a) How the amendment will change this existing administrative regulation: This amendment allows youth deer hunters to hunt with a crossbow during the entire archery deer season, lengthens the statewide deer crossbow season, clarifies when an antlerless deer can be harvested in zone 4, exempts mourning dove hunters from hunter orange requirements, and clarifies that deer sheds can be collected and possessed.

(b) The necessity of the amendment to this administrative regulation: See 1 (b) above.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See 1(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: For the 2017-18 deer season, there were approximately 257,898 resident and 27,435 non-resident Kentucky deer hunters.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Deer hunters will now have additional deer hunting days to use a crossbow to hunt deer, mourning dove hunters will now be exempt from hunter orange requirements, and youth deer hunters will now be able to use crossbows during archery season. The amendment also clarifies that individuals will be able to possess deer sheds.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not change any costs to the entities identified in question 3.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will benefit hunters by allowing them to hunt longer with different deer hunting weapons and allow for additional days of crossbow deer hunting. It also benefits youth deer hunters who may be interested in using crossbows during archery season, and exempts individuals from hunter orange requirements while hunting mourning doves during gun season.

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

(a) Initially: There will not be an additional cost to the agency to implement this administrative regulation initially.

(b) On a continuing basis: There will not be an additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because all deer hunters are subject to the same seasons, bag limits, zone requirements, and equipment restrictions.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources' Divisions of Wildlife and Law Enforcement will be impacted by this amendment.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1), 150,170, 150.175, and 150.390(1).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Direct revenue from the sale of deer permits for the first year is estimated to be between $3.5 and $4.0 million based on recent years' sales.

(b) How 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 during subsequent years is dependent on the number of permits sold, which has been stable to slightly decreasing in recent years.

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

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred 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:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 27:010. Definitions for 302 KAR Chapter 27.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the department to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This

administrative regulation establishes the definitions which apply to 302 KAR Chapter 27, which implements the provisions of KRS Chapter 217B.

Section 1. Definitions.

(1) "Accident" means an unexpected, undesirable event caused by the use or presence of a pesticide that adversely affects man or the environment.

(2) "Agricultural commodity" means any plant, or part thereof, or animals or animal products produced by persons, including farmers, ranchers, grape growers, plant propagators, Christmas tree growers, aquaculturists, orchardists, foresters, or other comparable persons, primarily for sale.

(3) "Agricultural fumigation" means the application of pesticide gases or fumigants in an enclosed area used for the production, storage, or transportation of agricultural commodities or to the contents of any structure used for the production, storage, or transportation of agricultural commodities. Agricultural fumigation shall not include the application of pesticide gases or fumigants to a structure for the purpose of controlling structural pests.

(4) "Application" means placing of a pesticide for effect, including mixing and loading.

(5) "Bulk fertilizer" means dry or liquid fertilizer in any unpackaged quantity.

(6) "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.

(7) "Calibration" means adjustment of dispersal or output of application equipment to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.

(8) "Certification" or "certified" means recognition by the department that a person has demonstrated a minimum level of competence by examination and continuing education units and is authorized to use or supervise the use of pesticides in the area of his certification.

(9) "Compatibility" means that chemical property of a pesticide which permits use with other chemicals without undesirable results being caused by the combination.[~~(10) "Competent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity, and the associated responsibility.~~]

(10)[~~(11)~~] "Common exposure route" means a probable manner, oral, dermal, or respiratory by which a pesticide may reach or enter an organism.

(11) "Competent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity, and the associated responsibility.

(12) "Continuing education unit" means one (1) contact instructional hour of fifty (50) minutes.

(13) "Department," unless otherwise specified, means the Kentucky Department of Agriculture.

(14) "Dicamaba" means any 3,6-Dichloro-2-methoxybenzoic acid, inclusive of any variant formulation or product name.

(15)[~~(14)~~] "Environment" means water, air, land, plants, man and other animals living therein, and the interrelationships which exist among them.

(16)[~~(15)~~] "Faulty, careless, or negligent manner" means any act or omission which has or may have a deleterious effect on any person or property resulting from application or use of pesticides inconsistent with label instructions or standards established by 302 KAR Chapter 27 or KRS Chapter 217B.

(17)[~~(16)~~] "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

(18)[~~(17)~~] "Forest" means a concentration of trees and related vegetation in nonurban areas characterized by natural terrain and drainage patterns.

(19)[~~(18)~~] "Hazard" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

(20)[~~(19)~~] "Host" means any plant or animal on or in which another plant or animal lives for nourishment, development, or protection.

(21)[~~(20)~~] "Inactive status" means holding in reserve a license held by a person not actively engaged in pesticide sales or application.

(22)[~~(21)~~] "Nontarget organism" means a plant or animal other than the one against which the pesticide is applied.

(23)[~~(22)~~] "Practical knowledge" means the comprehension of and ability to see pertinent facts in dealing with specific problems and situations.

(24)[~~(23)~~] "Private applicator" means a person certified to use any pesticide for purposes of producing any agricultural commodity on property owned or rented by him or his employer, or to the lands of a farmer-neighbor, if applied without compensation other than trading of personal services between producers of agricultural commodities.

(25)[~~(24)~~] "Protective equipment" means clothing or any other materials or devices that shield against unintentional exposure to pesticides.

(26)[~~(25)~~] "Regulated pest" means an organism for which restrictions, administrative regulations, or control procedures are in effect to protect the host, man, or the environment.[~~(26) "Remote pesticide sales agent" means a person located outside of the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky, or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky.~~

~~(27) "Resident pesticide sales agent" means a person located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user.~~]

(27)[~~(28)~~] "Spot fumigation" means fumigation operations performed in special rooms, vaults, chambers, tanks, railroad boxcars, aircraft, or other enclosed areas of limited size, which are segregated so that the fumigation crews and other persons remain outside and are not exposed to toxic concentrations of the fumigants used.

(28)[~~(29)~~] "Standard" means the level of knowledge and ability which must be demonstrated as a requirement for certification.

(29)[~~(30)~~] "State" means the Commonwealth of Kentucky.

(30)[~~(31)~~] "Structural pests" means those pests that have the potential to invade structures or may cause damage to structures.

(31)[~~(32)~~] "Structure" means any building regardless of its design or type of construction, public or private, vacant or occupied.

(32)[~~(33)~~] "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.

(33)[~~(34)~~] "Toxicity" means the property of a pesticide that causes any adverse physiological effects on a living organism.[~~Section 2. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.~~]

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing adds a definition for a chemical, and removes two other definitions.

(b) The necessity of this administrative regulation: This regulation is necessary to define one chemical that will require additional requirements in additional filings, and removes two definitions that are no longer needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

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

(a) How the amendment will change this existing administrative regulation: This filing adds a definition for a chemical, and removes two other definitions.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to define one chemical that will require additional requirements in additional filings, and removes two definitions that are no longer needed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 10,539 private applicators, 11,736 Ag applicators, including 1,950 Dicamba certification participants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217B

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 27:020. General provisions.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.105(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for recordkeeping, the storage and handling of pesticides, trainee supervision, certification denial, suspension, modification or revocation, and registered pesticide equipment identification.

Section 1. Recordkeeping Requirements.

(1) Applicability. The provisions of this section shall not apply to doctors of veterinary medicine applying restricted use pesticides during the ordinary course of their practice.

(2) Dealers. Each dealer, branch office, or pesticide sales agent[~~dealer or branch office~~] that sells pesticides shall maintain the following records for each sale of Dicamba or restricted use pesticides:

(a) Brand, amount, and type of restricted use pesticide sold;

(b) Buyer's name and address;

(c) Certification number of the purchaser; and

(d) Intended use: target crop or resale.

(3) All private applicators, noncommercial applicators, pesticide operators, and pesticide applicators who apply pesticides shall maintain the following records:

(a) Name and address of person receiving services;

(b) Brand or product name of pesticides applied;

(c) Date of application;

(d) Purpose of application;
(e) Size of area treated;
(f) Crop, commodity, stored product, or type of area treated;
(g) Name and certification number of applicator;
(h) EPA registration number;
(i) Location of application; [~~and~~]
(j) Total amount of each pesticide applied; [~~.~~]
(k) If application made by a trainee, the names of the trainee and supervisor; and
(l) Any other record as required by the label.

(4) Retention. All persons required to maintain records under subsection (2) of this section shall retain the records for a period of two (2) years from the date of sale pursuant to KRS 217B.105(7). All persons required to maintain records under subsection (3) of this section shall retain the records for a period of three (3) years from the date of use or application. Maintenance of duplicate records shall not be required. If a use or application of a restricted use pesticide is made in the name of a person or business entity, maintenance of only one (1) set of records for each use or application shall be required by that person or business entity, even though one (1) or more persons may have used or applied a pesticide.

(5) Availability. Records required under this section shall be made available to the department upon request or for dealers and branch offices, as prescribed in KRS 217B.105(7).

Section 2. Storage and Handling of Pesticides. (1) Applicability. This administrative regulation shall apply to all persons who have occasion to store restricted use pesticides or persons who have occasion to store any pesticides for the purpose of redistribution or direct resale.

(2) Standards for storage of pesticides:

(a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas.

(b) Storage sites shall be cool, dry, and airy or have a ventilation system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If a ventilation system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people.

(c) Storage sites shall be adequately lighted so that labels and label information can be easily read.[~~(d) Storage sites shall comply with applicable fire codes.~~]

(d)[~~(e)~~] Floor sweep compound of adsorptive clay, sand, sawdust, hydrated lime, or similar materials shall be kept on hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions.

(e)[~~(f)~~] Restricted use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison".[~~(3) Standards for storage of bulk fertilizer or bulk pesticides. Any person who has cause to store bulk fertilizer or bulk pesticides shall meet the standards and requirements set out in 302 KAR 31:040.~~

~~(4) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by private applicators, dealers, pesticide operators, pesticide applicators, or noncommercial applicators shall be transported consistent with 49 U.S.C. 51.~~]

Section 3. Supervisory Requirements. A trainee who applies pesticides shall have direct on the job supervision as defined in KRS 217B.040(28).]

Section 4. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 14.[~~Section 5. Registered Pesticide Equipment Identification. The equipment owner shall notify the department if equipment registered under KRS 217B.170 is permanently transferred from the original registering location or is permanently removed from active pesticide application service. The owner shall be responsible for removing the decal when the equipment is permanently removed from active pesticide application or is permanently transferred out of the state.~~

~~Section 6. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.~~]

RYAN F. QUARLES, Commissioner
APPROVED BY AGENCY: January 14, 2019
FILED WITH LRC: January 14, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates the general provisions for

(b) The necessity of this administrative regulation: This regulation is necessary to create the basic requirements for application, in addition to the ones on a label.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the general requirements for agriculture pesticide applications.

(2) If 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 adds recordkeeping for pesticide sales agents, one additional record requirement for applicators, and removes other requirements the KDA no longer will require.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to modernize this chapter.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the general requirement the KDA intends to use for our regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 10,539 private applicators, 11,736 Ag applicators, including 1,950 Dicamba certification participants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing, as these records are generally being kept already.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 27:040. Prison inmates.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes procedures for the issuance of pesticide licenses to prison inmates.

Section 1. Prison Inmates.

(1) Except as provided in subsection (2) of this section, prison inmates who have completed the requirements for licensing set out in 302 KAR 27:050 and KRS Chapter 217B and who have paid the appropriate fees, shall be issued a license which will be held in inactive status until the inmate is released from incarceration, or until the end of the three (3) year certification period, whichever is earliest.

(2) Prison inmates who are actively engaged in the application of pesticides for a prison shall be licensed in accordance with KRS 217B.090.[~~Section 2. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.~~]

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing creates requirements of prison inmates applying pesticides.

(b) The necessity of this administrative regulation: This regulation is necessary to allow prison inmates to be able to legally apply pesticides in a prison.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

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

(a) How the amendment will change this existing administrative regulation: This filing adds a 3 year limit on inactive status for an inmate.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish a limit on how long a license can be inactive, as continuing education is not possible in a prison setting.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate

administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 10,539 private applicators, 11,736 Ag applicators, including 1,950 Dicamba certification participants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217B

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 27:050. Certification.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Applicability.

(1) A person shall not be licensed to sell or apply pesticides unless he is certified in a category consistent with the sale or application. A person shall not purchase restricted use pesticides unless he is licensed or certified in a category consistent with the purchase.

(2) A pesticide operator, pesticide applicator, noncommercial applicator, or private applicator shall not apply any pesticide unless he is certified in a category consistent with the application, as provided in this administrative regulation, with the exception of a registered trainee acting under the direct on the job supervision of a certified person.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a license to any person who holds a valid license in another state if the person is employed by a dealer registered in Kentucky and if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

Section 2. Certification. Certification under this administrative regulation may be obtained from the department as a private applicator pursuant to Section 7 of this administrative regulation; category-specific certification may be obtained in the following categories of pesticide use or application:

(1) Category 1. Agricultural pest control. This category shall include:

(a) Plant and animal. This category shall include persons applying or supervising the application of pesticides in production of agricultural commodities including[~~, but not limited to,~~] tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, and on grasslands, noncrop agricultural lands, and greenhouses, and the application of pesticides on animals including[~~, but not limited to,~~] beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators or engaged in large-scale application of pesticides, shall be included in this category.

(b) Agricultural fumigation. This category shall include the application of pesticide gases or fumigants in an enclosed area used for the production, storage, or transportation of agricultural commodities or to the contents of any structure used for the production, storage, or transportation of agricultural commodities; and any other application of a pesticide gas or fumigant in preparing land for production or in controlling pests in growing agricultural commodities, whether the agricultural commodities are indoors or outdoors.

(2) Category 2. Forest pest control. This category shall include persons applying or supervising the application of restricted use pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Category 4. Seed treatment. This category shall include persons applying or supervising the application of pesticides on seeds.

(4) Category 5. Aquatic pest control. This category shall include persons applying or supervising the application of any pesticide purposefully applied to standing or running water, excluding applicators engaged in public health-related activities included in 302 KAR 29:060, Section 1(2).

(5) Category 6. Right-of-way pest control. This category shall include persons applying or supervising the application of pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, or other similar areas.[~~(6) Category 9. Regulatory pest control. This category shall include state, federal, or other governmental employees who apply or supervise the application of pesticides in the control of regulated pests.~~]

(6)[~~(7)~~] Category 10. Demonstration and research pest control. This category shall include individuals who demonstrate to the public the proper uses and techniques of applying pesticides or supervise the demonstration. Included in this group shall be persons such as extension specialists and county agents, individuals demonstrating methods used in public programs, and persons conducting field research with pesticides, and in so doing, apply or supervise the application of pesticides. This group shall include state and federal employees and other persons conducting field research on pesticides.

(7)[~~(8)~~] Category 11. Aerial. This category shall include persons applying pesticides to lands of another using aircraft.

(8)[~~(9)~~] Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this administrative regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 28 and 29. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification, if the person selling or distributing pesticides is licensed as a pesticide sales agent.

(9)[~~(10)~~] Category 13. Antifouling marine paint. This category shall include persons who apply paint mixed with a pesticide to prevent the growth of pests, both plant and animal, to a product to be used in lakes, rivers, and waterways.[~~(11) Category 14. Pest control consultant. This category shall include persons, who for a fee, offer or supply technical advice, supervision, or aid, or recommend the use of specific pesticides for the purpose of controlling insect pests, plant diseases, weeds, and other pests.~~]

(10)[~~(12)~~] Category 15. Antimicrobial pest control. This category shall include persons who apply pesticides to control bacteria, mold, or fungi to or through any medium. Water and wastewater treatment plant operators shall be included in this category. Homeowners applying pesticides to personal swimming pools and persons certified in Category 1 of this chapter shall be excluded from this category.

(11)[~~(13)~~] Category 16. Sewer root control. This category shall include persons who apply pesticides into a sewer or sewer system to control the ingress of roots or any other blockage of the system.

(12)[~~(14)~~] Category 17. Wood preservatives. This category shall include persons who apply pesticides to wood and wood products to protect from wood-destroying organisms. Excluded from this category shall be persons engaged in structural pest control pursuant to 302 KAR Chapter 29.

Section 3. General Requirements.

(1) To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in Sections 4 and 5 of this administrative regulation. The examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination. Upon successfully passing an examination, a person shall have ninety (90) days from the date of testing to activate the licenses requested. After ninety (90) days have expired, a person shall have to retake and pass the examination before activation of a license may occur.

(2) If an applicant provides a copy of a valid Kentucky-certified crop advisor certification to the department, the examination for a consultant license shall be waived.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

(1) Label and labeling comprehension:

(a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;

(b) Classification of the product, general or restricted; and

(c) Necessity for use consistent with the labeling.

(2) Safety factors, including:

(a) Pesticide toxicity, hazard to man and common exposure routes;

(b) Common types and causes of pesticide accidents;

(c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;

(d) Symptoms of pesticide poisoning;

(e) First aid and other procedures to be followed if a pesticide accident occurs;

(f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers;

(g) Practical application of the Worker Protection Standards, 40 C.F.R. 156 and 170, FIFRA; and

(h) The proper selection and use of personal protective equipment for handling and application of pesticides.

(3) The potential environmental consequences of use and misuse of pesticides as may be influenced by factors such as:

(a) Weather and other climatic conditions;

(b) Types of terrain, soil, or other substrata;

(c) Presence of fish, wildlife, and other nontarget organisms;

(d) Drainage patterns;

(e) Storage or use of pesticides and fertilizer including bulk fertilizer or pesticide;

(f) Other nonchemical controls including [~~, but not limited to,~~] sanitation.

(4) Pest identification, including consideration of the following factors:

(a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and

(b) Pest maturation and development as it may relate to the problem of identification and control.

(5) Pesticides, including consideration of the following factors:

(a) Types of pesticides;

(b) Types of pesticide formulations;

(c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;

(d) Hazards and residues associated with use;

(e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and

(f) Dilution procedures.

(6) Equipment, including consideration of the following factors:

(a) Types of pesticide application equipment and advantages and limitations of each; and

(b) Uses, maintenance, and calibration of equipment.

(7) Application techniques, factors including:

(a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;

(b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(c) Prevention of drift and pesticide loss into the environment.

(8) Laws and regulations. Knowledge of pertinent aspects of

the Federal Environmental Pesticides Control Act, 7 U.S.C. 136, and KRS Chapter 217B.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:

(1) Category 1. Agricultural. This category shall be subdivided as follows:

(a) Plant and animal. Persons requesting agricultural plant and animal certification shall demonstrate practical knowledge of crops and specific pests of those crops for which they may be using pesticides. Practical knowledge shall be required concerning soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, nontarget injury, and community problems resulting from the use of pesticides in agricultural areas. They shall demonstrate practical knowledge of agricultural animals and their associated pests. A practical knowledge shall also be required concerning specific pesticide toxicities and residue potentials since host animals will frequently be used for food. Further, the person shall know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

(b) Agricultural fumigation. This category shall include persons requesting agricultural fumigation certification. They shall demonstrate practical knowledge of the use of pesticide gases and fumigants in the treatment of enclosed areas used for the production, storage, or transportation of agricultural commodities and the use of pesticide gases and fumigants in preparing land for the production of agricultural commodities and for the control of pests in growing agricultural commodities.

(2) Category 2. Forestry. Persons requesting forest certification shall demonstrate practical knowledge of types of forests, forest nurseries, seed production in the Commonwealth, and the pests involved therein. They shall possess practical knowledge of the cyclic occurrence of certain pests and their specific population dynamics as a basis for programming pesticide applications. A practical knowledge shall be required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitation and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator shall, therefore, demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintentional effects on wildlife. Proper use of specialized equipment shall be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

(3) Category 4. Seed treatment. Persons requesting seed treatment certification shall demonstrate practical knowledge of the types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They shall demonstrate practical knowledge of the hazards associated with handling, sorting, mixing, misuse of treated seed such as introduction of treated seed into food and feed channels, and proper disposal of unused treated seeds.

(4) Category 5. Aquatic. Persons requesting aquatic certification shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this category. They shall demonstrate practical knowledge of various water-use situations and potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. They shall also demonstrate practical knowledge of the principles of limited-area application.

(5) Category 6. Right-of-way. Persons requesting right-of-way certification shall demonstrate practical knowledge of a wide variety of environments since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems of run-off, drift, excessive foliage destruction, and the ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides, the need for containment of these pesticides within the right-of-way area, and the impact of their application activities upon the adjacent areas and communities.[~~(6) Category 9. Regulatory. Persons applying for certification in this category shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made.~~]

(6)[~~(7)~~] Category 10. Demonstration and research. Persons demonstrating the safe and effective use of pesticides to other persons and the public shall meet comprehensive standards reflecting a broad spectrum of pesticide use. Practical knowledge of problems, pests, and population levels occurring in each demonstration situation shall be required. Further, they shall demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. In general, persons conducting demonstration pest control work shall possess a practical knowledge of all of the standards detailed in this administrative regulation.

(7)[~~(8)~~] Category 11. Aerial certification. Persons applying pesticides using aircraft shall obtain aerial certification. Aerial applicators shall possess knowledge of aerial application equipment and calibration of that equipment, spray efficiency testing, field flight patterns, swath markings, turning procedures and subsequent considerations, awareness of obstacles and obstructions, personal safety of pilot, flagman, and ground crew, and preflight checklists of spray personnel. Persons obtaining certification in this category shall also be certified in at least one (1) other category of pesticide use as appropriate for their business.

(8)[~~(9)~~] Category 12. Pesticide sales agent. Persons desiring certification in this category shall demonstrate practical knowledge of pesticide labels and label comprehension including environmental hazards, rates of application, proper application techniques, storage, shipping, handling, worker protection safety issues, and the different types of pesticides.

(9)[~~(10)~~] Category 13. Antifouling marine paint. Persons desiring certification in this category shall demonstrate practical knowledge of the principles and practices of using antifouling paints, including toxicity to humans and nontarget organisms via common exposure routes; proper cleaning, disposal and containment techniques; climatic factors that may influence environmental hazards; common types and features of target and nontarget aquatic or marine [~~aquatic/marine~~] organisms; proper handling, mixing and application procedures; and the laws and regulations governing pesticides and antifouling paints.[~~(11) Category 14. Pest control consultant. Persons desiring certification in this category shall demonstrate practical knowledge of soils, plant identification, pest identification, and soil fertility and have knowledge of pesticides for the purpose of controlling insect pests, plant diseases, weeds, and other pests.~~]

(10)[~~(12)~~] Category 15. Antimicrobial pest control. Persons desiring certification in this category shall demonstrate practical knowledge of disinfecting, sanitation, reduction or mitigation of growth or development of microbiological organisms; protection of inanimate objects, industrial processes, systems or services, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, virus, fungi, protozoa, algae, or slime. Water and wastewater treatment plant operators shall be included in this category. This category shall not include homeowners maintaining personal swimming pools.

(11)[~~(13)~~] Category 16. Sewer root control. Persons desiring certification in this category shall demonstrate practical knowledge of the safe handling and proper application of sewer root control chemicals, including practical knowledge of root growth and biology, equipment type and calibration procedures, proper pesticide handling, mixing and application procedures, proper use

and maintenance of personal protective equipment, toxicity of root control pesticides to human and nontarget organisms via common exposure routes, proper cleaning, disposal and containment techniques, effects of root control pesticides on ground water, sewage treatment plants, septic tanks, holding tanks, lift stations, and other sewage treating, conveying, or handling equipment, environmental effects, factors that may lead to a hazardous condition, and the laws and administrative regulations that cover pesticide use.

(12)[~~(14)~~] Category 17. Wood preservative. Persons desiring certification in this category shall demonstrate practical knowledge in the use of wood preservatives, air monitoring procedures, personal protective clothing and equipment, hygiene, related health and safety measures, emergency procedures, and practices necessary to prevent environmental contamination.

Section 6. Certification Maintenance. To maintain certification, each person certified under this administrative regulation, other than a private applicator, shall in any three (3) year period, attend at least twelve (12) continuing education units of training for a single category, approved by the department, in the use and application of pesticides. The training shall consist of nine (9) continuing education units of training based on Section 4 of this administrative regulation, and three (3) continuing education units of training based on Section 5 of this administrative regulation. For each additional category, in addition to the single category held by the person, an additional three (3) continuing education units based on Section 5 of this administrative regulation, shall be required. Nine (9) continuing education units of training based on Section 4 of this administrative regulation, shall be required to maintain certification regardless of how many additional categories a person may hold. Credit shall be given in full continuing education units only.[~~All persons holding certification in any category on the effective date of this administrative regulation shall begin a new three (3) year training period beginning January 1 after the effective date of this administrative regulation. All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, 2005.~~]

Section 7. Private Applicators.

(1) Standards of certification of private applicators. Compliance with the following standards shall qualify a person for certification as a private applicator. A private applicator may purchase, use, or apply pesticides in his capacity as a private applicator. As a minimum requirement for certification, a person who desires certification as a private applicator shall show that he possesses a practical knowledge of the pest problems and pest control practices associated with his agricultural operations[~~, including but not limited to,~~] proper storage, use, handling, and disposal of the pesticides and containers. This practical knowledge shall include the ability to:

(a) Recognize common pests to be controlled and damage caused by them;

(b) Read and understand the label and labeling information, including the common names of the pesticides, pests to be controlled, timing and methods of application, safety precautions, any preharvest and reentry restrictions, and specific disposal procedures;

(c) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) Recognize local environmental situations that shall be considered during application to avoid contamination;

(e) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident;

(f) Demonstrate knowledge of the standards for the supervision of noncertified persons established by 40 C.F.R. 171;

(g) Understand the practical application of the Worker Protection Standards, 40 C.F.R. 156 and 170, FIFRA;

(h) Properly select and use personal protective equipment for handling and application of pesticides; and

(i) Know and understand the standards and administrative regulations for the storage of pesticides and fertilizer, including bulk fertilizer or pesticide.

(2) Verification of competence. Competence of private applicators shall be verified by means of a training program administered by county extension agents. Audio-visual training shall be given accompanied by study of the private applicator training pamphlet. Included in the pamphlet shall be self-quizzes with answers to be used by the applicators to assess their own progress. Following completion of training, a certification competency statement shall be signed by the instructor and forwarded to the department or its designated representative. Certification credentials shall then be transmitted to the applicator by the department or its designated representative. Training shall be based on the "Core Manual" published by the United States Environmental Protection Agency. Private applicators may request a written competency test as an alternate means of certification. Private applicators shall be required to be recertified every three (3) years.

Section 8. Credentials. If a person meets all the requirements to obtain a category-specific license under KRS Chapter 217B and this administrative regulation, the department shall issue a document signifying that he is licensed and certified in the category for which he qualifies.

(1) Inactive status. If an applicator or operator, for any reason, changes status and is no longer employed by a dealer but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall be required to maintain certification and pay the annual renewal fee. The licensee shall not be required to register as a dealer or be permitted to perform any type of regulated activity until the license is reactivated and properly assigned to a dealer.

(2) Employee license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any pesticide license or certification other than a noncommercial license or private applicator certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any pesticide license other than a noncommercial license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties.[~~Section 9. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.~~]

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing creates certification requirements for applying pesticides.

(b) The necessity of this administrative regulation: This regulation is necessary to allow persons to be able to legally apply pesticides.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

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

(a) How the amendment will change this existing administrative regulation: This filing eliminates unneeded certification categories.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to modernize the certification categories by removing unneeded designations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 10,539 private applicators, 11,736 Ag applicators, including 1,950 Dicamba certification participants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217B

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 27:060. Fine schedule for violation of KRS 217B.120.

RELATES TO: KRS 217B.120

STATUTORY AUTHORITY: KRS 217B.050, 217B.193, 217B.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.193 requires the Commissioner of the Department of Agriculture to promulgate an administrative regulation establishing a schedule of civil penalties for violations set forth in KRS 217B.120. This administrative regulation establishes a system of regulatory fines pursuant to the violations set forth in KRS 217B.120.

Section 1. Notice of Violation and Abatement of Violation Pursuant to KRS 217B.193.

(1) The Department of Agriculture shall cause a notice of violation to be issued to persons, license holders, or registration holders found to be in violation of KRS 217B.120, 302 KAR 31:040, and 40 C.F.R. 170 and Section 2 of this administrative regulation in the manner required by KRS 217B.193(1).

(2) In addition to the information required to be set out in the notice of violation pursuant to KRS 217B.193, the Department shall notify the person, license holder, permit holder, registration holder, or certificate holder that:

(a) Except for good cause shown, an administrative fine in the amount specified in Section 2 of this administrative regulation shall be assessed if the violation is not corrected within the time specified in the notice of violation;

(b) He shall have thirty (30) days to request a hearing on assessment of the fine pursuant to KRS 217B.203 and 217B.990(2); and

(c) The request for hearing shall be mailed to the Kentucky Department of Agriculture, Director, Division of Pesticide Regulation, Frankfort, Kentucky 40601.

(3) The period for abatement of a violation shall commence on the day the notice of violation is issued pursuant to KRS 217B.193(1).

(4) The Department may allow additional time for abatement of a violation, not to exceed the maximum time set forth in KRS 217B.193, if it is determined that the violation cannot be corrected within the time period specified in the notice of violation.

(5) The Kentucky Enforcement Response Policy as incorporated by reference shall act as the guide for implementation of enforcement actions, mitigation and penalty adjustments in all actions of this section.

Section 2. (1) Administrative fines for each first violation of KRS 217B.120, 302 KAR 31:040, and 40 C.F.R. 170 shall be:

(a) $200 for a violation of KRS 217B.120(1);
(b) $100 for a violation of KRS 217B.120(2);
(c) $200 for a violation of KRS 217B.120(3);
(d) $100 for a violation of KRS 217B.120(4);
(e) $100 for a violation of KRS 217B.120(5);
(f) $100 for a violation of KRS 217B.120(6);
(g) $100 for a violation of KRS 217B.120(7);
(h) $200 for a violation of KRS 217B.120(8);
(i) $100 for a violation of KRS 217B.120(9);
(j) Fifty (50) dollars[~~$50~~] for a violation of KRS 217B.120(10);
(k) $200 for a violation of KRS 217B.120(11);
(l) $100 for a violation of KRS 217B.120(12);
(m) $200 for a violation of KRS 217B.120(13);
(n) $200 for a violation of KRS 217B.120(14);
(o) $200 for a violation of KRS 217B.120(15);
(p) $100 for a violation of KRS 217B.120(16);
(q) $200 for a violation of KRS 217B.120(17);
(r) $100 for a violation of KRS 217B.120(18);
(s) $200 for a violation of KRS 217B.120(19);
(t) $200 for a violation of KRS 217B.120(20);
(u) $200 for a violation of KRS 217B.120(21);
(v) $200 for a violation of KRS 217B.120(22);
(w) $200 for a violation of 302 KAR 31:040; and
(x) $200 for a violation of 40 C.F.R. 170.

(2) For a second violation, which is the same as the first violation in subsection (1) of this section and occurring within sixty (60) days of assessment of the first violation, the fine shall be doubled.

(3) For a third violation, which is the same as the first violation in subsection (1) of this section and occurring within ninety (90) days of assessment of the first violation, the fine shall be tripled.

(4) A fourth violation, which is the same as the first violation in subsection (1) of this section and occurring within 120 days of assessment of the first violation, may result in the suspension or revocation of a license, permit, registration or certification pursuant to KRS 217B.120.

(5) Penalties shall not be assessed or enhanced pursuant to this section if the licensee or certificate holder abates the violation within the period set by the Department pursuant to KRS 217B.193.

(6) Nothing in this section shall prohibit the Department from suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 217B.120.

Section 3. Notwithstanding Section 2, a violation of KRS 217B.120(2) for products containing Dicamba shall have the following administrative fines:

(1) For the first violation, the fine shall be fifty (50) dollars per acre based on the acres where the application was made, with a maximum administrative fine of 5,000 dollars.

(2) For the second violation, the fine shall be sixty (60) dollars per acre based on the acres where the application was made, with a maximum administrative fine of 10,000 dollars.

(3) For the third or subsequent violation, the fine shall be seventy (70) dollars per acre based on the acres where the application was made, with a maximum administrative fine of 15,000 dollars.

Section 4[~~3~~]. Failure to pay any fine, within thirty (30) days of the end of the time period prescribed in Section 1 of this administrative regulation, shall result in a suspension or revocation of a license, permit, registration, or certification pursuant to KRS 217B.120.

Section 5[4]. Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions contained in Section 2 of this administrative regulation. The fines or penalties shall not be enhanced unless the subsequent violations in Section 2 of this administrative regulation are committed in the same branch or office in which the first violation occurred.[~~Section 5. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.~~]

Section 6. Incorporation by Reference.

(1) The "Kentucky Enforcement Response Policy" (April 1999, Revised October 20, 2000) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing creates administrative fines for pesticide violations.

(b) The necessity of this administrative regulation: This regulation is necessary to establish violation penalties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper administrative fines the KDA intends to use for our regulated community.

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

(a) How the amendment will change this existing administrative regulation: This filing creates administrative fines for pesticide violations.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish violation penalties.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper administrative fines the KDA intends to use for our regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 10,539 private applicators, 11,736 Ag applicators, including 1,950 Dicamba certification participants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire Departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217B

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire Departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 28:010. Definitions for 302 KAR Chapter 28.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes definitions which apply to 302 KAR Chapter 28, which implements the provisions of KRS Chapter 217B.

Section 1. Definitions.

(1) "Accident" means an unexpected, undesirable event caused by the use or presence of a pesticide that adversely affects man or the environment.

(2) "Agricultural commodity" means any plant, or part thereof, or animals or animal products produced by persons, including farmers, ranchers, grape growers, plant propagators, Christmas tree growers, aquaculturists, orchardists, foresters, or other comparable persons, primarily for sale.

(3) "Application" means placing of a pesticide for effect, including mixing and loading.

(4) "Bulk fertilizer" means dry or liquid fertilizer in any unpackaged quantity.

(5) "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.

(6) "Calibration" means adjustment of dispersal or output of application to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.

(7) "Certification" or "certified" means recognition by the department that a person has demonstrated a minimum level of competence by examination and continuing education units and is authorized to use or supervise the use of pesticides in the area of his certification.

(8) "Common exposure route" means a probable manner, oral, dermal, or respiratory by which a pesticide may reach or enter an organism.

(9)[~~(8)~~] "Compatibility" means that chemical property of a pesticide which permits use with other chemicals without undesirable results being caused by the combination.

(10)[~~(9)~~] "Competent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.[~~(10) "Common exposure route" means a probable manner, oral, dermal, or respiratory by which a pesticide may reach or enter an organism.~~]

(11) "Continuing education unit" means one (1) contact instructional hour of fifty (50) minutes.

(12) "Department", unless otherwise specified, means the Kentucky Department of Agriculture.

(13) "Environment" means water, air, land, plants, man and other animals living therein, and the interrelationships which exist among them.

(14) "Faulty, careless, or negligent manner" means any act or omission which has or may have a deleterious effect on any person or property resulting from application or use of pesticides inconsistent with label instructions or standards established by 302 KAR Chapter 28 or KRS Chapter 217B.

(15) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act.

(16) "Forest" means a concentration of trees and related vegetation in nonurban areas characterized by natural terrain and drainage patterns.

(17) "Hazard" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being

dependent on a number of interrelated factors present at any given time.

(18) "Host" means any plant or animal on or in which another plant or animal lives for nourishment, development, or protection.

(19) "Inactive status" means holding in reserve a license held by a person not actively engaged in pesticide sales or application.

(20) "Interior plantscapes" means ornamentals in the interior of a building.

(21) "Nontarget organism" means a plant or animal other than the one against which the pesticide is applied.

(22) "Ornamental" means trees, shrubs, and other plantings, except agricultural commodities, in and around habitations generally, but not necessarily located in urban and suburban areas, including residences, parks, streets, retail outlets, industrial, and institutional buildings.

(23) "Practical knowledge" means the comprehension of and ability to see pertinent facts in dealing with specific problems and situations.

(24) "Protective equipment" means clothing or any other materials or devices that shield against unintentional exposure to pesticides.

(25) "Regulated pest" means an organism for which restrictions, administrative regulations, or control procedures are in effect to protect the host, man, or the environment.[~~(26) "Remote pesticide sales agent" means a person located outside of the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky, or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky.~~

~~(27) "Resident pesticide sales agent" means a person located within the Commonwealth of Kentucky who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user.~~]

(26)[~~(28)~~] "Sports turf" means any land area covered with turf on which sports activities occur, but does not include golf courses.

(27)[~~(29)~~] "Standard" means the level of knowledge and ability which must be demonstrated as a requirement for certification.

(28)[~~(30)~~] "State" means the Commonwealth of Kentucky.

(29)[~~(31)~~] "Structure" means any building regardless of its design or type of construction, public or private, vacant or occupied.

(30)[~~(32)~~] "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.

(31)[~~(33)~~] "Toxicity" means the property of a pesticide that causes any adverse physiological effects on a living organism.[~~Section 2. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.~~]

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing adds a definition for a chemical, and removes two other definitions.

(b) The necessity of this administrative regulation: This regulation is necessary remove two definitions that are no longer needed with changes in sister filings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

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

(a) How the amendment will change this existing administrative regulation: This filing removes two other definitions that are not needed as they are defined in statues.

(b) The necessity of the amendment to this administrative regulation: This regulation removes two definitions that are no longer needed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As many as 12,000 applicators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217B

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 28:020. General provisions.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for recordkeeping, the storage and handling of pesticides, trainee supervision, and certification denial, suspension, modification or revocation.

Section 1. Pesticide Sales Agents.[~~There shall be two (2) classifications of pesticide sales agent licenses: resident pesticide sales agent and remote pesticide sales agent.~~]

(1) A person[~~located within the Commonwealth of Kentucky~~] who sells or distributes restricted use pesticides or sells and makes recommendations for the use or application of pesticides to the final user within the Commonwealth of Kentucky shall be licensed as a [~~resident~~] pesticide sales agent.[~~(2) A person located outside the Commonwealth of Kentucky who sells or distributes restricted use pesticides for delivery within the Commonwealth of Kentucky or sells and makes recommendations for the use or application of pesticides to the final user accepting delivery within the Commonwealth of Kentucky shall be licensed as a remote pesticide sales agent.~~

~~(3) A person located outside the Commonwealth of Kentucky and employed by a dealer registered in Kentucky may be licensed as a resident pesticide sales agent.~~]

(2)[~~(4)~~] A [~~resident pesticide sales agent license or remote~~] pesticide sales agent license shall not be issued unless the applicant holds a valid Category 12 certification as provided in 302 KAR 28:050.

(3)[~~(5)~~] An employee or agent of a manufacturer who sells pesticides solely to a dealer for redistribution or resale shall be exempt from licensure under this regulation.

Section 2. Recordkeeping Requirements.

(1) Pesticide sales agents.[~~A remote pesticide sales agent shall provide his license number to the purchaser at the commencement of the transaction and upon delivery of the pesticides, and shall have and maintain a system to ensure restricted use pesticides are delivered only to properly certified individuals.~~] A[~~resident pesticide sales agent or remote~~] pesticide sales agent who is not employed by a dealer shall maintain the following records with respect to each sale of restricted use pesticides, with copies submitted monthly to the Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601;

(a) Brand, amount, and type of restricted use pesticide sold;

(b) Buyer's name and address;

(c) Certification number of the purchaser; and

(d) Intended use: target pest or resale.

(2) Dealers. Each dealer or branch office, in the location where the pesticides are sold, shall maintain the following records with respect to each sale of restricted use pesticides:

(a) Brand, amount, and type of restricted use pesticide sold;

(b) Buyer's name and address;

(c) Certification number of the purchaser; and

(d) Intended use: target pest or resale.

(3) Noncommercial applicators, pesticide operators, and pesticide applicators. Unless regulated by KRS 217B.300 or 217B.320, all noncommercial applicators, pesticide operators, and pesticide applicators who apply pesticides shall maintain the following records:

(a) Name and address of person receiving services;

(b) Brand or product name of pesticide applied;

(c) Date of application;

(d) Purpose of application;

(e) Size of area treated;

(f) Crop, commodity, stored product, or type of area treated;

(g) Name and certification number of applicator;

(h) EPA registration number;

(i) Location of application; [~~and~~]

(j) Total amount of each pesticide applied;[~~.~~]

(k) If application made by a trainee, the names of the trainee and supervisor; and

(l) Any other record as required by the label.

(4) Retention. All persons required to maintain records under subsections (1) and (2) of this section shall retain the records for a period of two (2) years from the date of sale. All persons required to maintain records under subsection (3) of this section shall retain the records for a period of three (3) years from the date of use or application. Maintenance of duplicate records shall not be required. If a use or application of a restricted use pesticide is made in the name of a person or business entity, then maintenance of only one (1) set of records for each job or use shall be required by that person or business entity, even though one (1) or more persons may have used or applied pesticides.

(5) Availability. Records required under this section shall be made available to the department upon request or for dealers and branch offices, as prescribed in KRS 217B.105(7).

Section 3. Storage and Handling of Pesticides.

(1) Applicability. This administrative regulation shall apply to all persons who have occasion to store restricted use pesticides or persons who have occasion to store any pesticides for the purpose of redistribution or direct resale.

(2) Standards for storage of pesticides:

(a) Sites for the storage of pesticides shall be of sufficient size to store all stocks in designated areas;

(b) Storage sites shall be cool, dry, and airy or have a ventilation system installed to reduce concentrations of toxic fumes and to regulate temperatures and moisture. If a ventilation system is installed to reduce fumes, heat, or moisture, the ventilation exhaust shall not connect with offices or other areas frequented by people;

(c) Storage sites shall be adequately lighted so that labels and label information can be easily read;[~~(d) Storage sites shall comply with applicable fire codes.~~]

(d)[~~(e)~~] Floor sweep compound of adsorptive[~~adsorptic~~] clay, sand, sawdust, hydrated lime, or similar materials shall be kept on

hand to absorb spills or leaks. The contaminated material shall be disposed of per label directions.

(e)[~~(f)~~] Restricted use pesticides shall be located in designated and segregated areas apart from general use pesticides. These segregated areas may remain open if the entire storage area is locked when authorized personnel cannot control access to the area. Entrance to these segregated areas shall be plainly labeled on the outside with signs containing the words "pesticide storage area" and "danger" or "poison".[~~(3) Standards for storage of bulk fertilizer or bulk pesticides. Any person who has cause to store bulk fertilizer or bulk pesticides shall meet the standards and requirements set out in 302 KAR 31:040.~~

~~(4) Standards for transportation of pesticides. All pesticides transported on or in vehicles owned or operated by dealers, pesticide operators, pesticide applicators, or noncommercial applicators shall be transported consistent with 49 U.S.C. 51.~~]

Section 4. Supervisory Requirements. A trainee who applies pesticides shall have direct on the job supervision as defined in KRS 217B.040(28).

Section 5. Denial, Suspension, or Revocation of Pesticide Certification. The department shall review for possible denial, suspension, or revocation, the license or certification of any person if the licensee or certified person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 14.[~~Section 6. Registered Pesticide Equipment Identification. The equipment owner shall notify the department if equipment registered under KRS 217B.170 is permanently transferred from the original registering location or is permanently removed from active pesticide application service. The owner shall be responsible for removing the decal when the equipment is permanently removed from active pesticide application or is permanently transferred out of the state.~~

~~Section 7. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.~~]

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation creates the general provisions for

(b) The necessity of this administrative regulation: This regulation is necessary to create the basic requirements for application, in addition to the ones on a label.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the general requirements for agriculture pesticide applications.

(2) If 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 adds recordkeeping for pesticide sales agents, one additional record requirement for applicators, and removes other requirements the KDA no longer will require.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to modernize this chapter.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the general requirement the KDA intends to use for our regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As many as 12,000 applicators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing, as these records are generally being kept already.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217B

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

(a) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 28:030. Ornamental and interior plantscape posting.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes ornamental and interior plantscape posting requirements.

Section 1. Applicability. Any operator or applicator who applies pesticides to ornamentals or interior plantscapes shall:

(1) Immediately following application of pesticides to ornamentals or interior plantscapes, place a marker at a prominent location in the ornamentals or interior plantscapes. The sign shall read "PESTICIDES HAVE BEEN APPLIED - PLEASE STAY OUT OF TREATED AREA" in letters easily readable and not less than three-eighths (3/8) inches in height. The marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator. Posting requirements shall not apply if plants that are in interior plantscapes are taken off-site for pesticide application and not returned until the plants have adequately dried.

(2) Provide prior notification to the customer or adjoining residents in writing, in person, or by telephone if requested, of the date and approximate time of the application. If an operator is not able to provide prior notification to a customer or adjoining residence due to the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence.

(3) Provide the customer with the following information:

(a) The brand name, or common name, of the pesticide applied;

(b) The pesticide type;

(c) The fertilize rate and analysis;

(d) The reason for use;

(e) The concentration of end use product applied to the ornamental or interior plantscape; the rate of application, and the total gallons of end use product applied;

(f) Any precautionary or hazard information appearing on the label as applicable to the end use concentration;

(g) The name and license or certificate number of the individual actually making the application; and

(h) Customer name, address, and date of application.[~~Section 2. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.~~]

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing creates requirements notice and sign requirements for applications.

(b) The necessity of this administrative regulation: This regulation is necessary to allow persons to be able to legally apply pesticides.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper notice provisions the KDA intends to require for our regulated community.

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

(a) How the amendment will change this existing administrative regulation: This filing strikes an old effective date.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to conform to modern drafting requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper notices the KDA intends to use for our regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As many as 12,000 applicators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217B

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 28:040. Prison inmates.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes procedures for the issuance of pesticide licenses to prison inmates.

Section 1. Prison Inmates.

(1) Except as provided in subsection (2) of this section, prison inmates who have completed the requirements for licensing[~~, as~~] set out in 302 KAR 28:050 and KRS Chapter 217B[~~,~~] and who have paid the appropriate fees, shall be issued a license which will be held in inactive status until the inmate is released from incarceration, or until the end of the three (3) year certification period, whichever is earliest.

(2) Prison inmates who are actively engaged in the application of pesticides for a prison shall be licensed in accordance with KRS 217B.090.[~~Section 2. Effective Date. The effective date of this administrative regulation shall be July 1, 2002.~~]

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing creates requirements of prison inmates applying pesticides.

(b) The necessity of this administrative regulation: This regulation is necessary to allow prison inmates to be able to legally apply pesticides in a prison.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

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

(a) How the amendment will change this existing administrative regulation: This filing adds a 3 year limit on inactive status for an inmate.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish a limit on how long a license can be inactive, as continuing education is not possible in a prison setting.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As many as 12,000 applicators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217B

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 28:050. Certification.

RELATES TO: KRS Chapter 217B, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification for persons required to be licensed or certified under KRS Chapter 217B.

Section 1. Applicability.

(1) A person shall not be licensed to sell or apply pesticides unless they are[~~he is~~] certified in a category consistent with the sale or application. A person shall not purchase restricted use pesticides unless he or she is licensed or certified in a category consistent with the purchase.

(2) A pesticide operator, pesticide applicator, noncommercial applicator, or private applicator shall not apply any pesticide unless he or she is certified in a category consistent with the application, as provided in this administrative regulation, with the exception of a registered trainee acting under the direct on the job supervision of a certified person.

(3) The department may, after payment of all applicable fees, waive the certification requirement and issue a license to any person who holds a valid license in another state if the person is employed by a dealer registered in Kentucky and if, in the opinion of the department, the other state's requirements are substantially similar to that of Kentucky and the other state agrees to reciprocate with Kentucky.

Section 2. Certification.

(1) Certification may be obtained from the department as a pesticide operator, noncommercial applicator, pesticide applicator, or pesticide sales agent pursuant to Section 3 of this administrative regulation, in the following categories of pesticide use or application:

(2) Category 3. Ornamental and lawn care. This category shall include persons applying pesticides or fertilizer to control insects, weeds, and diseases in residential and commercial lawns, and maintenance of ornamental trees, shrubs and flowers, including the control of pests that do not normally invade structures, such as bagworms, grubs, and moles. Certification in this category shall not qualify an applicator to make applications to sports turf or golf courses.

(3) Category 12. Pesticide sales agent. This category shall include any individual who sells or distributes restricted use pesticides or any individual who sells and makes recommendations for the use and application of pesticides to the final user. Category 12 certification as a pesticide sales agent under this administrative regulation shall meet the requirements of Category 12 certification under 302 KAR Chapters 27 and 29. Persons taking orders or explaining service programs without naming or making recommendations for pesticide use shall be excluded from certification, if the person selling or distributing pesticides is licensed as a pesticide sales agent.

(4) Category 18. Golf course. This category shall include persons who apply pesticides or fertilizer to land on which turf and ornamental care is done for the purpose of preparing the land for use in the game of golf.

(5) Category 19. Interior Plantscapes. This category shall include persons using pesticides to control insects, weeds, and diseases in or on interior plantscapes, regardless of who owns the plants.

(6) Category 20. Sports turf. This category shall include persons applying pesticides to control insects, weeds, and diseases to or on turf on which sports activities occur. Certification in this category shall not qualify an applicator to make applications to golf courses.

Section 3. General Requirements. To obtain certification, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested. Competency in the use and handling of pesticides shall be determined and based upon standards established in Sections 4 and 5 of this administrative regulation. The examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory in which a person desires to be certified. A person shall pay an initial certification examination fee of twenty-five (25) dollars. For persons testing in multiple categories, there shall be an additional examination fee of ten (10) dollars for each additional category. Examination fees shall be charged each time a person takes a certification examination and

shall be charged regardless of the passing or failing of the examination. Upon successfully passing an exam, a person will have ninety (90) days from the date of testing to activate the licenses and certification requested. After ninety (90) days have expired, a person shall have to retake and pass the examination before activation of a license and certification may occur.

Section 4. General Standards of Competency. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and may include the following areas of competency:

(1) Label and labeling comprehension:

(a) An understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;

(b) Classification of the product, general or restricted; and

(c) Necessity for use consistent with the labeling.

(2) Safety factors, including:

(a) Pesticide toxicity, hazard to man, and common exposure routes;

(b) Common types and causes of pesticide accidents;

(c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;

(d) Symptoms of pesticide poisoning;

(e) First aid and other procedures to be followed if a pesticide accident occurs;

(f) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers;

(g) Practical application of the Worker Protection Standards, 40 C.F.R. 156 and 170, FIFRA; and

(h) The proper selection and use of personal protective equipment for handling and application of pesticides.

(3) The potential environmental consequences of use and misuse of pesticides as may be influenced by factors such as:

(a) Weather and other climatic conditions;

(b) Types of terrain, soil, or other substrata;

(c) Presence of fish, wildlife, and other nontarget organisms;

(d) Drainage patterns;

(e) Storage or use of pesticides and fertilizer including bulk fertilizer or pesticide; and

(f) Other nonchemical controls, including[~~, but not limited to,~~] sanitation.

(4) Pest identification, including consideration of the following factors:

(a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition; and

(b) Pest maturation and development as it may relate to the problem of identification and control.

(5) Pesticides, including consideration of the following factors:

(a) Types of pesticides;

(b) Types of pesticide formulations;

(c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulation;

(d) Hazards and residues associated with use;

(e) Factors which influence effectiveness or lead to such problems as resistance to pesticides; and

(f) Dilution procedures.

(6) Equipment, including consideration of the following factors:

(a) Types of pesticide application equipment and advantages and limitations of each; and

(b) Uses, maintenance, and calibration of equipment.

(7) Application techniques; factors including:

(a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;

(b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

(c) Prevention of drift and pesticide loss into the environment.

(8) Laws and administrative regulations. Knowledge of pertinent aspects of the Federal Environmental Pesticides Control Act, 7 U.S.C. 136, and KRS Chapter 217B.

Section 5. Specific Standards of Competency.

(1) In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as follows:

(2) Category 3. Ornamentals and lawn care. Persons requesting ornamental and lawn care certification shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and lawns, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category shall demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(3) Category 12. Pesticide sales agent. Persons requesting certification in this category shall demonstrate practical knowledge of the different types of pesticides, pesticide labels and label comprehension including environmental hazards, rates of application, proper application techniques, storage, shipping, handling, and worker protection safety issues.

(4) Category 18. Golf courses. Persons requesting certification in this category shall demonstrate practical knowledge of the safe handling and proper application of pesticides and fertilizers; practical knowledge of fungi, weeds, insect infestation, disease control, and fertility; proper use and maintenance of personal protective equipment; toxicity of pesticides to human and nontarget organisms; proper cleaning, disposal and containment techniques; effects of control pesticides on ground water; conveying or handling equipment; environmental effects; factors that may lead to hazardous conditions; and the laws and administrative regulations that cover pesticide use.

(5) Category 19. Interior plantscapes. Persons requesting certification in this category shall demonstrate practical knowledge of the safe handling and proper application of pesticides; practical knowledge of fungi, weeds, insect infestation, and disease control; proper use and maintenance of personal protective equipment; toxicity of pesticides to human and nontarget organisms; proper cleaning and disposal techniques; effects of pesticides on conveying and handling equipment; environmental effects; factors that may lead to hazardous conditions; and the laws and administrative regulations that cover pesticide use.

(6) Category 20. Sports turf. Persons requesting certification in this category shall demonstrate practical knowledge of the safe handling and proper application of pesticides; practical knowledge of fungi, weeds, insect infestation, and disease control; proper use and maintenance of personal protective equipment; toxicity of pesticides to human and nontarget organisms; proper cleaning and disposal techniques; effects of pesticides on conveying or handling equipment; environmental effects; factors that may lead to hazardous conditions; and the laws and administrative regulations that cover pesticide use.

Section 6. Certification Maintenance. To maintain certification, each person certified under this administrative regulation shall in any three (3) year period, attend at least twelve (12) continuing education units of training for a single category approved by the department in the use and application of pesticides. The training shall consist of nine (9) continuing education units of training based on Section 4 of this administrative regulation, and three (3) continuing education units of training based on Section 5 of this administrative regulation. For each additional category in addition to the single category held by the person, an additional three (3) continuing education units based on Section 5 of this administrative regulation, shall be required. Nine (9) continuing education units of training based on Section 4 of this administrative regulation, shall be required to maintain certification regardless of how many additional categories a person may hold. Credit shall be given in full continuing education units only. All persons holding certification in any category on the effective date of this administrative regulation shall begin a new three (3) year training period beginning January 1 after the effective date of this

administrative regulation.[~~All certifications in effect on the effective date of this administrative regulation shall be renewed with an expiration date of December 31, 2005.~~]

Section 7. Credentials. If a person meets all the requirements to obtain a category-specific license under KRS Chapter 217B and this administrative regulation, the department shall issue a document signifying that he is licensed and certified in the category for which he qualifies.

(1) Inactive status. If an applicator or operator, for any reason, changes status and is no longer employed by a dealer but elects to maintain his license, he may do so by advising the department of the change and the reason for the change. The department shall then issue to that person a notification that his license will be held in inactive status. The license holder shall be required to maintain certification and pay the annual renewal fee. The licensee shall not be required to register as a dealer or be permitted to perform any type of regulated activity until the license is reactivated and properly assigned to a dealer.

(2) Employee license and certification. An employee of the Kentucky Department of Agriculture employed after the effective date of this administrative regulation shall not obtain or maintain any pesticide license or certification other than a noncommercial license or private applicator certification during the term of his employment with the department unless required by the department in the performance of his official duties. Any pesticide license other than a noncommercial license obtained by an employee prior to the effective date of this administrative regulation shall be placed in inactive status for the duration of his employment with the department unless required by the department in the performance of his official duties.[~~Section 8. Effective Date. The effective date of this administrative regulation shall be July 1, 2002~~]

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing creates certification requirements for applying pesticides.

(b) The necessity of this administrative regulation: This regulation is necessary to allow persons to be able to legally apply pesticides.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

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

(a) How the amendment will change this existing administrative regulation: This filing eliminates unneeded certification categories.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to modernize the certification categories by removing unneeded designations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As many as 12,000 applicators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217B

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first

year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Agriculture
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 28:060. Fine schedule for violation of KRS 217B.120.

RELATES TO: KRS 217B.120

STATUTORY AUTHORITY: KRS 217B.050, 217B.193, 217B.585, 217B.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.193 requires the Commissioner of the Department of Agriculture to promulgate an administrative regulation establishing a schedule of civil penalties for violations set forth in KRS 217B.120. This administrative regulation establishes a system of regulatory fines pursuant to the violations set forth in KRS 217B.120.

Section 1. Notice of Violation and Abatement of Violation Pursuant to KRS 217B.193. (1) The Department of Agriculture shall cause a notice of violation to be issued to persons, license holders, or registration holders found to be in violation of KRS 217B.120, 302 KAR 31:040, and 40 C.F.R. 170 and Section 2 of this administrative regulation in the manner required by KRS 217B.193(1).

(2) In addition to the information required to be set out in the notice of violation pursuant to KRS 217B.193, the department shall notify the person, license holder, permit holder, registration holder, or certificate holder that:

(a) Except for good cause shown, an administrative fine in the amount specified in Section 2 of this administrative regulation shall be assessed if the violation is not corrected within the time specified in the notice of violation;

(b) He has thirty (30) days to request a hearing on assessment of the fine pursuant to KRS 217B.203 and 217B.990(2); and

(c) The request for hearing shall be mailed to the Kentucky Department of Agriculture, Director, Division of Pesticide Regulation, Frankfort, Kentucky 40601.

(3) The period for abatement of a violation shall commence on the day the notice of violation is issued pursuant to KRS 217B.193(1).

(4) The department may allow additional time for abatement of a violation, not to exceed the maximum time set forth in KRS 217B.193, if it is determined that the violation cannot be corrected within the time period specified as provided in the notice of violation.

(5) The Kentucky Enforcement Response Policy as incorporated by reference shall act as the guide for implementation of enforcement actions, mitigation, and penalty adjustments in all actions of this section.

Section 2. (1) Administrative fines for each first violation of KRS 217B.120, 302 KAR 31:040, and 40 C.F.R. 170 shall be:

(a) $200 for a violation of KRS 217B.120(1);
(b) $100 for a violation of KRS 217B.120(2);
(c) $200 for a violation of KRS 217B.120(3);
(d) $100 for a violation of KRS 217B.120(4);
(e) $100 for a violation of KRS 217B.120(5);
(f) $100 for a violation of KRS 217B.120(6);
(g) $100 for a violation of KRS 217B.120(7);
(h) $200 for a violation of KRS 217B.120(8);
(i) $100 for a violation of KRS 217B.120(9);
(j) Fifty (50) dollars[~~$50~~] for a violation of KRS 217B.120(10);
(k) $200 for a violation of KRS 217B.120(11);
(l) $100 for a violation of KRS 217B.120(12);
(m) $200 for a violation of KRS 217B.120(13);
(n) $200 for a violation of KRS 217B.120(14);
(o) $200 for a violation of KRS 217B.120(15);
(p) $100 for a violation of KRS 217B.120(16);
(q) $200 for a violation of KRS 217B.120(17);
(r) $100 for a violation of KRS 217B.120(18);
(s) $200 for a violation of KRS 217B.120(19);
(t) $200 for a violation of KRS 217B.120(20);
(u) $200 for a violation of KRS 217B.120(21);
(v) $200 for a violation of KRS 217B.120(22);
(w) $200 for a violation of 302 KAR 31:040; and
(x) $200 for a violation of 40 C.F.R. 170.

(2) For a second violation, which is the same as the first violation in subsection (1) of this section and occurring within sixty (60) days of assessment of the first violation, the fine shall be doubled.

(3) For a third violation, which is the same as the first violation in subsection (1) of this section and occurring within ninety (90) days of assessment of the first violation, the fine shall be tripled.

(4) A fourth violation, which is the same as the first violation in subsection (1) of this section and occurring within 120 days of assessment of the first violation, may result in the suspension or revocation, of a license, permit, registration, or certification pursuant to KRS 217B.120.

(5) Penalties shall not be assessed or enhanced pursuant to this section if the licensee or certificate holder abates the violation within the period set by the department pursuant to KRS 217B.193.

(6) Nothing in this section shall prohibit the commissioner from suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 217B.120.

Section 3. Failure to pay any fine within thirty (30) days of the end of the time period prescribed in Section 1 of this administrative regulation, shall result in a suspension or revocation of a license, permit, registration, or certification pursuant to KRS 217B.120.

Section 4. Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions contained in Section 2 of this administrative regulation. The fines or penalties shall not be enhanced unless the subsequent violations in Section 2 of this administrative regulation are committed in the same branch or office in which the first violation occurred.

Section 5. [~~Effective Date. The effective date of this administrative regulation shall be July 1, 2002~~.

~~Section 6.~~] Incorporation by Reference.

(1) The "Kentucky Enforcement Response Policy" (April 1999, Revised October 20, 2000) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Pesticide Regulation, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be

heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing creates administrative fines for pesticide violations.

(b) The necessity of this administrative regulation: This regulation is necessary to establish violation penalties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper administrative fines the KDA intends to use for our regulated community.

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

(a) How the amendment will change this existing administrative regulation: This filing creates administrative fines for pesticide violations.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish violation penalties.

(c) How the amendment conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper administrative fines the KDA intends to use for our regulated community.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As many as 12,000 licensed ag and lawn applicators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire Departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217B

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

DEPARTMENT OF AGRICULTURE
Office of Consumer and Environmental Protection
(Amendment)

302 KAR 85:010. Requirements to establish fee schedules for calibrations, adjustments, weights and measures.

RELATES TO: KRS 363.590, 363.610

STATUTORY AUTHORITY: KRS 363.590(1), 363.610[~~, 2006 Ky. Acts ch. 252, Part 1, A.22(4)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.590(1) requires the director of the division of weights and measures to issue administrative regulations for the enforcement of KRS 363.510 to 363.850. KRS 363.610 authorizes the director to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. KRS XXX[~~, 2006 Ky. Acts ch. 252, Part 1, A.22(4)~~] authorizes the Department to promulgate administrative regulations establishing license fees, testing fees, and any other fees necessary to operate and maintain a metrology lab. This administrative regulation requires the department to inspect all weighing and measuring devices for accuracy and allows establishment of a fee system for the calibration and adjustments to these weighing and measuring devices.

Section 1. Application. The department shall inspect and calibrate all weighing and measuring devices in accordance with KRS 363.610.

(1) Each weighing and measuring device inspected shall be charged the following calibration fees:

(a)

		MASS	(lbs.)	(weights)		
0-5	5.01-10	10.01-49	50-250	251-500	501-1000	1001-5000
$5	$7.50	$15	$20	$35	$50	$100

(b)

VOLUME (gal)				(gas cans & provers)	
5	25	50	100	500	1000
$20	$35	$50[~~$70~~]	$70[~~$50~~]	$250	$400

(2) Each weighing and measuring device that is out of tolerance and requires adjustment shall be charged the following fee for adjustment:

MASS (lbs.) (weights)						
0-5	5.01-10	10.01-49	50-250	251-500	501-1000	1001-5000
$2.50	$2.50	$5	$5	$10	$20	$50

(a)

VOLUME (gal) (gas cans & provers)					
5	25	50	100	500	1000
$5.00	$5	$10	$25	$50	$100

(b) Three (3) Metric Equivalents shall be charged on the schedule established in subsections 1 and 2.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: December 11, 2018

FILED WITH LRC: January 7, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates the fee schedule for weights and measures.

(b) The necessity of this administrative regulation: This regulation is necessary for the clear communication of the fee to be applied for each unit of measure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363 authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for weights and measures in the Commonwealth. This filing corrects a table error made in the past.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper fee, by correcting a former mistake.

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

(a) How the amendment will change this existing administrative regulation: This amendment corrects the fee schedule.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary because an error in filing was made, leading to confusion about the fee required.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 363 authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for weights and measures in the Commonwealth. This filing corrects a table error made in the past.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper fee, by correcting a former mistake.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 10 businesses annually, and the KDA.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need to pay the proper fee, in accordance with the amended chart.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Only the cost of the specific fee applicable in each case.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease of not having to respond to calls or emails from entities that spot the error.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Yes, fees are associated with this amendment. It is an increase only in that 2 table provisions are being swapped.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Fees are established directly, and one is increased due to the swap.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 363

(3) Estimate the effect of this administrative regulation on the 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 entire program generates approximately ten thousand dollars.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No net revenue change is anticipated.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Juvenile Justice
(Amendment)

505 KAR 1:080. Kentucky Educational Collaborative for State Agency Children.

RELATES TO: KRS 158.135, 158.137, 605.110
STATUTORY AUTHORITY: KRS 158.135, 605.110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 605.110(3) requires that children maintained in a facility or program operated or contracted by the Department of Juvenile Justice or the Cabinet for Health and Family[~~Cabinets for Families and Children, Justice, or Health~~] Services shall, so far as possible, receive a common school education. KRS 605.110(3)(d) requires the department to promulgate administrative regulations governing the education of state agency children. This administrative regulation establishes requirements governing the Kentucky Educational Collaborative for State Agency Children.

Section 1. Definitions.
(1) "Average daily membership" means the average number of state agency children on the KECSAC designated child count days.
(2) "Department" means the Department of Juvenile Justice.
(3) "Educational administrative staff" means a principal, assistant principal, supervisor, coordinator, director, pupil personnel worker or guidance counselor employed or contracted by the Kentucky Educational Collaborative for State Agency Children to provide education services.
(4) "Extended school calendar" means 230 school days, of which at least 210 shall be instructional days and the remainder shall be determined by the local school district, as required in KRS 158.070. It is recommended that three (3) of the noninstructional days be used for professional development designed for state agency children teachers.
(5) "Individual education program" or "IEP" means the written statement that meets the requirements of 707 KAR 1:320[~~the instructional program required~~] for state agency children identified as a child with an educational disability as[~~having educational disabilities as~~] governed by 707 KAR 1:002[~~707 KAR 1:210~~].
(6) "Individual plan of instruction" or "IPI" means the instructional plan required for state agency children not identified as having educational disabilities established in 707 KAR 1:002.
(7) "Individual treatment plan" or "ITP" means a social and behavioral intervention plan, including the plan for educational instruction, that is developed for each state agency child being served by a Program[~~treatment institution or facility~~].
(8) "KDE" means the Kentucky Department of Education.
(9) "KECSAC" means Kentucky Educational Collaborative for State Agency Children.
(10) "Local school district" means the school district where a state agency child is provided educational services.
(11) "On-site state agency school program" means a school program operated on the campus of a residential facility or day treatment program.
(12) "Private child care agency" means a private, not state operated, program which provides care or treatment for children on a per child contractual or financed basis.
(13) "Program" means a state operated or contracted institution or facility, including day treatment facility, that is responsible for safety, security, and meeting the educational needs of a state agency child.
(14)[~~(13)~~] "Program director" means the administrator at a Program[~~state operated or contracted institution or day treatment facility or administrator of a private child care agency~~] that is responsible for the safety and security of youth and staff and the operation of the Program[~~treatment facility~~].
(15)[~~(14)~~] "Rated capacity" means the capacity of the program as determined by the Cabinet for Health and Family Services or the Department of Juvenile Justice in the Justice and Public Safety Cabinet[~~Cabinets for Families and Children or Health Services or the Justice Cabinet~~].
(16)[~~(15)~~] "School" means the site where the educational program for state agency children is provided.
(17)[~~(16)~~] "School administrator" means the lead teacher, principal, or lead educator designated by the local district or by KECSAC to be responsible for the operation of the daily education program, and may be the program director of a facility, if the program director has appropriate educational certification.
(18)[~~(17)~~] "State agencies" means the Department of Juvenile Justice (DJJ), the Justice and Public Safety Cabinet, and the Cabinet for Health and Family Services (CHFS)[~~Families and Children (CFC), and the Cabinet for Health Services~~].
(19)[~~(18)~~] "State agency children" or "SAC" is defined in KRS 158.135(1)(a).
(20)[~~(19)~~] "State agency children's fund" means appropriations to support KRS 158.135 previously known as out-of-district funds.
(21)[~~(20)~~] "Teacher preparation" means those courses provided by a public or private college or university which lead to teacher certification.
(22)[~~(21)~~] "Therapeutic foster care state agency child" means a youth in therapeutic foster care as defined by KRS 158.135(1)(c).
(23)[~~(22)~~] "Treatment" means the total array of services utilized to produce a positive change in a child served by a Program[~~the treatment facility~~].

Section 2. Governance.
(1) An interagency advisory group for KECSAC, composed of representatives of the state agencies, KDE, the State Agency Children School Administrators' Association and a superintendent from a school district that provides education to SAC, shall provide recommendations for policy and procedure development. The interagency advisory group shall meet, at a minimum, biannually.
(2) Contracting procedures.
(a) The department shall contract with a university training resource center for the establishment of KECSAC. KECSAC shall be responsible for the oversight or administration of state and federal education funding and the provision of educational services to state agency children. KECSAC shall be financed by the state agency children's fund. KECSAC shall have knowledge and experience in the following:
1. Appropriate statutes and administrative regulations related to Kentucky's system of schools;
2. State and federal statutes pertaining to youth with educational disabilities, e.g. Individuals with Disabilities Education Act, 20 U.S.C. Section[~~U.S.C.~~] 1400 through 1450, as amended,[~~to 1491o~~], and Section 504 of the Rehabilitation Act, 29 U.S.C. 794;
3. Kentucky Unified Juvenile Code, enacted as KRS Chapters 600 through 645, and the operation of agency programs for juvenile offenders, status offenders and dependent children; and
4. Research regarding the education of at-risk, incarcerated and difficult to motivate youth.
(b) KECSAC shall plan programs and state agency children's fund budgets cooperatively with the state agencies, KDE and local school districts providing programs to state agency children. Local school districts shall be notified of projected funding levels by KECSAC by December 1, for the following school year.
(c) The KECSAC annual applications to the department shall constitute the biennial plan. The applications shall contain educational goals and objectives for the biennium for which funding is requested. The goals and objectives shall be consistent with appropriate statutes and administrative regulations related to the system of common schools and the mandates of the Individuals with Disabilities Education Act. The educational goals and objectives shall be compatible with and complementary to the treatment goals for state agency children. The application shall also include strategies for enhancing teacher preparation and professional development for teachers in local districts serving SAC.
(d) KECSAC, with the cooperation of the state agencies and KDE, shall develop written procedures for the operation of the state-wide education system for state agency children.
(3) Staffing.
(a) Teachers and other educational staff shall be employed or contracted by a local school district.

1. If the local school district is not[~~able or~~] willing to participate in providing[~~provide~~] the educational personnel for the state agency children in a Program[~~children's treatment facility~~] for the extended school calendar of this administrative regulation, KECSAC shall:

a. Be notified in writing by that local school district of the school district's intent not to provide an extended school calendar at least two (2) years prior to the date that the school district plans to stop providing[~~no later than January 1 prior to the start of the next school year of the school district's intent not to provide~~] an extended school calendar; and

b.(i) Contract with another school district for educational staff; or

(ii) Contract or employ teachers or educational administrative staff.

2. When filling a teacher or an educational administrative staff vacancy in a state-operated or contracted facility, the local school district or KECSAC shall provide the state agency program director an opportunity to interview prospective new teachers or educational administrative staff for the on-site state agency school program. The state agency program director shall provide the local school district with interview results regarding the applicant's suitability for teaching in the on-site state agency school program.

(b) Educational administrative staff and teachers employed or contracted by KECSAC to provide educational services for the extended school calendar shall meet Kentucky education certification requirements and shall be evaluated. KECSAC shall evaluate all KECSAC staff employed by the contracted university.

(c) Educational staff employed by a school district shall be evaluated in accordance with local school district policy.

(d) Each on-site state agency school program shall designate a school administrator.

(e) Education staff employed or contracted by KECSAC to provide educational services for the extended school calendar shall be compensated at rates at least commensurate with public school employees with comparable qualifications, experience and assignments in the school district where the Program[~~treatment facility~~] is located.

(f) On-site state agency school programs shall have sufficient teachers as specified in 707 KAR 1:350[~~available~~] with appropriate certification to serve youth identified with educational disabilities in accordance with 707 KAR 1:002 and 707 KAR 1:320[~~as specified in 707 KAR 1:230~~].

(g) Other specific services identified in an IEP by the admission and release committee as needed for a youth with educational disabilities may be accessed by KECSAC contracting for appropriate extended school calendar services. KECSAC shall comply with the administrative regulations relating to youth with disabilities as provided in 707 KAR Chapter 1. The extended school calendar may be modified if the SAC in therapeutic foster care are included in the school district's extended school program as approved by KECSAC.

(4) Policy application. Interagency agreements, including program goals and objectives, shall be developed between each local school district and treatment provider regarding their mutual responsibility for education and care of state agency children. This agreement shall be reviewed annually. If a conflict arises between the local agencies regarding the development or fulfillment of the interagency agreement by either party, it shall be resolved by KECSAC.

(5) Student eligibility. If a specific activity (e.g., football or debate) is not provided to youth in a state or private contracted agency program, the youth shall not lose eligibility to participate based on the requirements in 702 KAR 7:065[~~7:070~~]. Eligibility shall be figured on a month-to-month basis (e.g., nine (9) months in a state agency facility without a formal football program shall leave nine (9) months of eligibility in a local school district). The eligibility period shall not exceed one (1) additional year. Other eligibility criteria shall be met by the youth.

Section 3. Finance.

(1) The amount of funds generated by state agency children under the Support Education Excellence in Kentucky (SEEK) Program as specified in KRS 157.360 for the guaranteed SEEK base and adjustments shall be sent to the school district providing education for state agency children to be used pursuant to Memoranda of Agreement (MOA) negotiated with KECSAC.

(2) Distribution of state agency children's funds shall be as follows:

(a) State agency children's funds shall be used to fund the Memorandum of Agreement with KECSAC.

(b) State agency children's funds may be used for educational services which benefit state agency programs in a collective manner.

(c) State agency children's funds may be used as matching funds if the match shall increase the amount of funds available to educate state agency children.

(d) After the items in paragraphs (a), (b), and (c) of this subsection have been funded, the remainder of the state agency children's fund appropriation shall be divided by the total number of state agency children to be educated. The resulting per pupil amount shall be allocated for each state agency child.

(3) KECSAC shall be considered the same as a school district for the generation, application, distribution and accountability of state and federal funds, other than SEEK, available to educate on-site state agency school children.

(4) An annual memorandum of agreement shall be negotiated between KECSAC and each school district providing education to state agency children. The MOA shall be signed and returned to KECSAC within ninety (90) days of issuance. KECSAC may decrease funding by quarterly increments for noncompliance with the submission deadline. Attachments shall include the state approved budget format. All funds expended for SAC shall be included in the annual school audit. An itemized budget shall be part of the MOA. State agency children's fund distribution shall be based upon SAC average daily membership (ADM) or rated capacity.

(a) Noncompliance with the MOA provisions may result in decreasing SACF allocation as determined by KECSAC. The withholding of funds shall be temporary provided that the school district becomes compliant by the end of the fiscal year.

(b) For a new or expanded program, the state agency children's fund shall be allocated based on the rated or licensed capacity if opened during the first three (3) quarters of the fiscal year. A program opened or expanded during the last quarter of the fiscal year shall receive funding based on the rated or licensed capacity for the initial fifteen (15) months of operation. A new or expanded program may be funded at a lower per-pupil amount based on availability of state agency children's funds.

(5)(a) Each biennium, KECSAC, in consultation with the state agencies and KDE, shall submit a biennial budget plan benchmarked to the projected SEEK increase and projected set-aside to reimburse district's for excess cost.

(b) The state agency children's fund, as specified in KRS 158.135, shall be cost reimbursed to school districts biannually from KDE upon approval by KECSAC and the appropriate state agency.

(c) KECSAC shall develop a procedure by October 1, 1999, for school district's reimbursement of expenses exceeding twenty (20) percent of total amount received from state and federal sources to serve a state agency child.

(6) As part of the MOA with each local school district, KECSAC shall ensure the development of a plan for professional development of certified staff. A teacher or administrator new to a SAC on-site program shall attend Professional Development for New Educators. It is recommended that a SAC school program commit three (3) days of the extended school calendar for teacher participation in the KECSAC approved professional development events designed for SAC teachers. These three (3) days shall be in addition to the Professional Development for New Educators. The school district shall maintain an annual record of professional development for all school district employees in SAC on-site programs.

(7) A school district shall ensure that the SAC access all eligible federal and state funding (such as KETS Funding and Title I).

(8) An on-site SAC program shall have access to textbooks,

instructional materials, technology, and equipment comparable to that available in the local school district.

(9) KECSAC shall obtain information from the Kentucky Department of Education and the Workforce Development Cabinet regarding all discretionary and entitlement state, federal and miscellaneous funding opportunities available to local school districts and file applications or reports necessary to procure and use funds for the education of state agency children.

(10) If a state agency plans to open or contract for a new program or to expand an existing SAC program during a biennium, the state agency shall notify KDE and KECSAC by April 1 of the first year of the biennium regarding the projected number of youth to be educated in the new or expanded program.

(11) If youth age sixteen (16) through twenty (20) years enter with or receive a GED while attending a state agency program, that youth shall continue in the state agency program for further academic and vocational training and continue to generate SEEK funds. State agency children funds may be used to:

(a) Support a GED preparation program; or

(b) Educate GED and high school graduates.

(12) The state agencies, the Kentucky Department of Education, the Cabinet for Workforce Development and other appropriate agencies shall develop and review annually an interagency agreement defining services and financial responsibilities of each state and local agency providing educational services for state agency children. The agreement shall include procedures for resolving interagency disputes.

(13) If a dispute arises between KECSAC and a local school district that cannot be resolved by the parties, the dispute shall be submitted, for resolution, to the interagency advisory group by written request of either party. The request shall identify in detail the issue in dispute. The interagency advisory group shall schedule a meeting with the parties, during which each party shall explain its position. The interagency advisory group shall render a written report and recommendation to the commissioner of the department responsible for the program in dispute within fifteen (15) days of the meeting. The commissioner shall render a written decision resolving the dispute within fifteen (15) days of receiving the recommendation from the interagency advisory group.

Section 4. Operations.

(1) School options for state agency children with an IEP shall be planned, if not restricted by treatment needs, using the least restrictive environment based on specific child needs. Additional days beyond the school year shall take place either at the local public school or on the state agency program site. If the state agency child is not restricted to the treatment site for security purposes, the continuum from least restrictive to most restrictive alternatives shall be as follows:

(a) A program for state agency children may send all of its children to be educated in the local public school where children in the local public school district are assigned or where their IEP indicates placement.

(b) A program for state agency children may send some of its children to be educated in the local public school as in paragraph (a) of this subsection and have on-site state agency school option for other children.

(c) A program for state agency children may have an on-site state agency school for all children due to reasons necessary for the conditions of placement in the state agency program.

(2) Assessments.

(a) The local school district shall complete an informal academic assessment of the educational needs of all SAC, and vocational needs of SAC aged fourteen (14) and up or in eighth grade and above, within the first thirty (30) days after admission to on-site programs. Educational goals and objectives shall be consistent with goals specified in each youth's individual treatment plan.

(b) If the youth is suspected to have an educational disability as governed by 707 KAR 1:002,[~~1:180 and~~] 707 KAR 1:300, and 707 KAR 1:320[~~1:190~~], assessments shall be administered, following required due process procedures.

(3) In a school district providing educational services, local school district staff shall coordinate the completion of the required individual education program pursuant to 707 KAR 1:002[~~1:180~~] and 707 KAR 1:320[~~1:190~~].

(4) Instructional services.

(a) The teacher pupil ratio for on-site state agency school programs serving state agency children shall average, based on annual average daily attendance, no more than ten (10) students to one (1) teacher without a classroom aide and fifteen (15) students to one (1) teacher with a classroom aide. A classroom that exclusively serves students with the educational disabilities shall comply with teacher pupil ratios as specified in 707 KAR 1:230, Section 5.

(b) By the 30th school day after admission to a school program, an individual plan of instruction shall be developed by the school district for state agency children not identified with a disability. The individual plan of instruction shall be developed in coordination with the ITP. If a youth is determined to have an educational disability, the IEP requirements as governed by 707 KAR Chapter 1 shall suffice. The IPI shall be in a standardized format, as determined by the KECSAC Interagency Advisory Group.

(c) An educational passport shall be prepared as required by KRS 158.137 and 605.110(3)(e).

(d) A state agency child reading at two (2) or more years below the appropriate grade level, as measured by an educational assessment tool, shall be provided developmental reading, listening and writing instruction.

(5) Accountability.

(a) The assessments and portfolios of state agency children shall be governed by 703 KAR 5:070.

(b) An accountability system shall be designed by KECSAC for state agency children school programs. The memorandum of agreement which shall include quality of educational services shall be monitored, at a minimum, in conjunction with KDE's IDEA monitoring cycle. Noncompliance with the MOA may result in reduction, elimination, or recoupment of the district's reimbursement from the state agency children's fund as determined by KECSAC.

(c) If required by the state agency, the SAC school programs shall be in compliance with accreditation standards of the respective professional accrediting association of that state agency.

(6) Transition.

(a) KECSAC shall ensure that transition procedures for SAC moving from the state agency education program to the next instructional or vocational setting are being implemented. Educational staff at an on-site program shall participate in the transition process.

(b) The transition planning to a postschool setting shall comply with the transition plan and service requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 through 1450, as amended[~~enacted as 20 U.S.C. 1400 to 1491o~~], and 707 KAR Chapter 1[~~1:220~~] for students with educational disabilities.

(c) KECSAC shall design and implement a system of educational data collection and information dissemination in order to improve the quality of educational delivery for SAC.

(d) The last school or school district a state agency youth attends prior to placement in a state agency program shall be responsible for forwarding the educational records to the state agency program within five (5) school days of receipt of the request.

(e) The school administrator shall ensure that the educational records of state agency children are forwarded to the receiving school within five (5) school days following the release of the youth from the Program[~~treatment facility~~].

STACY R. WOODRUM, Deputy Commissioner

For RAYMOND F. DEBOLT, Commissioner

APPROVED BY AGENCY: January 10, 2019

FILED WITH LRC: January 11, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

February 25, 2019 at 10:00 a.m. Eastern Time at the Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: William Codell, Assistant General Counsel, Department of Juvenile Justice, 1025 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 573-2738, fax (502) 573-0836, email William.Codell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: William Codell

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the community operations of the Department of Juvenile Justice including the assessment, supervision and case management of juveniles probated or committed to the Department.

(b) The necessity of this administrative regulation: To conform to the requirements of KRS 605.110.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation governs educational requirements for state agency children.

(d) How this administrative regulation currently assists, or will assist, in the effective administration of the statutes: By providing clear and concise direction and information to the Department of Juvenile Justice employees, the Kentucky Educational Collaborative for State Agency Children, educators, and school administrators in connection with providing educational services for state agency children.

(2) If 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 references to 707 KAR. After 707 KAR was amended in connection with providing individual education programs for each child with a disability, this regulation contained references to 707 KAR that are no longer accurate. The amendment would provide for corrected and accurate references to 707 KAR. The amendment additionally provides clarification regarding deadlines for local school districts associated with discontinuing the provision of educational services for state agency children.

(b) The necessity of the amendment to this administrative regulation: To conform to the requirements of KRS 605.110.

(c) How the amendment conforms to the content of the authorizing statutes: It provides an update with accurate references to 707 KAR with regard to the governance, curriculum, and other topics necessary to educate state agency children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will help the Department of Juvenile Justice to operate more efficiently in that it provides updates to references to other regulations that were no longer accurate.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 employees of the Department of Juvenile Justice, approximately 1100 youth in all programs, the Kentucky Education Collaborative for State Agency Children, local school districts, and all visitors and volunteers to Department of Juvenile Justice.

(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: All entities will be provided with additional clarification regarding the use of individual education programs for each state agency child with a disability by making accurate references to applicable regulations contained within 707 KAR.

(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: Upon information and belief, all agencies are already taking the actions required by this amendments to the regulation in that the Kentucky Education Collaborative for State Agency Children currently has developed written procedures for the operation of the state-wide education system for state agency children, and the relevant local school districts implement individual education programs for state agency children with disabilities. The amendment primarily updates references to 707 KAR so that the relevant regulations regarding individual education programs are appropriately incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is projected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation will now accurately reference the appropriate regulations within 707 KAR securing quality education for state agency children in compliance with Federal law.

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

(a) Initially: No Additional funding will be required.

(b) On a continuing basis: No Additional funding will be required on an annual basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funds budgeted for this 2016-2018 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: None

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as the Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Response: Department of Juvenile Justice, the Kentucky Education Collaborative for State Agency Children, the Kentucky Department of Education, the Cabinet for Health and Family Services, and local school districts with state agency children.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Response: KRS 605.110, KRS 158.135, KRS 158.137, 20 U.S.C. § 1407 and 1412, 34 C.F.R. 300.100, 707 KAR 1:320.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No additional cost is projected. Upon information and belief, the relevant local school districts are already complying with the 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?

Response: 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? Response: None.

(c) How much will it cost to administer this program for the first year? Response: No Additional funding will be required for the first year.

(d) How much will it cost to administer this program for subsequent years? Response: No additional cost is projected.

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

Revenues (+/-): No revenue will be generated from this regulation.

Expenditures (+/-): No additional cost is projected.

Other Explanation: This amendment updates the regulation to provide accurate references to 707 KAR after said 707 KAR has been revised. Upon information and belief, the applicable divisions of state and local government are currently in compliance.

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

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

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

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

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

Section 1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) "Motor vehicle" is defined by KRS 186.010(4).

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

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

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

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

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

(21) "Service call" means an onsite remote service of an ignition interlock device, outside of a fixed facility, including for example:

(a) Diagnostic trouble shooting;

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

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

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

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

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

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

(26) "Violation" means:

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

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

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

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

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

Section 2. Ignition Interlock Device Applications.

(1) The requirements established in this administrative regulation shall not be applied retroactively to ignition interlock

devices in use prior to the effective date of this administrative regulation.

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

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

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

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

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

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

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

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

(6)(a) Prior to application, a defendant shall be required to remit to the cabinet a non-refundable application fee in the amount of $105 pursuant to KRS 189A.420(6). Payment shall be made by cashier's check, certified check, or money order at one (1) of the cabinet's regional field offices or the central office in Frankfort.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. General Requirements for Ignition Interlock Device Providers.

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

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

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

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

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

(6)(a) A device and service provider shall be prohibited from removing a device owned by a different provider unless an

agreement is in place or for the purpose of replacing a defendant's provider due to that provider's insolvency or business interruption.

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

(7) A device provider shall notify the cabinet within fifteen (15) days of a pending suspension, revocation, or disciplinary action taken against it by a jurisdiction outside the commonwealth. Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal.

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

Section 4. Certification of Ignition Interlock Devices and Device Providers.

(1) An ignition interlock device provider requesting certification of an ignition interlock device shall:

(a) Submit an affidavit that the ignition interlock device sought to be used complies with the applicable specifications and certification requirements contained in the RFQ; and

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

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

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

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

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

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

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

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

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

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

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

(3) Device providers shall notify the appropriate county attorney within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method approved by the recipient of the following occurrences:

(a) Device tampering or circumvention violations; or

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

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

Section 5. Ignition Interlock Device Installation.

(1) A provider may charge a defendant for the commodities and services listed in the RFQ, including the following:

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

(b) Device rental on a monthly basis;

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

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

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

(f) Missed appointments without notice;

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

(h) Device removal.

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

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

(3) The defendant shall remit the fees directly to the device or service provider as directed by the device provider. A device provider shall not prohibit the pre-payment of fees for the device and services.

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

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

(6) A service provider and technician shall use the calibration units approved by NHTSA and appearing on its list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers.

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

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

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

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

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

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

(8) The cabinet shall:

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

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

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

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

Section 6. Installation, Operation, Calibration, and Removal of Devices.

(1) Prior to installing the device, the provider shall obtain and retain copies of the following from the defendant:

(a) Photo identification;

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

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

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

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

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

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

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

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

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

Section 7. Provider Suspension, Revocation, Voluntary Facility Closure, or Financial Insolvency.

(1) The department shall indefinitely suspend or revoke certification of an ignition interlock device provider for the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Providing notice to defendants; and

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

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

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

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

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

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

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

Section 8. Surrender of Motor Vehicle Registration Plates.

(1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plates pursuant to KRS 189A.085.

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

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

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

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

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

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

(5) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration

plate and registration receipt upon the request of the vehicle owner as follows:

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

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

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

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

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

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

(d) "Ignition Interlock Application", TC 94-175, August 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m. This material is also available on the cabinet's Web site at http://drive.ky.gov.[Surrender of Motor Vehicle Registration Plates. (1) Upon receipt of a request for a vehicle registration inventory from a court, the Transportation Cabinet shall:

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

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

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

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

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

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

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

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

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

(e) The ignition interlock device shall:

1. Record each time the vehicle is started;

2. Record results of the alcohol concentration test;

3. Record how long the vehicle is operated; and

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

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

(g) The ignition interlock device shall require:

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

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

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

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

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

1. If the retest is not performed; or

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

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

(2) An ignition interlock device shall be:

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

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

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

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

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

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

2. Dates of activity;

3. Value and type of standard used;

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

5. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number, year and color.

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

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

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

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

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

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

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

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

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

GREG THOMAS, Secretary
MATTHEW D. HENDERSON, Commissioner
P. KEVIN MOORE, Office of Legal Services

APPROVED BY AGENCY: January 7, 2019

FILED WITH LRC: January 8, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 25, 2019 at 10:00 a.m. local time at the Transportation Cabinet, Transportation Cabinet Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing, of their intent to attend. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement five working days prior to the hearing. This request does not have to be in writing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: P. Kevin Moore

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the ignition interlock program.

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

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

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

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

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order; divisions within the department will approve and process the application forms; and circuit clerks will issue the ignition interlock licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Defendants will pay device and servicing fees pursuant to KRS 189A.500, and an application fee in the amount of $105 pursuant to KRS 189A.420(6).

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

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

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

(b) On a continuing basis: $105 per defendant and up to approximately $525,000 annually.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An appropriation will be needed to maintain this program.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Vehicle Regulation, Division of Driver Licensing, the Circuit Clerks, Administrative Office of the Courts, County Attorneys.

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

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

local government, costs should be minimal as the process is judicially driven and the regulatory actions will be performed within the context of DUI prosecutions.

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

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

(c) How much will it cost to administer this program for the first year? Up to approximately $525,000.

(d) How much will it cost to administer this program for subsequent years? $105 per defendant and up to approximately $525,000 annually.

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

Revenues (+/-): No revenues will be generated by this program.

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

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

PUBLIC PROTECTION CABINET
Kentucky Claims Commission
(Amendment)

802 KAR 1:010. Tax appeal procedures.

RELATES TO: KRS Chapter 13B, 49.220, 49.230, 49.240, 49.250

STATUTORY AUTHORITY: KRS 49.020, 49.220(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 49.020(5) authorizes the commission to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the commission's statutory authority. KRS 49.220(1) authorizes the commission, with exclusive jurisdiction, to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation. This administrative regulation establishes the procedures governing tax appeals.

Section 1. Rules Applicable to All Filings. (1) Filings. All documents shall be filed by mail, electronic mail to [~~mailto:~~] taxappeals@ky.gov, or in person. Documents filed by electronic mail shall be considered received when sent if properly addressed.

(2) Service. Any party who files a document with the commission or hearing officer shall serve to all other parties to the appeal a copy of the document filed. A filed document shall be accompanied by a certification stating:

(a) That a copy has been served on each party; and

(b) The method of service used.

Section 2. Rules for Filing Tax Appeals with the Commission.

(1) Initiation of tax appeal. A party wishing to appeal a final ruling, order, or determination of any agency of state or county government affecting revenue or taxation shall file a petition of appeal with the commission.

(2) Timing. The initial petition of appeal shall be received by the commission within thirty (30) days of the date of mailing of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal.

(a) An untimely appeal shall be dismissed.

(b) If the appeal is timely filed, the commission or hearing officer shall notify the petitioner of deficiencies and allow fifteen (15) days to amend the petition.

(3) Format and content. A petition of appeal shall be legibly written, typed, or printed and contain the following:

(a) A statement of all relevant issues of fact and law;

(b) A statement certifying that the information contained in the petition of appeal is true and correct to the best [~~of the petitioner's~~] knowledge of the petitioner or counsel, if represented by an attorney;

(c) The signature of the petitioner or counsel, if represented by an attorney;

(d) The petitioner's mailing address, telephone number, and email address;

(e) If represented by an attorney, the petitioner's attorney's name, mailing address, telephone number, and email address; and

(f) A copy of the final ruling, order, or determination to be reviewed.

(4) Upon receiving a petition of appeal, the commission shall provide notice to[~~the~~]:

(a) The appellee that an action has been filed; [~~and~~]

(b) The petitioner that the petition of appeal has been received; and

(c) The petitioner's counsel, if represented by an attorney.

Section 3. Representation in Proceedings before the Commission.

(1) The appellee or the appellee's attorney shall file an entry of appearance within thirty (30) days of the date of the notice of appeal provided by the commission. The entry of appearance shall contain the mailing address, telephone number, and email address of the appellee and the appellee's attorney, if any.

(2) An individual who is not an attorney shall not represent any entity or other individual who is a party to an appeal.

Section 4. Discovery.

(1) Discovery may be obtained without prior order of the commission or hearing officer pursuant to the Kentucky Rules of Civil Procedure.

(2) The commission or hearing officer may deny, limit, or require discovery.

(3) If a party fails to comply with an order regarding discovery, the commission or hearing officer may order that the:

(a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;

(b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;

(c) Appeal be dismissed or relief be granted as requested by the opposing party;

(d) Appeal be stayed until the order is obeyed; or

(e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.

(4) A response to discovery under subsection (1) of this section shall not be filed with the commission unless required by order or used as evidence.

Section 5. Prehearing Filings. At least thirty (30) days prior to the hearing, a party shall file with the commission or hearing officer a:

(1) Prehearing summary that contains a:

(a) Summary of the party's position on any issue of fact in dispute;

(b) Summary of the party's position on any issue of law raised by the appeal; and

(c) Written statement of facts to which the party agrees and any facts that a party does not dispute;

(2) List of the names, addresses, and phone numbers (if known) of all witnesses the party expects to call to testify as a witness at the hearing; and

(3) Copy of all exhibits that the party intends to introduce at the hearing.

Section 6. Motion Practice.

(1) Any party affected by a motion or pleading may file a

response to the motion or pleading within fifteen (15) days from the date on which the motion or pleading was originally served.

(2) A moving party may file a reply to another party's response. The reply shall be filed within fifteen (15) days from the date the response was served. Other replies or responses shall not be filed, unless prior approval is granted by the commission or hearing officer.

Section 7. Summary Disposition. At any time after an appeal has begun, a party may move for a summary disposition of the whole or a part of the appeal, in which event the procedure established in subsections (1) through (4) of this section shall apply.

(1) The moving party shall file a motion that:

(a) Asserts that there are no disputed material facts as to one (1) or more of the issues before the commission or hearing officer;

(b) Includes a statement specifying which material facts are undisputed. A material undisputed fact may be submitted to the commission or hearing officer through affidavits, discovery responses, or deposition testimony;

(c) States that any issue before the commission or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation; and

(d) Attaches a copy of any legal authority that supports the moving party's position on any legal issue before the commission or hearing officer.

(2)(a) Within twenty (20) days after a party moves for summary disposition, any other party shall:

1. Submit an acknowledgment that there are no disputed material facts;

2. Submit a response stating that a material fact is in dispute, along with any affidavit, discovery response, or deposition testimony that shows the material fact in dispute. Facts stated in the petition of appeal and any document or exhibit attached thereto may be relied upon as undisputed material facts by the appellee; and

3. Attach all legal authorities that support the opposing party's position on any legal issue.

(b) Failure of a nonmoving party to respond within twenty (20) days to the motion for summary disposition or to request additional time to respond to the motion may result in the com-mission or hearing officer finding there are no disputed factual issues to be considered in deciding the legal issues.

(3) If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.

(4) The commission or hearing officer may grant a motion for summary disposition in whole or in part. If the commission or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the commission or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 8. Other. Except as otherwise stated in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.

MARCUS CAREY, Chairman
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: January 11, 2019

FILED WITH LRC: January 11, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 AM on February 21, 2019 at the Kentucky Claims Commission, 130 Brighton Park Blvd., 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 February 28, 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: Tim Cocanougher, Executive Director, 130 Brighton Park Blvd., Frankfort, Kentucky 40601, phone 502-573-2290, fax 502-573-4817, email tim.cocanougher@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Tim Cocanougher

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for appealing the decisions of state or county governments affecting revenue or taxation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific procedures mandated by KRS Chapter 49.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies fully with KRS Chapter 49, specifying the manner in which the commission is to carry out its functions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to the commission, appellants, appellees, and state or county officials whose tax determinations are being appealed.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment will allow individuals or companies represented by counsel to have their counsel sign certifications and receive notices on their behalf.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because larger companies appealing tax decisions by county or state officials may not always have the correct person to verify information contained in the petition available to sign the petition of appeal. Allowing their counsel to sign the petition on behalf of a client as well as receive notifications from the commission will alleviate a significant burden that some appellants have identified to commission staff.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 49.020(2) grants the commission the power to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation. KRS 49.020(5) authorizes the commission to promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of the commission's statutory authority.

(d) How the amendment will assist in the effective administration of the statutes: This amendment facilitates filings for appellants before the Commission and complies with the requirements of KRS 49.190 to 49.250.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect any individual or company appealing tax decisions by a local or state official to the Commission, permitting their counsel to file, sign, and receive documents from the Commission.

(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: If an individual or company appealing a tax decision is represented by counsel, that counsel will be permitted to file, sign, and receive documents on the appellant's behalf without further action from the appellant.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There will be no added cost to appellants to comply with this administrative

regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Entities will have the benefit of the option to have their counsel sign, file, and receive documentation on their behalf. This has been identified as a potential problem to the commission staff, particularly among entities who may not have corporate officials locally available to sign documents.

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

(a) Initially: There will be no added cost to the commission because of this administrative regulation.

(b) On a continuing basis: There will be no added cost to the commission because of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increases in fees or funding will be necessary to implement this amendment to the administrative regulation.

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

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because this administrative regulation applies equally to all individuals or companies represented by counsel appealing tax decisions by state or local government.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Claims Commission and any state or local government entities responsible for taxation will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 49

(3) Estimate the effect of this administrative regulation on the 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 to the administrative regulation will not generate revenue for the state or local government.

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

(c) How much will it cost to administer this program for the first year? This amendment to the administration will not create any additional cost for the first year.

(d) How much will it cost to administer this program for subsequent years? This amendment to the administration will not create any additional cost 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

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:320 Toxic and hazardous substances.

RELATES TO: KRS 338.015, 338.031, 29 C.F.R. 1910.134, 1910.141, 1910.1000-1910.1450

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, E.O. 2018-586

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations necessary to accomplish the purposes of KRS Chapter 338. Executive Order 2018-586 transfers the authority to adopt, amend, or repeal regulations from the Occupational Safety and Health Standards Board to the Secretary of the Kentucky Labor Cabinet. 29 C.F.R. 1910.1000 to 1910.1450 establish federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the toxic and hazardous substances standards to be enforced by the Department of Workplace Standards in the area of general industry.

Section 1. Definitions. (1) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) mu particles.

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "Authorized employee" means an employee whose duties require the employee to be in the regulated area and who has been specifically assigned to that area by the employer.

(4) "Clean change room" means a room where employees put on clean clothing or protective equipment in an environment free of 4,4' Methylene bis (2-chloroaniline).

(5) "Closed system" means an operation involving 4, 4'-Methylene bis (2-chloroaniline) if containment prevents the release of 4,4' Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(6) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(7) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by the director or the Secretary of Health, Education, and Welfare to act for the director.

(8) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(9) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) that may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(10) "Employee" is defined by KRS 338.015(2).

(11) "Employer" is defined by KRS 338.015(1).

(12) "External environment" means any environment external to regulated and nonregulated areas.

(13) "Isolated system" means a fully enclosed structure, other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of containment occurs.

(14) "Laboratory type hood" means a device:

(a) Enclosed on three (3) sides with the top and bottom designed and maintained to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and

(b) Designed, constructed, and maintained so that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee's body other

than hands and arms.

(15) "National consensus standard" is defined by KRS 338.015(9).

(16) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(17) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(18) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(19) "Regulated area" means an area where entry and exit is restricted and controlled.

(20) "Standard" means "occupational safety and health standards" as defined by KRS 338.015(3).

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section shall apply to any area in which 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144, is manufactured, processed, repackaged, released, handled, or stored. This section shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (4)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than one and zero-tenths (1.0) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. Those areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas if 4,4'-Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and

2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

1. Access shall be restricted to authorized employees only.

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be from ordinary work areas to the operation.

a. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

b. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 C.F.R. 1910.134. A respirator affording a higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains shall be prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall be:

1. Provided with and required to wear clean, impervious garments, including gloves, boots, and continuous-air supplied hood in accordance with 29 C.F.R. 1910.134;

2. Decontaminated before removing the protective garments and hood; and

3. Required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this paragraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures, and equipment that could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4.a. Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area.

b. The wastes and carcasses shall be incinerated so that no carcinogenic products are released.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section;

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, except for those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be

identified as required under subsection (4)(b), (c), and (d) of this section; and

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in the surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

9. There shall not be a connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. If 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area shall not be required, except:

1. Only authorized employees shall be permitted to handle the materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment if leaving the work area at the end of the work day or if solution is spilled on the clothing or equipment. Used clothing and equipment shall be placed in impervious containers for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section;

4. Employees shall be required to wash hands and face after removing protective clothing and equipment and before engaging in other activities;

5. Employees assigned to work covered by this paragraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), and (c) of this section; and

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering; and

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification.

1. A daily roster of employees entering regulated areas shall be established and maintained.

2. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years.

3. The rosters or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director.

4. If the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures, including the requirements of this paragraph, shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency is determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3.a. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency.

b. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (5)(b) of this section.

4. If an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline), the employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (5)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or consumption of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of those products, shall be prohibited in regulated areas.

2. If employees are required by this section to wash, washing facilities shall be provided in accordance with 29 C.F.R. 1910.141.

3. If employees are required by this section to shower, facilities shall be provided in accordance with 29 C.F.R. 1910.141(d)(3).

4. If employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 29 C.F.R. 1910.141(e), for the number of employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas.

a. Local exhaust ventilation may be used to satisfy this requirement.

b. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment, and the decontamination facility.

4. Dry sweeping and dry mopping shall be prohibited.

(4) Signs, information, and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
Authorized Personnel Only

2. Entrances to regulated areas containing operations established in subsection (2)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed
In this Area
Impervious Suit Including Gloves,
Boots, and Air-Supplied Hood
Required At All Times
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that shall be followed in entering and leaving a regulated area.

(b) Container labeling. Containers shall be labeled in accordance with the requirements of 29 C.F.R. 1910.1200.

(c) Lettering.

1. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches.

2. Labels on containers required by paragraph (b) of this subsection shall:

a. Not be less than one-half (1/2) the size of the largest lettering on the package, up to a maximum required size of one (1) inch in height; and

b. Not use less than eight (8) point type.

(d) Prohibited statements. A statement shall not appear on or near any required sign, label, or instruction that contradicts or detracts from the effect of any required warning, information, or instruction.

(e) Training and indoctrination.

1. Each employee, prior to being authorized to enter a

regulated area, shall receive a training and indoctrination program including:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) that could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application of decontamination practices and procedures;

e. The purpose for and significance of emergency practices and procedures;

f. The employee's specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations that may result in the release of 4,4'-Methylene bis (2-chloroaniline); and

h. The purpose for and application of specific first-aid procedures and practices.

2. Each employee shall receive a review of this section at the employee's first training and indoctrination program and annually thereafter.

3. Specific emergency procedures shall be prescribed and posted, and employees shall be familiarized with their terms and rehearsed in their application.

4. All materials relating to the program shall be provided if requested by authorized representatives of the assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1 of each year, the information required by this paragraph shall be reported in writing by the employer to the nearest Area Director. Any change in the reported information shall be reported in writing within fifteen (15) calendar days of the change. The report shall contain the following information:

1. A brief description and in-plant location of the areas regulated and the address of each regulated area;

2. The names and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area;

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area, such as whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(b) Incidents. Incidents that result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this paragraph.

1. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest Area Director.

2. A written report shall be filed with the nearest Area Director within fifteen (15) calendar days of the initial report and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

b. A description of the area involved, and the extent of known and possible employee and area contamination;

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical examinations. Records shall be maintained for the duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor; records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director. If requested by an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016. (1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that carcinogenic products shall not be released.

(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

(b)1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities; and

(d) Required to shower after the last exit of the day.

(8) Employees, except for those engaged only in animal support activities, each day shall be:

(a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

(b)1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for

decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation; and

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities.

(9) Air pressure in laboratory areas, and animal rooms where chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

(10) There shall not be a connection between regulated areas and any other areas through the ventilation system.

(11) A current inventory of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be maintained.

(12) Ventilated apparatus such as laboratory-type hoods shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(i).

(2) If an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why that time is unreasonable or impractical.

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(iii).

(4) If an employee or designated representative requests a copy of a record, the employer shall, except as specified in 29 C.F.R. 1910.1020(e)(1)(v) of this section, within the period of time previously specified assure that either:

(a) A copy of the record is provided without cost to the employee or representative;

(b) The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

(c) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

Section 5. (1) The language relating to gloves in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1030(d)(3)(ix).

(2) Gloves shall be worn if it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin if performing vascular access procedures or if handling or touching contaminated items or surfaces.

Section 6. Except as modified by Sections 1 through 5 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.1000 - 1910.1450, revised July 1, 2018; and

(2) The revisions to 29 C.F.R. 1910.1024 as published in the August 9, 2018 Federal Register, Volume 83, Number154.[~~2016; and~~

~~(2) The revisions to 29 C.F.R 1910 Subpart Z as published in the January 9, 2017 Federal Register, Volume 82, Number 5.~~]

DAVID A. DICKERSON, Acting Secretary

APPROVED BY AGENCY: January 14, 2019

FILED WITH LRC: January 14, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2019 at 1:30 P.M. (EDT) at the Labor Cabinet, 657 Chamberlin Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Brian Black, OSH Standards Specialist, Department of Workplace Standards, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone: (502) 564-3320, Fax: (502) 564-4769, Email Brian.Black@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brian Black

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not found in the federal standard. Section 2 of this administrative regulation, effective since February 12, 1996, retains requirements related to the use of 4,4'-Methylene bis (2-Chloroaniline). Section 3 of this administrative regulation, effective since February 12, 1996, retains requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003-1016 that are different from OSHA. Section 4 effective since July 17, 1997, retains requirements related to access to exposure or medical records that are different from OSHA. Section 5 of this administrative regulation, effective since October 7, 1992, retains requirements related to glove use as it applies to 29 C.F.R. 1910.1030 that are different from OSHA. Section 6 requires employers in general industry to comply with the requirements of Subpart Z of 29 C.F.R. 1910 and updates the C.F.R. to July 1, 2018. Section 6 also establishes the amendments to 29 C.F.R. 1910.1024 as established in the August 9, 2018 Federal Register, Volume, 83, Number 154.

OSHA's original January 9, 2017 final rule established a March 12, 2018 implementation date for most provisions of the standard. The enforcement date was then delayed by OSHA policy to May 11, 2018. Two (2) additional enforcement delays of certain provisions of the regulation were also enacted by OSHA policy. OSHA's August 9, 2018 final rule extended the compliance date for certain ancillary provisions of the general industry beryllium standard to December 12, 2018. The delay only affects the methods of compliance, beryllium work areas, regulated areas, personal protective clothing and equipment, hygiene areas and practices, housekeeping, communication of hazards, and recordkeeping provisions of the beryllium regulation.

The Labor Cabinet adopted OSHA's August 9, 2018 final rule pursuant to Executive Order 2018-586, which transfers the authority to adopt occupational safety and health (OSH) regulations from the OSH Standards Board to the Secretary.

(b) The necessity of this administrative regulation: The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Kentucky was not required to adopt this final rule. However, to maintain consistency with the federal program and to codify the policy set forth by Labor Cabinet Administrative Order 2018-007, which notified the public of the OSH Program's intention to delay enforcement to remain consistent with OSHA, the Secretary adopted OSHA's August 9, 2018 final rule.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will promote employee health and safety throughout Kentucky and keep the state program as effective as the federal program by adopting the language in this final rule.

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

(a) How the amendment will change this existing administrative regulation: Section 6 requires employers in general industry to comply with the requirements of Subpart Z of 29 C.F.R. 1910 and updates the C.F.R. to July 1, 2018. Section 6 also establishes the amendments to 29 C.F.R. 1910.1024 as set forth in the August 9, 2018 Federal Register, Volume, 83, Number 154. This Federal Register delays compliance dates for certain provisions in the beryllium standard to December 12, 2018. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Kentucky was not required to adopt this final rule. However, to maintain consistency with the federal program and to codify the policy set forth by Labor Cabinet Administrative Order 2018-007, which notified the public of the OSH Program's intention to delay enforcement to remain consistent with OSHA, the Secretary adopted OSHA's August 9, 2018 final rule.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing a clear understanding of the requirements to employers and employees. This amendment promotes employee safety and health throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No immediate action is required. This final rule simply delays enforcement of provisions of the regulation to allow employers more time to comply.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
Improved employee protection will result from the promulgation of this amendment, due to the consistency with the federal requirement, providing a clear understanding of the requirements. This rule avoids disrupting general industry by extending the compliance date for provisions of the general industry beryllium standard so that it is consistent with OSHA's final rule.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program 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 state and federal funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953.

2. State compliance standards. The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the required final rule. Kentucky was not required to adopt this final rule. However, to maintain consistency with the federal program and to codify the policy set forth by Labor Cabinet Administrative Order 2018-007, which notified the public of the OSH Program's intention to delay enforcement to remain consistent with OSHA, the Secretary adopted OSHA's August 9, 2018 final rule pursuant to Executive Order 2018-586.

3. Minimum or uniform standards contained in the federal mandate. The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. 29 C.F.R. 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the required final rule. Kentucky was not required to adopt this final rule. However, to maintain consistency with the federal program and to codify the policy set forth by Labor Cabinet Administrative Order 2018-007, which notifies the public of the OSH Program's intention to delay enforcement to remain consistent with OSHA, the Secretary adopted OSHA's August 9, 2018 final rule pursuant to Executive Order 2018-586.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 1 of this administrative regulation defines terms not found in the federal standard. Section 2 of this administrative regulation, effective since February 12, 1996, retains requirements related to the use of 4,4'-Methylene bis (2-Chloroaniline). Section 3 of this administrative regulation, effective since February 12, 1996, retains requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003-1016 that are different from OSHA. Section 4, effective since July 17, 1997, retains requirements related to access to exposure or medical records that are different from OSHA. Section 5 of this administrative regulation, effective since October 7, 1992, retains requirements related to glove use as it applies to 29 C.F.R. 1910.1030 that are different from OSHA. Section 6 requires employers in general industry to comply with the requirements of Subpart Z of 29 C.F.R. 1910 and updates the C.F.R. to July 1, 2018. Section 6 also establishes the amendments to 29 C.F.R. 1910.1024 as established in the August 9, 2018 Federal Register, Volume, 83, Number 154.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84

STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the 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? There are no costs associated with this amendment; it only delays enforcement, allowing employers more time to comply.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment; it only delays enforcement, allowing employers more time to comply.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This final rule does not impose any additional requirements or expenditures to the employer.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:505. Cranes and derricks in construction.

RELATES TO: KRS 338.015, 29 C.F.R. Part 1926.1400-1926.1441

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. Executive Order 2018-586 transfers the authority to adopt, amend, or repeal administrative regulations from the Occupational Safety and Health Standards Board to the Secretary of the Kentucky Labor Cabinet. This administrative regulation establishes the standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions.

(1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

(4) "Established federal standard" is defined by KRS 338.015(10).

(5) "National consensus standard" is defined by KRS 338.015(9).

(6) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(7) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(8) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet.[, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. Except as established by the definitions in Section 1 and the requirements in Section 3 of this administrative regulation, the construction industry shall comply with the following established federal standards published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1400-1926.1441, effective July 1, 2018 [2017]; and

(2) The amendments to 29 C.F.R. 1926.1427 published in the November 9, 2018 Federal Register, Volume 83, Number 218.[2017 Federal Register, Volume 82, Number 216.]

Section 3. (1) 29 C.F.R. 1926.1423(e)(1)(iii) shall be replaced with: "On horizontal lattice booms where the fall distance is ten (10) feet or more."

(2) 29 C.F.R. 1926.1423(f) shall be replaced with: "For assembly – disassembly work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking – working surface with an unprotected side or edge more than ten (10) feet above a lower level, except when the employee is at or near draw-works (when the equipment is running), in the cab, or on the deck."

(3) 29 C.F.R. 1926.1423(h)(2) shall be replaced with: "For erecting, climbing, and dismantling work, the employer must provide and ensure the use of fall protection equipment for employees who are on a walking – working surface with an unprotected side or edge more than ten (10) feet above a lower level."

DAVID A. DICKERSON, Acting Secretary

APPROVED BY AGENCY: January 14, 2019

FILED WITH LRC: January 14, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2019 at 9:00 a.m. (EDT) at the Labor Cabinet, 657 Chamberlin Avenue, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If 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 attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Brian Black, OSH Standards Specialist, Kentucky Department of Workplace Standards, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 564-3320, fax (502) 564-4769, email Brian.Black@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Brian Black

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.1427. Section 2, as amended, updates the C.F.R. to July 2018 and establishes the amendments to 29 C.F.R. 1926.1427 published in the November 9, 2018 Federal Register, Volume 83, Number 218. The amendment to 1926.1427 clarifies each employer's duty to ensure the competency of crane operators through training, certification or licensing, and evaluation. OSHA's November 9, 2018 final rule amends a provision that required operator certification based on crane type and the rated lifting capacity of the crane. Testing organizations are not required to issue certifications based on rated capacities, but they are permitted to do so. Employers may also choose to rely on certifications based on crane type alone. Finally, OSHA's final rule establishes minimum requirements for determination of operator competency and will maintain safety and health protections for

workers as it reduces compliance burdens.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the OSH Program was not obligated to adopt this amendment. However, to promote consistency with OSHA, and provide employers and employees with a clear understanding of the requirements, the Secretary adopted the final rule pursuant to Executive Order 2018-586.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061, as well as Executive Order 2018-586. KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. Executive Order 2018-586 transfers the authority to adopt, amend, or repeal regulations from the Occupational Safety and Health Standards Board to the Secretary of the Kentucky Labor Cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote employee health and safety throughout Kentucky and keep the state program as effective as the federal program. OSHA's November 9, 2018 final rule amends a provision that required operator certification based on crane type and the rated lifting capacity of the crane. Testing organizations are not required to issue certifications based on rated capacities, but they are permitted to do so. Employers may also choose to rely on certifications based on crane type alone. The amendment establishes minimum requirements for determination of operator competency and will maintain safety and health protections for workers as it reduces compliance burdens.

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

(a) How the amendment will change this existing administrative regulation. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.1400-1926.1441. Section 2 also updates the C.F.R. to July 2018 and requires employers to comply with the amendments to 29 C.F.R. 1926.1427 as published in the November 9, 2018 Federal Register, Volume 83, Number 218.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the OSH Program was not obligated to adopt this amendment. However, to promote consistency with OSHA and provide employers and employees with a clear understanding of the requirements, the Secretary adopted the final rule pursuant to Executive Order 2018-586.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061, as well as Executive Order 2018-586. KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards. Executive Order 2018-586 transfers the authority to adopt, amend, or repeal regulations from the Occupational Safety and Health Standards Board to the Secretary of the Kentucky Labor Cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program. OSHA's November 9, 2018 final rule amends a provision that required operator certification based on crane type and the rated lifting capacity of the crane. Testing organizations are not required to issue certifications based on rated capacities, but they are permitted to do so. Employers may also choose to rely on certifications based on crane type alone. The amendment establishes minimum requirements for determination of operator competency and will maintain safety and health protections for workers as it reduces compliance burdens.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required. The final rule clarifies the requirements for crane operator training, certification, and competency.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from the promulgation of this amendment, due to the consistency with the federal requirement, providing a clear understanding of the requirements. This rule will avoid disrupting the construction industry and ensure the safe operation of cranes.

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

(a) Initially: There is no additional cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program 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 state and federal funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Since OSHA's amendment did not impose any additional or more stringent requirements on employers than the existing standard, the OSH Program was not obligated to adopt this amendment. However, to promote consistency with OSHA, and provide employers and employees with a clear understanding of the requirements, the Secretary adopted the final rule pursuant to Executive Order 2018-586.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. This administrative regulation incorporates occupational safety and health standards set forth in 29 C.F.R. Part 1926, thereby ensuring that the state program is at least as effective as OSHA.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or

requirements, than those required by the federal mandate? This amendment does not change the ten (10) foot fall protection requirement, found in Section 3 of this regulation. This amendment clarifies the requirements for operator training, certification, and evaluation and does not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the 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? This amendment will not impose any additional costs to the employer and will result in cost savings.

(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 (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This final rule does not impose any additional requirements or expenditures to the employer.

PUBLIC PROTECTION CABINET
Department of Professional Licensing
(Amendment)

830 KAR 2:010. Registration and Fees.

RELATES TO: KRS 164.6907(1), 164.6909, 164.6911, 164.6915

STATUTORY AUTHORITY: KRS 164.6905(3), 164.6909(1), 164.6911(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.6905(3) authorizes the Department of Professional Licensing to promulgate administrative regulations necessary to implement the provisions of KRS 164.6901 to 164.6935. KRS 164.6909(1) requires the department to prescribe an application form for registration as an athlete agent. KRS 164.6911(4) requires the department to prescribe a registration renewal form. This administrative regulation establishes the procedures and fees for registration and registration renewal applications of an athlete agent.

Section 1. Application Procedures.

(1) Initial registrations may be submitted at any time. An applicant for initial registration shall submit:

(a) A completed Athlete Agent Registry Application Form, Form AAR-002, with all attachments required by the form;

(b) An initial registration fee of $300;

(c) A copy of each agent contract with a student athlete in the Commonwealth of Kentucky; and

(d) A copy of all licenses or permits under which the agent is providing representation, advice, or serving as an agent in any way.

(2) The initial registration and each renewal registration shall be valid for two (2) years. The expiration date of each term of the registration shall be the date immediately preceding the anniversary of the initial date of registration.

(3) Renewal registrations shall be submitted within 120 days prior to the expiration of the current term of the registration[~~annually on or before March 31~~]. Any[~~athlete agent~~] registration that is not renewed within such 120 day period [~~on or before March 31~~] shall be considered automatically revoked. An athlete agent applying for registration renewal shall submit:

(a) A completed Athlete Agent Registry Application Form, Form number AAR-002; and

(b) A renewal registration fee of $200.

(4)[~~(3)~~] The Department may request clarification and verification of information provided in the application prior to granting initial or renewal registration.

Section 2. Incorporation by Reference.

(1) "Application for Athlete Agent Registry or Renewal", Form AAR-002, July 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ISAAC VAN HOOSE, Commissioner
K. GAIL RUSSELL, Acting Secretary
APPROVED BY AGENCY: January 11, 2019
FILED WITH LRC: January 11, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:00 a.m. on February 21, 2019 at the Department of Professional Licensing, 911 Leawood Ave, 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: David Trimble, General Counsel, 911 Leawood Dr., Frankfort, Kentucky 40601, phone (502) 782-8823, email davidc.trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: David Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the registration requirements and fees for athlete agents in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to carry out KRS 164.6901 et. seq. as amended during the 2018 Regular Session of the General Assembly, which require the Department of Professional Licensing to administer the Kentucky Athlete Agent Registry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Amendments to KRS 164.6911 during

the 2018 Regular Session of the General Assembly modified the duration of a certificate of registration or a renewal of registration as an athlete agent to two (2) years. This amendment updates the administrative regulation to conform to the two (2) year duration.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 164.6905 sets forth the role and authority of the Department of Professional Licensing in carrying out the Revised Athlete Agent Act. Amendments to KRS 164.6911 during the 2018 Regular Session of the General Assembly modified the duration of a certificate of registration or a renewal of registration as an athlete agent to two (2) years. This amendment updates the administrative regulation to conform to the two (2) year duration, carrying out the will of the General Assembly.

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

(a) How the amendment will change this existing administrative regulation: Amendments to KRS 164.6911 during the 2018 Regular Session of the General Assembly modified the duration of a certificate of registration or a renewal of registration as an Athlete Agent to two (2) years. This amendment updates the administrative regulation to conform to the two (2) year duration and clarifying that a renewal date is based on the date of initial registration.

(b) The necessity of the amendment to this administrative regulation: Amendments to KRS 164.6911 during the 2018 Regular Session of the General Assembly modified the duration of a certificate of registration or a renewal of registration as an athlete agent to two (2) years. This amendment updates the administrative regulation to conform to the two (2) year duration, carrying out the will of the General Assembly. Under the current language in the administrative regulation, all athlete agent registrations expire annually on March 31, which is inconsistent with the newly amended statutory provision.

(c) How the amendment conforms to the content of the authorizing statutes: Amendments to KRS 164.6911 during the 2018 Regular Session of the General Assembly modified the duration of a certificate of registration or a renewal of registration as an Athlete Agent to two (2) years. This amendment updates the administrative regulation to conform to the two (2) year duration, carrying out the will of the General Assembly.

(d) How the amendment will assist in the effective administration of the statutes: Amendments to KRS 164.6911 during the 2018 Regular Session of the General Assembly modified the duration of a certificate of registration or a renewal of registration as an athlete agent to two (2) years. This amendment updates the administrative regulation to conform to the two (2) year duration, carrying out the will of the General Assembly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Department of Professional Licensing, all currently registered athlete agents, and all persons seeking to be registered athlete agents in the future will be affected by this administrative regulation.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Registrants must complete a form and submit it to the Department of Professional Licensing, accompanied by a registration fee. Registrants must subsequently renew at least once every two (2) years, or their registration will be automatically revoked.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Complying with this amendment will cost each initial registrant $300, and each renewing registrant $200 every other year. Moving to biennial registration renewal is a reduction in red tape, and removing the arbitrary March 31 deadline will ensure that registrants get the full two year period they paid for. Special consideration will be afforded to individuals who registered between July of this year, when the statutory change took effect, and the effective date of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Athlete agents complying with the administrative regulation will have their frequency of renewals reduced to every other year.

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

(a) Initially: There will be no initial cost to the Department of Professional Licensing to implement this administrative regulation.

(b) On a continuing basis: There will be no continuing cost to the Department of Professional Licensing to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is necessary for the implementation and enforcement of this administrative regulation. Current Department of Professional Licensing staff suffice to meet all requirements.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding necessary to implement this 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 increase any fees directly or indirectly; it merely clarifies the duration of the registration's validity.

(9) TIERING: Is tiering applied? Tiering is not applied because the administrative regulation applies equally to all registrants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What 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 Athlete Agent Registry will be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.6905, 164.6911

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is anticipated to generate approximately $30,000 for the state government. This administrative regulation will not generate revenue for 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 anticipated to generate approximately $30,000 for the state government on an annual basis. This administrative regulation will not generate revenue for local government.

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

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

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

Revenues (+/-): $30,000

Expenditures (+/-): $30,000

Other Explanation: Recent amendments to the statutory scheme provide significantly increased penalties for violations; enforcement action cost and quantity may increase in the future, but that is likely to be offset by revenue from related penalties.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Analytics
(Amendment)

900 KAR 7:030. Data reporting by health care providers.

RELATES TO: KRS Chapter 13B, 216.2920, 216.2925, 216.2927, 304.14-135

STATUTORY AUTHORITY: KRS 216.2923(3), 216.2925

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216.2925 requires that the Cabinet for Health and Family Services promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality, and outcomes of health care services provided in the commonwealth. KRS 216.2923(3) authorizes the cabinet to promulgate administrative regulations to impose fines for failure to report required data. This administrative regulation establishes the required data elements, forms, and timetables for submission of data to the cabinet and fines for noncompliance.

Section 1. Definitions.

(1) "Ambulatory facility" is defined by KRS 216.2920(1).

(2) "Cabinet" is defined by KRS 216.2920(2).

(3) "Coding and transmission specifications", "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", or "Kentucky Data Coordinator's Manual for Ambulatory Facilities" means the document containing the technical directives the cabinet issues concerning technical matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the standard billing form and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(4) "Hospital" is defined by KRS 216.2920(6).

(5) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay, and discharge date, that is identified by a provider-assigned patient control number unique to that inpatient episode, except for hospice care.

(6) "National Provider Identifier" or "NPI" means the unique identifier assigned by the Centers for Medicare and Medicaid Services to an individual or entity that provides health care services and supplies.

(7) "Outpatient services" means services performed on an outpatient basis in a hospital in accordance with Section 3(2) of this administrative regulation or services performed on an outpatient basis by an ambulatory facility in accordance with Section 4 of this administrative regulation.

(8) "Provider" means a hospital, ambulatory facility, clinic, or other entity of any nature providing hospitalizations, mammograms, or outpatient services as defined in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(9) "Record" means the documentation of a hospitalization or outpatient service in the format prescribed by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals or the Kentucky Data Coordinator's Manual for Ambulatory Facilities as approved by the Statewide Data Advisory Committee on a computer readable electronic medium.

(10) "Standard Billing Form" means the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services, or the HCFA 1500 for use by hospitals and other providers in billing for hospitalizations and outpatient services.

Section 2. Medicare Provider-Based Entity. A licensed outpatient facility that is a Medicare provider-based entity of a hospital and reports under the hospital's provider number shall be separately identifiable through a facility-specific NPI.

Section 3. Data Collection for Hospitals.

(1) Inpatient hospitalization records. A hospital shall document every hospitalization it provides on a Standard Billing Form and shall, for every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(2) Outpatient services records.

(a) A hospital shall document on a Standard Billing Form the outpatient services it provides and shall for every record, copy and provide to the cabinet the data specified in Section 12 of this administrative regulation.

(b) A hospital shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(3) Data collection on patients. A hospital shall submit required data on every patient as provided in Section 12 of this administrative regulation, regardless of the patient's billing or payment status.

Section 4. Data Collection for Ambulatory Facilities.

(1) Outpatient services records.

(a) An ambulatory facility shall submit outpatient services records if the ambulatory facility provides one (1) or more of the following outpatient services:

1. Surgery;
2. Childbirth;
3. Urgent treatment of minor illness or injury;
4. Emergency;
5. Mammography;
6. X-ray;
7. Ultrasound;
8. Computed tomography;
9. Magnetic resonance imaging;
10. Cardiac catheterization;
11. Positron emission tomography; and
12. Megavoltage radiation therapy.

(b) An ambulatory facility shall document on a Standard Billing Form the outpatient services it provides and shall, for every record, copy and provide to the cabinet the data specified in Section 13 of this administrative regulation.

(c) An ambulatory facility shall submit records that contain the required outpatient services procedure codes specified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Data collection on patients. An ambulatory facility shall submit required data on every patient as provided in Section 13 of this administrative regulation, regardless of the patient's billing or payment status.

Section 5. Data Finalization and Submission by Providers.

(1) Submission of final data.

(a) Data shall be final for purposes of submission to the cabinet as soon as a record is sufficiently final that the provider could submit it to a payer for billing purposes, regardless of whether the record has actually been submitted to a payer.

(b) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payer.

(c) Data on a hospitalization shall not be submitted to the cabinet before a patient is discharged and before the record is sufficiently final that it could be used for billing.

(2) Data submission responsibility.

(a) If a patient is served by a mobile health service, specialized medical technology service, or another situation by which one (1) provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet shall reside with the provider that bills for the service or would do so if a service is unbilled.

(b) Charges for physician services provided within a hospital shall be reported to the cabinet.

1. Responsibility for reporting the physician charge data shall rest with the hospital if the physician is an employee of the hospital.

2. A physician charge contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when

aggregating data with other hospital records that do not contain physician charges.

(3) Transmission of records.

(a) Records submitted to the cabinet by a hospital shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

(b) Records submitted to the cabinet by an ambulatory facility shall be uniformly completed and formatted according to coding and transmission specifications set forth by the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(c) Each provider shall submit data by electronic transmission as specified by the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(d) Each provider shall provide back-up security against accidental erasure or loss of the data until all incomplete or inaccurate records identified by the cabinet have been corrected and resubmitted.

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet shall, within twenty-four (24) hours of submission, verify by electronic message to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of a discrepancy between the provider's data log and a verification notice.

Section 6. Data Submission Timetable for Providers.

(1) Quarterly submissions. Each provider shall submit data at least once for each calendar quarter. A quarterly submission shall:

(a) Contain data that during that quarter became final as specified in Section 5(1) of this administrative regulation; and

(b) Be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

1. If the 45th day falls on a weekend or holiday, the submission due date shall be the next working day.

2. Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(2) Submissions more frequent than quarterly. A provider may submit data after records become final as specified in Section 5(1) of this administrative regulation and at a reasonable frequency convenient to a provider for accumulating and submitting batch data.

Section 7. Data Corrections for Providers.

(1) Editing. Data received by the cabinet shall, upon receipt, be edited to ensure completeness and validity of the data. Computer editing routines shall identify for correction every record in which the submitted contents of required fields are not consistent with the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(2) Submission of corrections. The cabinet shall allow a provider thirty (30) days in which to submit corrected copies of initially submitted data the cabinet identifies as incomplete or invalid as a result of edits.

(a) The thirty (30) days shall begin on the date of the cabinet's notice informing the provider that corrections are required.

(b) A provider shall submit to the cabinet corrected data by electronic transmission within thirty (30) days.

(c) Corrected data submitted to the cabinet shall be uniformly completed and formatted according to the cabinet's coding and transmission specifications contained in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals and the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

(3) Percentage error rate.

(a) If editing data upon its initial submission, the cabinet shall identify and return to the provider for correction every record in which one (1) or more of the required data elements fails to pass the edit.

(b) If editing data that a provider has submitted, the cabinet shall check for an error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

(c) The cabinet may return for further correction any submission of allegedly corrected data in which the provider fails to achieve a corrected error rate per quarter of no more than one (1) percent of records or not more than ten (10) records, whichever is greater.

Section 8. Fines for Noncompliance for Providers.

(1) A provider failing to meet quarterly submission guidelines as established in Sections 6 and 7 of this administrative regulation shall be assessed a fine of $500 per violation.

(2) The cabinet shall notify a noncompliant provider by certified mail, return receipt requested, of the documentation of the reporting deficiency and the assessment of the fine.

(3) A provider shall have thirty (30) days from the date of receipt of the notification letter to pay the fine, which shall be made payable to the Kentucky State Treasurer and sent by certified mail to the Kentucky Cabinet for Health and Family Services, Office of Health Data and Analytics[~~Policy~~], 275 East Main Street 4 W-E, Frankfort, Kentucky 40621.

(4) Fines during a calendar year shall not exceed $1,500 per provider.

Section 9. Extension or Waiver of Data Submission Timelines.

(1) A provider experiencing extenuating circumstances or a hardship may request from the cabinet, in writing, a data submission extension or waiver.

(a) A provider shall request an extension or waiver from the Office of Health Data and Analytics[~~Policy~~] on or before the last day of the data reporting period to receive an extension or waiver for that period.

(b) An extension or waiver shall not exceed a continuous period of greater than six (6) months.

(2) The cabinet shall consider the following criteria in determining whether to grant an extension or waiver:

(a) Whether the request was made due to an event beyond the provider's control, such as a natural disaster, catastrophic event, or theft of necessary equipment or information;

(b) The severity of the event prompting the request; and

(c) Whether the provider continues to gather and submit the information necessary for billing.

(3) A provider shall not apply for more than three (3) extensions or waivers during a calendar year.

Section 10. Appeals for Providers.

(1) A provider notified of its noncompliance and assessed a fine pursuant to Section 8(1) of this administrative regulation shall have the right to appeal within thirty (30) days of the date of the notification letter.

(a) If the provider believes the action by the cabinet is unfair, without reason, or unwarranted, and the provider wishes to appeal, the provider shall appeal in writing to the Secretary of the Cabinet for Health and Family Services, 5th Floor, 275 East Main Street, Frankfort, Kentucky 40621.

(b) An appeal shall be filed in accordance with KRS Chapter 13B.

(2) Upon receipt of the appeal, the secretary or designee shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of the hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall issue a recommendation in accordance with KRS 13B.110. Upon receipt of the recommended order, following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

Section 11. Working Contacts for Providers.

(1) On or before the last day of the data reporting period, a provider shall report by electronic transmission to the cabinet the names and telephone numbers of a designated contact person and one (1) back-up person to facilitate technical follow-up in data reporting and submission.

(a) A provider's designated contact and back-up shall not be the chief executive officer unless no other person employed by the provider has the requisite technical expertise.

(b) The designated contact shall be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person, or back-up person changes during the year, the name and telephone number of the replacing person shall be reported immediately to the cabinet.

Section 12. Required Data Elements for Hospitals. A hospital shall ensure that each record submitted to the cabinet contains the data elements identified in the Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals.

Section 13. Required Data Elements for Ambulatory Facilities. An ambulatory facility shall ensure that each record submitted to the cabinet contains the data elements identified in the Kentucky Data Coordinator's Manual for Ambulatory Facilities.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Kentucky Inpatient and Outpatient Data Coordinator's Manual for Hospitals", revised January[~~October~~] 1, 2019[~~2017~~]; and

(b) "Kentucky Data Coordinator's Manual for Ambulatory Facilities," revised January[~~October~~] 1, 2019[~~2015~~].

(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 4WE, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT PUTT, Executive Director
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: January 10, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Allison Lile, email: allison.lile@ky.gov, Phone: 502-564-7940; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for submission of administrative claims data to the Cabinet and instructs specified health care providers on the process necessary to submit copies of administrative claims data to the Cabinet.

(b) The necessity of this administrative regulation: This administrative regulation is necessary so that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data. The administrative regulation contains the updated data submission manual for hospitals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation is necessary to ensure that health care providers have a uniform mechanism with timeframes and instructions with which to submit the required data to enable the Cabinet to publish the data and reports as required by KRS 216.9295.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed instructions to specified health care providers relating to the data elements, forms, and timetables necessary to comply with the statute.

(2) If 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 has been revised to update the manuals for submitting data, which are incorporated by reference. Additionally the name of the Office of Health Policy was changed to the Office of Health Data and Analytics.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure accuracy and standardization of the submitted data newly required by KRS 216.2927 and to update the agency name.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by providing a standardized method of reporting by hospitals and ambulatory care facilities.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment will assist in the effective administration of the statutes by providing a standardized method of reporting by hospitals and ambulatory care facilities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment due to changes in KRS 216.2927 will impact 131 hospitals and 141 Ambulatory Facilities who were previously required to submit claims data.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers required to submit data will follow the revised hospital manual for revised instructions on data submissions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are expected to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Data integrity is improved as the cabinet is able to identify instances of individuals admitted to a hospital or seeking outpatient services on a repeated basis.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation. The Cabinet currently collects data and has the necessary data collection system in place.

(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: The source of funding for the implementation and enforcement of this administrative regulation will be the Office of Health Data and

Analytics' existing budget. No new funding will be 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: No fee or funding increase 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: The administrative regulation previously established a fee referenced in KRS 216.2923(3) and this amendment does not increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it. Tiering is 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 impacts the Office of Health Data and Analytics, Division of Analytics and may impact any government owned or controlled hospital or ambulatory care facility.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216.2923(3), 216.2925, and 216.2927

3. Estimate the effect of this administrative regulation on the 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 may generate revenue for the state in that organizations may purchase data created by these reports

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amount of revenue generated by these data purchases is unknown.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): Minimal increase in revenue is expended.

Expenditures (+/-): Expenditures will remain neutral.

Other Explanation:

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

907 KAR 1:604. Recipient cost-sharing.

RELATES TO: KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.20, 447.21, 447.50, 447.52, 447.53, 447.54, 447.55, 447.56, 447.57[~~447.59~~], 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396o, 1396r-6, 1396r-8, 1396u-1, 1397aa -1397jj, 2014 Ky. Acts ch. 117, Part I.G.3.b.(10)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6312(5), 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.50-447.90[~~447.82~~], 457.535, 457.560, 42 U.S.C. 1396r-6(b)(5)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. KRS 205.6312(5) requires the cabinet to promulgate administrative regulations that implement copayments for Medicaid recipients. This administrative regulation establishes the provisions relating to Medicaid Program copayments.

Section 1. Definitions. (1) "Community spouse" means the individual who is married to an institutionalized spouse and who:

(a) Remains at home in the community; and

(b) Is not:

1. Living in a medical institution;

2. Living in a nursing facility; or

3. Participating in a 1915(c) home and community based services waiver program.

(2) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Dependent child" means a[~~couple's~~] child, including a child gained through adoption, who:

(a) Lives with the community spouse; and

(b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(5) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(6) "Drug" means a covered drug provided in accordance with 907 KAR 23:010 for which the Department for Medicaid Services provides reimbursement.

(7) "Enrollee" means a Medicaid recipient who is enrolled with a managed care organization.

(8) "Federal Poverty Level" or "FPL" means guidelines that are updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

(9) "KCHIP" means the Kentucky Children's Health Insurance Program.

(10) "KCHIP - Separate Program" means a health benefit program for individuals with eligibility determined in accordance with 907 KAR 4:030, Section 2.

(11) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(12) "Medicaid Works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 20:020; and

(e) Meets the resource standards established in 907 KAR 20:025.

(13) "Nonemergency" means a condition which does not require an emergency service pursuant to 42 C.F.R. 447.54[~~447.53~~].

(14) "Nonpreferred brand name drug" means a brand name drug that is not on the department's preferred drug list.

(15) "Preferred brand name drug" means a brand name drug:

(a) For which no generic equivalent exists which has a more favorable cost to the department; and

(b) Which prescribers are encouraged to prescribe, if medically appropriate.

(16) "Preventive service" means:

(a)1. All of the preventive services assigned a grade of A or B by the United States Preventive Services Task Force (USPSTF); or

2. All approved adult vaccines, including their administration, recommended by the Advisory Committee on Immunization Practices;

(b) Preventive care and screening for infants, children, and adults recommended by the Health Resources and Services Administration Bright Futures Program Project; or

(c) Preventive services for women recommended by the Institute of Medicine.

(17) "Recipient" is defined in KRS 205.8451(9).

(18) "Transitional medical assistance" or "TMA" means an extension of Medicaid benefits in accordance with 907 KAR 20:005, Section 5(5).

Section 2. Copayments. (1) The following table shall establish the:

(a) Copayment amounts that a recipient shall pay, unless the recipient is exempt from cost sharing pursuant to Section 3(1) of this administrative regulation; and

(b) Corresponding provider reimbursement deductions.

Benefit	Copayment Amount
Acute inpatient hospital admission	$50
Outpatient hospital or ambulatory surgical center visit	$4
~~[Generic prescription drug]~~	~~[$1]~~
~~[Preferred brand name drug]~~	~~[$4]~~
~~[Nonpreferred brand name drug]~~	~~[$8]~~
Emergency room for a nonemergency visit	$8
DMEPOS	$4
Podiatry office visit	$3
Chiropractic office visit	$3
Dental office visit	$3
Optometry office visit	$3
General ophthalmological office visit	$3
Physician office visit	$3
Office visit for care by a physician assistant, an advanced practice registered nurse, a certified pediatric and family nurse practitioner, or a nurse midwife	$3
Office visit for behavioral health care	$3
Office visit to a rural health clinic	$3
Office visit to a federally qualified health center or a federally qualified health center look-alike	$3
Office visit to a primary care center	$3
Physical therapy office visit	$3
Occupational therapy office visit	$3
Speech-language pathology services office visit	$3
Laboratory, diagnostic, or radiological service	$3
A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age.	$0
Brand name drug	$4
Generic drug	$1
Brand name drug preferred over generic drug	$1
Pharmacy product class: certain antipsychotic drug	$1
Pharmacy product class: contraceptives for family planning	$0
Pharmacy product class: tobacco cessation	$0
Pharmacy product class: diabetes supplies, blood glucose meters	$0
Pharmacy product class: Diabetes supplies, all other covered diabetic supplies	$4 for first fill, $0 for second fill and beyond, per day
Pharmacy patient attribute: pregnant	$0
Pharmacy patient attribute: long-term care resident	$0
Pharmacy patient attribute: under eighteen (18) years of age, and not a KCHIP beneficiary.	$0
KI-HIPP participant	$0
Kentucky HEALTH: Medically Frail	$0
Kentucky HEALTH: Former Foster Care Youth up to 26 years of age	$0
Kentucky HEALTH: enrollee current on premiums	$0

(2) The full amount of the copayment established in the table in subsection (1) of this section shall be deducted from the provider reimbursement.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

Section 3. Copayment General Provisions and Exemptions. (1) A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age shall be exempt from the copayment or cost-sharing requirements established pursuant to this administrative regulation.

(2)(a)[~~(a) Except for a foster care child, a recipient shall not be exempt from paying the eight (8) dollar copayment for a nonpreferred brand name drug prescription.~~

~~(b)~~] A copayment shall not be imposed for a service, prescription, item, supply, equipment, or any type of Medicaid benefit provided to a foster care child.

(b)[~~(c) Except for the mandatory copayment referenced in paragraph (a) of this subsection,~~] The department shall impose no cost sharing for an individual or recipient who is exempt pursuant to 42 C.F.R. 447.56.[~~the following:~~

~~1. A service furnished to an individual who has reached his or her 18th birthday, but has not turned nineteen (19), and who is required to be provided medical assistance under 42 U.S.C. 1396a(a)(10)(A)(i)(I), including services furnished to an individual with respect to whom aid or assistance is made available under Title IV, Part B (42 U.S.C. 620 to 629i) to children in foster care and individuals with respect to whom adoption or foster care assistance is made available under Title IV, Part E (42 U.S.C. 670 to 679b), without regard to age;~~

~~2. A preventive service;~~

~~3. A service furnished to a pregnant woman;~~

~~4. A service furnished to a terminally ill individual who is receiving hospice care as defined in 42 U.S.C. 1396d(o);~~

~~5. A service furnished to an individual who is an inpatient in a hospital, nursing facility, intermediate care facility for individuals with an intellectual disability, or other medical institution, if the individual is required, as a condition of receiving services in the institution under Kentucky's Medicaid Program, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs;~~

~~6. An emergency service as defined by 42 C.F.R. 447.53;~~

~~7. A family planning service or supply as described in 42 U.S.C. 1396d (a)(4)(C); or~~

~~8. A service furnished to a woman who is receiving medical assistance via the application of 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII) and 1396a(aa).~~

~~(2) The department has determined that any individual liable for a copayment shall:~~

~~(a) Be able to pay a required copayment; and~~

~~(b) Be responsible for a required copayment.~~]

(3) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined in 42 U.S.C. 1396r-8(k)(5), or a representative, employee, independent contractor or agent of a pharmaceutical manufacturer, shall not make a

copayment for a recipient.

(4) A parent or guardian shall be responsible for a copayment imposed on a dependent child under the age of twenty-one (21).

(5) Any amount of uncollected copayment by a provider from a recipient shall be considered a debt to the provider.

(6)[~~(a)~~] A provider shall:

(a)[~~1.~~] Collect from a recipient the copayment as imposed by the department for a recipient in accordance with this administrative regulation;

(b)[~~2.~~] Not waive a copayment obligation as imposed by the department for a recipient; and

(c)[~~3.~~] Collect a copayment at the time a benefit is provided or at a later date.[~~(b) Regarding a service or item for an enrollee in which the managed care organization in which the enrollee is enrolled does not impose a copayment, the provider shall not collect a copayment from the enrollee.~~]

(6)[~~(7)~~] Cumulative cost sharing for copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.

(7)[~~(8)~~] In accordance with 42 C.F.R. 447.15 and 447.20[~~447.82~~], the department shall not increase its reimbursement to a provider to offset an uncollected copayment from a recipient.

Section 4. Premiums for Medicaid Works Individuals.

(1)(a) A Medicaid Works individual shall pay a monthly premium that is:

1. Based on income used to determine eligibility for the program; and

2. Established in subsection (2) of this section.

(b) The monthly premium shall be:

1. Thirty-five (35) dollars for an individual whose income is greater than 100 percent but no more than 150 percent of the FPL;

2. Forty-five (45) dollars for an individual whose income is greater than 150 percent but no more than 200 percent of the FPL; and

3. Fifty-five (55) dollars for an individual whose income is greater than 200 percent but no more than 250 percent of the FPL.

(2) An individual whose family income is equal to or below 100 percent of the FPL shall not be required to pay a monthly premium.

(3) A Medicaid Works individual shall begin paying a premium with the first full month of benefits after the month of application.

(4) Benefits shall be effective with the date of application if the premium specified in subsection (1) of this section has been paid.

(5) Retroactive eligibility pursuant to 907 KAR 20:010, Section 1(3), shall not apply to a Medicaid Works individual.

(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(7) A Medicaid Works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.

(8) If twelve (12) months have elapsed since a missed premium, a Medicaid Works individual shall not be required to pay the missed premium before reenrolling.

Section 5. Provisions for Enrollees. A managed care organization shall[~~:~~

~~(1) Shall~~] not impose a copayment on an enrollee that exceeds a copayment established in this administrative regulation[~~; and~~

~~(2) May impose on an enrollee:~~

~~(a) A lower copayment than established in this administrative regulation; or~~

~~(b) No copayment~~].

Section 6. Freedom of Choice. (1) In accordance with 42 C.F.R. 431.51, a recipient who is not an enrollee may obtain services from any qualified provider who is willing to provide services to that particular recipient.

(2) A managed care organization may restrict an enrollee's choice of providers to the providers in the provider network of the managed care organization in which the enrollee is enrolled except as established in:

(a) 42 C.F.R. 438.52; or

(b) 42 C.F.R. 438.114(c).

Section 7. Appeal Rights. An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

Section 8. Applicability of Title 895 KAR. If eligible for Kentucky HEALTH, an individual subject to this administrative regulation shall also comply with any applicable requirements established pursuant to Title 895 KAR, including 895 KAR 1:010[~~Effective Date. The cost sharing provisions and requirements established in this administrative regulation shall be effective beginning January 1, 2014~~].

Section 9. Federal Approval and Federal Financial Participation. The department's copayment provisions and any coverage of services established in this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation; and

(2) Centers for Medicare and Medicaid Services' approval.

Section 10. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 13, 2014.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 20, 2018

FILED WITH LRC: December 28, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cost sharing requirements and provisions for the Kentucky Medicaid program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the cost sharing requirements and provisions for the Kentucky Medicaid 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 establishing the cost sharing requirements and provisions for the Kentucky Medicaid program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the cost sharing requirements and provisions for the Kentucky Medicaid program.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation synchronize co-pay exemptions with federal regulations, include additional co-pays and categories of co-pays, and prohibit MCOs from waiving or reducing Medicaid copays. The amendments also exempt certain Medicaid beneficiaries and KCHIP beneficiaries from paying copayments, and update the amount and types of copayments required for beneficiaries to pay. The amendments exempt various types of Kentucky HEALTH beneficiaries, including the medically frail, pregnant women, former foster youth, and individuals who are current on Kentucky HEALTH premiums.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to clarify Medicaid policy relating to copayments and to clarify how certain co-pays should be charged for certain types of visits at certain types of providers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing a copayment requirement, synchronizing co-payment exemptions with the federal regulations, and updating certain copayments.

(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 instituting a clear policy on the use of copayments and updating certain copayments.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid recipients who are not exempt from cost sharing will be affected by the amendment as well as Medicaid providers for whose services cost sharing is applied.

(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. Enrollees and recipients will be required to remit a copayment when accessing a Medicaid service and that requirement cannot be waived or reduced by an MCO. Providers of services for which cost sharing is imposed will be required to impose cost sharing when providing the given service and recipients are responsible for paying cost sharing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Enrollees and recipients will have to pay copayments as listed in this administrative regulation. Providers may experience administrative costs resulting from a Medicaid recipient refusing to pay a copayment obligation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Enrollees and recipients will be able to fully access Medicaid benefits, and providers will be able to charge for services provided.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments to this administrative regulation.

(b) On a continuing basis: The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is applied in that some Medicaid recipients are exempt (by federal regulation or law) from most cost sharing obligations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(14), 42 U.S.C. 1396o, 42 C.F.R. 447.50 through 447.90, 42 C.F.R. 447.15 and 447.20, and 42 C.F.R. 438.108

2. State compliance standards. KRS 205.520(3) and 194A.050(1).

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(14) authorizes a state's Medicaid program to impose cost sharing only as allowed by 42 U.S.C. 1396o. 42 U.S.C. 1396o establishes categories of individuals for whom a state's Medicaid program may not impose cost sharing as well as cost sharing and premium limits. 2 C.F.R. 447.50 through 447.60 also establishes limits on cost sharing (based on income of the given Medicaid eligibility group); Medicaid populations exempt from cost sharing (children, pregnant women, institutionalized individuals for example); services exempt from cost sharing (emergency services, family planning services to child-bearing age individuals); prohibition against multiple cost sharing for one (1) service; and a requirement that managed care organizations' cost sharing must comply with the aforementioned federal regulations. 42 C.F.R. 438.108 establishes that a managed care organization's cost sharing must comply with the federal cost sharing requirements for Medicaid established in 42 C.F.R. 447.50 through 42 C.F.R. 447.90.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal regulations 42 C.F.R. 447.50 through 42 C.F.R. 447.90, 42 C.F.R. 447.15 and 447.20, and this administrative regulation authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation 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? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) anticipates no additional costs as a result of the amendments to this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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

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

RELATES TO: KRS 194A.060, 194A.125, 205.510(15), 205.559, 205.560, 304.38-240, 422.317, 434.840-434.860, 42 C.F.R. 160, 162, 164, 415.174, 400.203, 415.184, 431.300-431.307, 440.50, 455.440, 45 C.F.R.162.406

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(2), (7), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), the Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.559 establishes the requirements regarding Medicaid reimbursement of telehealth providers and KRS 205.559(2) and (7) require the cabinet to promulgate an administrative regulation relating to telehealth services[~~consultations~~] and reimbursement. This administrative regulation establishes the Department for Medicaid Services' coverage and reimbursement policies relating to telehealth services[~~consultations~~] in accordance with KRS 205.559.

Section 1. Definitions. (1)[~~"Advanced practice registered nurse" or "APRN" is defined by KRS 314.011(7). (2) "Certified nutritionist" is defined by KRS 310.005(12).~~

~~(3) "Chiropractor" is defined by KRS 312.015(3).~~

~~(4) "Community mental health center" or "CMHC" means a facility that provides a comprehensive range of mental health services to Medicaid recipients of a designated area in accordance with KRS 210.370 to 210.485.~~

~~(5)~~] "Department" means the Department for Medicaid Services or its designated agent.[~~(6) "Diabetes self-management training consultation" means the ongoing process of facilitating the knowledge, skill, and ability necessary for diabetes self-care.~~

~~(7) "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.~~

~~(8) "Encounter" means one (1) visit by a recipient to a telehealth spoke site where the recipient receives a telehealth consultation in real time, during the visit, from a telehealth provider or telehealth practitioner at a telehealth hub site.~~]

(2)[~~(9)~~] "Face-to-face" means[~~, except as established in Section 4(4)(g) of this administrative regulation~~]:

(a) In person; and

(b) Not via telehealth.

(3)[~~(10)~~] "Federal financial participation" is defined in 42 C.F.R. 400.203.

(4) "Health Insurance Portability and Accountability Act of 1996" or "HIPAA" means the federal law codified at 45 C.F.R. Parts 160, 162, and 164 that covers the use of a patient's protected health information.[~~(11) "GT modifier" means a modifier that identifies a telehealth consultation which is approved by the healthcare common procedure coding system (HCPCS).~~

~~(12) "Health care provider" means a Medicaid provider who is:~~

~~(a) Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and~~

~~(b) Currently participating as a Medicaid provider in accordance with 907 KAR 1:671.~~

~~(13) "Hub site" means a telehealth site:~~

~~(a) Where the telehealth provider or telehealth practitioner performs telehealth; and~~

~~(b) That is considered the place of service.~~

~~(14) "Legally-authorized representative" means a Medicaid recipient's parent or guardian if a recipient is a minor child, or a person with power of attorney for a recipient.~~

~~(15) "Licensed clinical social worker" means an individual meeting the licensure requirements established in KRS 335.100.~~

~~(16) "Licensed dietitian" is defined by KRS 310.005(11).~~

~~(17) "Licensed marriage and family therapist" is defined by KRS 335.300(2).~~

~~(18) "Licensed professional clinical counselor" is defined by KRS 335.500(3).~~]

(5)[~~(19)~~] "Medical necessity" or "medically necessary" means a covered benefit is determined to be needed in accordance with 907 KAR 3:130 or pursuant to the process established in KRS 304.38-240.

(6)[~~(20)~~] "National Provider Identifier" or "NPI" means a standard unique health identifier for health care providers which:

(a) Is required by 42 C.F.R. 455.440; and

(b) Meets the requirements of 45 C.F.R. 162.406.

(7) "Place of service" means the originating site, where the patient is located, of a telehealth service as defined by Kentucky or federal law.

(8) "Telehealth" includes the delivery of HIPAA compliant health care services and public health via information and communication technologies or use of other electronic media to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care and includes remote patient monitoring, synchronous interactions and asynchronous store and forward transfers of images and data.

(9) "Telehealth care provider" means a Medicaid provider who is:

(a) Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

(b) Currently participating as a Medicaid provider in accordance with 907 KAR 1:671.

(10) "Telehealth service" means any:

(a) Event;

(b) Encounter;

(c) Consultation;

(d) Visit;

(e) Store and forward transfer;

(f) Remote patient monitoring;

(g) Referral;

(h) Treatment; or

(i) Other healthcare activity between a:

1. Telehealth care provider and Medicaid beneficiary; or

2. Telehealth care provider and specialist with regard to a Medicaid beneficiary, including services offered direct to patient.[~~(21) "Occupational therapist" is defined by KRS 319A.010(3).~~

~~(22) "Optometrist" means an individual licensed to engage in the practice of optometry in accordance with KRS 320.210(2).~~

~~(23) "Physical therapist" is defined by KRS 327.010(2).~~

~~(24) "Physician" is defined by KRS 311.550(12).~~

~~(25) "Physician assistant" is defined by KRS 311.840(3).~~

~~(26) "Psychologist" is defined by KRS 319.010(9).~~

~~(27) "Registered nurse" is defined by KRS 314.011(5).~~

~~(28) "Speech-language pathologist" is defined by KRS 334A.020(3).~~

~~(29) "Spoke site" means a telehealth site where the recipient receiving the telehealth consultation is located.~~

~~(30) "Telehealth consultation" is defined by KRS 205.510(15).~~

~~(31) "Telehealth practitioner" means an individual who is:~~
~~(a) Authorized to perform a telehealth consultation in accordance with this administrative regulation;~~
~~(b) Employed by or is an agent of a telehealth provider; and~~
~~(c) Not the individual or entity who:~~
~~1. Bills the department for a telehealth consultation; or~~
~~2. Is reimbursed by the department for a telehealth consultation.~~
~~(32) "Telehealth provider" means a health care provider who:~~
~~(a) Performs a telehealth consultation at a hub site; or~~
~~(b) Is the employer of or entity that contracts with a telehealth practitioner who performs a telehealth consultation:~~
~~1. At a hub site; and~~
~~2. That is billed under the telehealth provider's national provider identifier.~~
~~(33) "Telehealth site" means a hub site or spoke site that has been approved as part of a telehealth network established in accordance with KRS 194A.125.~~
~~(34) "Telepresenter" means an individual operating telehealth equipment at a spoke site to enable a recipient to receive a telehealth consultation.~~
~~(35) "Transmission cost" means the cost of the telephone line and related costs incurred during the time of the transmission of a telehealth consultation.~~
~~(36) "Two (2) way interactive video" means a type of advanced telecommunications technology that permits a real time telehealth consultation to take place between a recipient and a telepresenter at the spoke site and a telehealth provider or telehealth practitioner at the hub site.~~]

Section 2. General Policies. (1)(a) Except as provided in paragraph (b) of this subsection, the coverage policies established in this administrative regulation shall apply to:

1. Medicaid services for individuals not enrolled in a managed care organization; and

2. A managed care organization's coverage of Medicaid services for individuals enrolled in the managed care organization for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services.

(b) A managed care organization shall[~~not be required to~~] reimburse the same amount for a telehealth service[~~consultation~~] as the department reimburses unless a different payment rate is negotiated[~~, but may reimburse the same as the department reimburses if the managed care organization chooses to do so~~].

(2) A telehealth service[~~consultation~~] shall not be reimbursed by the department if:

(a) It is not medically necessary;

(b) The equivalent service is not covered by the department if provided in a face-to-face setting;

(c)[~~It requires a face-to-face contact with a recipient in accordance with 42 C.F.R. 447.371;~~

~~(d)~~] The telehealth care provider of the telehealth service[~~consultation~~] is:

1. Not currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

2. Not currently participating in the Medicaid program pursuant to 907 KAR 1:671;

3. Not in good standing with the Medicaid program;

4. Currently listed on the Kentucky DMS Provider Terminated and Excluded Provider List[~~of Excluded Providers~~], which is available at https://chfs.ky.gov/agencies/dms/dpi/pe/Pages/terminated.aspx [~~http://chfs.ky.gov/dms/provEnr~~]; or

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

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

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

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

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

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

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

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

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

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

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

1. Medical necessity;
2. Compliance with this administrative regulation; and
3. Compliance with applicable state and federal law.

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

1.[~~Not~~] Medically necessary;[~~, is not~~]

2. Compliant with this administrative regulation;

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

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

(c) The department shall recoup the reimbursement for a previously reimbursed telehealth service if the department determines that a telehealth service[~~consultation that it has already reimbursed for~~] was not:

1. Medically necessary;[~~, was not~~]

2. Compliant with this administrative regulation;

3. Applicable to this administrative regulation;[~~,~~] or[~~was not~~]

4. Compliant with applicable state or federal law[~~, the department shall recoup the reimbursement for the telehealth consultation from the provider~~].[~~(6) A telehealth consultation shall require:~~

~~(a) The use of two (2) way interactive video;~~

~~(b) A referral by a health care provider; and~~

~~(c) A referral by a recipient's lock-in provider if the recipient is locked in pursuant to:~~

~~1. 42 C.F.R. 431.54; and~~

~~2. 907 KAR 1:677.~~]

Section 3. Telehealth Reimbursement. (1)(a) Until July 1, 2020, the department shall reimburse an eligible telehealth care provider for a telehealth service in an amount equal to the amount paid for a comparable in-person service unless a managed care organization and provider establish a different rate.

(b) After July 1, 2020, the department shall reimburse an eligible telehealth care provider for a telehealth service in an amount that is at least eighty-five (85) percent of the amount paid for a comparable in-person service unless a managed care organization and provider establish a different rate.

(c) It is the department's goal that the enhanced amount reimbursed until July 1, 2020 allows for Kentucky Medicaid providers to:

1. Educate patients about the availability of expanded telehealth services; and

2. Purchase, expand, and implement any technological upgrades needed to more fully adopt the use of telehealth services.

(2) The department shall not be liable for reimbursing a practitioner who is employed by a provider or is an agent of a provider.

(3) A provider shall appropriately denote telehealth services by

place of service, modifiers or other means as designated by the department or as required in a managed care organization's contract with the provider or member.[~~Consultation Coverage in a Setting That is Not a Community Mental Health Center. (1) The policies in this section shall apply to a telehealth consultation provided in a setting that is not a community mental health center.~~

~~(2) The following telehealth consultations shall be covered by the department as follows:~~

~~(a) A physical health evaluation or management consultation provided by:~~

~~1. A physician including a physician:~~

~~a. With an individual physician practice;~~

~~b. Who belongs to a group physician practice; or~~

~~c. Who is employed by a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center;~~

~~2. An advanced practice registered nurse including an advanced practice registered nurse:~~

~~a. With an individual advanced practice registered nurse practice;~~

~~b. Who belongs to a group advanced practice registered nurse practice; or~~

~~c. Who is employed by a physician, federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center;~~

~~3. An optometrist; or~~

~~4. A chiropractor;~~

~~(b) A mental health evaluation or management service provided by:~~

~~1. A psychiatrist;~~

~~2. A physician in accordance with the limit established in 907 KAR 3:005;~~

~~3. An APRN in accordance with the limit established in 907 KAR 1:102;~~

~~4. A psychologist:~~

~~a. With a license in accordance with KRS 319.010(6);~~

~~b. With a doctorate degree in psychology;~~

~~c. Who is directly employed by a psychiatrist; and~~

~~d. If:~~

~~(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and~~

~~(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;~~

~~5. A licensed professional clinical counselor:~~

~~a. Who is directly employed by a psychiatrist; and~~

~~b. If:~~

~~(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and~~

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

~~6. A licensed clinical social worker:~~

~~a. Who is directly employed by a psychiatrist; and~~

~~b. If:~~

~~(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient during the encounter; and~~

~~(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or~~

~~7. A licensed marriage and family therapist:~~

~~a. Who is directly employed by a psychiatrist; and~~

~~b. If:~~

~~(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient during the encounter; and~~

~~(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;~~

~~(c) Individual or group psychotherapy provided by:~~

~~1. A psychiatrist;~~

~~2. A physician in accordance with the limit established in 907 KAR 3:005;~~

~~3. An APRN in accordance with the limit established in 907 KAR 1:102;~~

~~4. A psychologist:~~

~~a. With a license in accordance with KRS 319.010(6);~~

~~b. With a doctorate degree in psychology;~~

~~c. Who is directly employed by a psychiatrist; and~~

~~d. If:~~

~~(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient or recipients during the encounter; and~~

~~(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;~~

~~5. A licensed professional clinical counselor:~~

~~a. Who is directly employed by a psychiatrist; and~~

~~b. If:~~

~~(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient or recipients during the encounter; and~~

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

~~6. A licensed clinical social worker:~~

~~a. Who is directly employed by a psychiatrist; and~~

~~b. If:~~

~~(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient or recipients during the encounter; and~~

~~(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed clinical social worker is directly employed; or~~

~~7. A licensed marriage and family therapist:~~

~~a. Who is directly employed by a psychiatrist; and~~

~~b. If:~~

~~(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient or recipients during the encounter; and~~

~~(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;~~

~~(d) Pharmacologic management provided by:~~

~~1. A physician in accordance with the limit established in 907 KAR 3:005;~~

~~2. An APRN in accordance with the limit established in 907 KAR 1:102; or~~

~~3. A psychiatrist;~~

~~(e) A psychiatric, psychological, or mental health diagnostic interview examination provided by:~~

~~1. A psychiatrist;~~

~~2. A physician in accordance with the limit established in 907 KAR 3:005;~~

~~3. An APRN in accordance with the limit established in 907 KAR 1:102;~~

~~4. A psychologist:~~

~~a. With a license in accordance with KRS 319.010(6);~~

~~b. With a doctorate degree in psychology;~~

~~c. Who is directly employed by a psychiatrist; and~~

~~d. If:~~

~~(i) The psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and~~

~~(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the psychologist is directly employed;~~

~~5. A licensed professional clinical counselor:~~

~~a. Who is directly employed by a psychiatrist; and~~

~~b. If:~~

~~(i) The psychiatrist by whom the licensed professional clinical counselor is directly employed also interacts with the recipient during the encounter; and~~

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

~~6. A licensed clinical social worker:~~

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed clinical social worker is directly employed also interacts with the recipient during the encounter; and

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

7. A licensed marriage and family therapist:

a. Who is directly employed by a psychiatrist; and

b. If:

(i) The psychiatrist by whom the licensed marriage and family therapist is directly employed also interacts with the recipient during the encounter; and

(ii) The telehealth consultation is billed under the NPI of the psychiatrist by whom the licensed marriage and family therapist is directly employed;

(f) Individual medical nutrition therapy consultation services provided by a:

1. Licensed dietitian:

a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, a hospital's outpatient department, or the Department for Public Health; and

b. If the telehealth consultation is billed under the:

(i) NPI of the physician, federally qualified health care center, rural health clinic, hospital's outpatient department, or primary care center by whom the licensed dietitian is directly employed; or

(ii) Department for Public Health if the licensed dietitian works for the Department for Public Health; or

2. Certified nutritionist:

a. Who is directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, a hospital's outpatient department, or the Department for Public Health; and

b. If the telehealth consultation is billed under the:

(i) NPI of the physician, federally qualified health care center, rural health clinic, hospital's outpatient department, or primary care center by whom the certified nutritionist is directly employed; or

(ii) Department for Public Health if the certified nutritionist works for the Department for Public Health;

(g) Individual diabetes self-management training consultation if:

1. Ordered by a:

a. Physician;

b. APRN directly employed by a physician; or

c. Physician assistant directly employed by a physician;

2. Provided by a:

a. Physician;

b. APRN directly employed by a physician;

c. Physician assistant directly employed by a physician;

d. Registered nurse directly employed by a physician; or

e. Licensed dietitian directly employed by a physician, federally qualified health care center, rural health clinic, primary care center, a hospital's outpatient department, or the Department for Public Health; and

3. The telehealth consultation is billed under the:

a. NPI of the physician, federally qualified health care center, rural health clinic, hospital's outpatient department, or primary care center by whom the provider is directly employed; or

b. Department for Public Health if the provider works for the Department for Public Health;

(h) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by a physician:

1. If direct physician contact occurs during the evaluation;

2. If the telehealth consultation is billed under the physician's NPI; and

3. In accordance with the limits established in 907 KAR 3:005;

(i) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by or is an agent of a nursing facility:

1. If the telehealth consultation is billed under the nursing facility's NPI; and

2. In accordance with the limits established in 907 KAR 1:065;

(j) An occupational therapy evaluation or treatment provided by an occupational therapist who is directly employed by or is an agent of a home health agency:

1. If the telehealth consultation is billed under the home health agency's NPI; and

2. In accordance with the limits established in 907 KAR 1:030;

(k) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by a physician:

1. If direct physician contact occurs during the evaluation;

2. If the telehealth consultation is billed under the physician's NPI; and

3. In accordance with the limits established in 907 KAR 3:005;

(l) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by or is an agent of a hospital's outpatient department:

1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and

2. In accordance with the limits established in 907 KAR 10:014;

(m) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by or is an agent of a home health agency:

1. If the telehealth consultation is billed under the home health agency's NPI; and

2. In accordance with the limits established in 907 KAR 1:030;

(n) A physical therapy evaluation or treatment provided by a physical therapist who is directly employed by or is an agent of a nursing facility:

1. If the telehealth consultation is billed under the nursing facility's NPI; and

2. In accordance with the limits established in 907 KAR 1:065;

(o) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by a physician:

1. If direct physician contact occurs during the evaluation or treatment;

2. If the telehealth consultation is billed under the physician's NPI; and

3. In accordance with the limits established in 907 KAR 3:005;

(p) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by or is an agent of a hospital's outpatient department:

1. If the telehealth consultation is billed under the hospital's outpatient department's NPI; and

2. In accordance with the limits established in 907 KAR 10:014;

(q) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by or is an agent of a home health agency:

1. If the telehealth consultation is billed under the home health agency's NPI; and

2. In accordance with the limits established in 907 KAR 1:030;

(r) A speech therapy evaluation or treatment provided by a speech-language pathologist who is directly employed by or is an agent of a nursing facility:

1. If the telehealth consultation is billed under the nursing facility's NPI; and

2. In accordance with the limits established in 907 KAR 1:065;

(s) A neurobehavioral status examination provided by:

1. A psychiatrist;

2. A physician in accordance with the limit established in 907 KAR 3:005; or

3. A psychologist:

a. With a license in accordance with KRS 319.010(6);

b. With a doctorate degree in psychology; and

c. Who is directly employed by a physician or a psychiatrist:

(i) In accordance with the limits established in 907 KAR 3:005;

(ii) If the physician or psychiatrist by whom the psychologist is directly employed also interacts with the recipient during the encounter; and

(iii) If the telehealth consultation is billed under the NPI of the physician or psychiatrist by whom the psychologist is directly employed; or

(t) End-stage renal disease monitoring, assessment, or counseling consultations for a home dialysis recipient provided by:

1. A physician directly employed by a hospital's outpatient department if the telehealth consultation is billed under the hospital's outpatient department's NPI; or

2. An APRN directly employed by a hospital's outpatient department if the telehealth consultation is billed under the hospital's outpatient department's NPI.

Section 4. Telehealth Consultation Coverage in a Community Mental Health Center. (1) The policies in this section shall apply to a tele-health consultation provided via a community mental health center.

(2) The limits, restrictions, exclusions, or policies:

(a) Which apply to a service provided face-to-face in a community mental health center shall apply to a telehealth consultation or service provided via telehealth via a community mental health center; and

(b) Established in 907 KAR 1:044 shall apply to a telehealth consultation or service provided via:

1. Telehealth; and

2. A community mental health center.

(3) The department shall not reimburse for a telehealth consultation provided via a community mental health center if:

(a) The consultation is not billed under the community mental health center's national provider identifier; or

(b) The person who delivers the telehealth consultation is not:

1. Directly employed by the community mental health center; or

2. An agent of the community mental health center.

(4) The following telehealth consultations provided via a community mental health center shall be covered by the department as follows:

(a) A psychiatric diagnostic interview examination provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist; or

b. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

(b) A psychological diagnostic interview examination provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist; or

b. A psychologist with a license in accordance with KRS 319.010(6);

(c) Pharmacologic management provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A physician;

b. A psychiatrist; or

c. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

(d) Group psychotherapy provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist;

b. A psychologist with a license in accordance with KRS 319.010(6);

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric registered nurse; or

g. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

(e) Mental health evaluation or management emergency services provided:

1. In accordance with 907 KAR 1:044; and

2. By:

a. A psychiatrist;

b. A psychologist with a license in accordance with KRS 319.010(6);

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric medical resident;

g. A psychiatric registered nurse; or

h. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057;

(f) A mental health assessment provided:

1. In accordance with 907 KAR 1:044; and

2. By a psychologist with a license in accordance with KRS 319.010(6); or

(g) Individual psychotherapy provided:

1. In accordance with 907 KAR 1:044 except that "face-to-face" shall include two (2) way interactive video for the purposes of individual psychotherapy provided via a community mental health center; and

2. By:

a. A psychiatrist;

b. A psychologist with a license in accordance with KRS 319.010(6);

c. A licensed professional clinical counselor;

d. A licensed marriage and family therapist;

e. A licensed clinical social worker;

f. A psychiatric registered nurse; or

g. An APRN who:

(i) Is certified in the practice of psychiatric mental health nursing; and

(ii) Meets the requirements established in 201 KAR 20:057.

(5) If a provision established in 907 KAR 1:044 or the material incorporated by reference into 907 KAR 1:044 is in contrast with subsection (4)(g)1. of this section, the policy established in subsection (4)(g)1 of this section shall supersede the contrary statement.

Section 5. Reimbursement. (1)(a) The department shall reimburse a telehealth provider who is eligible for reimbursement from the department for a telehealth consultation an amount equal to the amount paid for a comparable in-person service in accordance with:

1. 907 KAR 3:010 if the service was provided:

a. By a physician; and

b. Not in the circumstances described in subparagraphs 3., 4., 5., or 6. of this paragraph;

2. 907 KAR 1:104 if the service was provided:

a. By an advanced practice registered nurse; and

b. Not in the circumstances described in subparagraphs 3., 4., 5., or 6. of this paragraph;

3. 907 KAR 1:055 if the service was provided and billed through a federally-qualified health center, federally-qualified health center look-alike, rural health clinic, or primary care center;

4. 907 KAR 10:015 if the service was provided and billed through a hospital outpatient department;

5. 907 KAR 1:031 if the service was provided and billed through a home health agency; or

6. 907 KAR 1:065 if the service was provided and billed through a nursing facility.

(b)1. Reimbursement for a telehealth consultation provided by a practitioner who is employed by a provider or is an agent of a provider shall be a matter between the provider and the practitioner.

2. The department shall not be liable for reimbursing a practitioner who is employed by a provider or is an agent of a provider.

(c) A managed care organization shall not be required to reimburse the same amount for a telehealth consultation as the department reimburses, but may reimburse the same amount as the department reimburses if the managed care organization chooses to do so.

(2) A telehealth provider shall bill for a telehealth consultation using the appropriate two (2) letter "GT" modifier.

(3) The department shall not require the presence of a health

~~care provider requesting a telehealth consultation at the time of the telehealth consultation unless it is requested by a telehealth provider or telehealth practitioner at the hub site.~~

~~(4) The department shall not reimburse for transmission costs.~~

~~Section 6. Confidentiality and Data Integrity. (1) A telehealth consultation shall be performed on a secure telecommunications line or utilize a method of encryption adequate to protect the confidentiality and integrity of the telehealth consultation information.~~

~~(2) Both a hub site and a spoke site shall use authentication and identification to ensure the confidentiality of a telehealth consultation.~~

~~(3) A telehealth provider or telehealth practitioner of a telehealth consultation shall implement confidentiality protocols that include:~~

~~(a) Identifying personnel who have access to a telehealth transmission;~~

~~(b) Usage of unique passwords or identifiers for each employee or person with access to a telehealth transmission; and~~

~~(c) Preventing unauthorized access to a telehealth transmission.~~

~~(4) A telehealth provider's or telehealth practitioner's protocols and guidelines shall be available for inspection by the department upon request.~~

~~Section 7. Informed Consent. (1) Before providing a telehealth consultation to a recipient, a telehealth provider or telehealth practitioner shall document written informed consent from the recipient and shall ensure that the following written information is provided to the recipient in a format and manner that the recipient is able to understand:~~

~~(a) The recipient shall have the option to refuse the telehealth consultation at any time without affecting the right to future care or treatment and without risking the loss or withdrawal of a Medicaid benefit to which the recipient is entitled;~~

~~(b) The recipient shall be informed of alternatives to the telehealth consultation that are available to the recipient;~~

~~(c) The recipient shall have access to medical information resulting from the telehealth consultation as provided by law;~~

~~(d) The dissemination, storage, or retention of an identifiable recipient image or other information from the telehealth consultation shall comply with 42 U.S.C. 1301 et seq., 45 C.F.R. Parts 160, 162, 164, KRS 205.566, 216.2927, and any other federal law or regulation or state law establishing individual health care data confidentiality policies;~~

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

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

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

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

~~Section 8. Medical Records. (1) A request for a telehealth consultation from a health care provider and the medical necessity for the telehealth consultation shall be documented in the recipient's medical record.~~

~~(2) A health care provider shall keep a complete medical record of a telehealth consultation provided to a recipient and follow applicable state and federal statutes and regulations for medical recordkeeping and confidentiality in accordance with KRS 194A.060, 422.317, 434.840 - 434.860, 42 C.F.R. 431.300 to 431.307, and 45 C.F.R. 164.530(j).~~

~~(3)(a) A medical record of a telehealth consultation shall be maintained in compliance with 907 KAR 1:672 and 45 C.F.R. 164.530(j).~~

~~(b) A health care provider shall have the capability of generating a hard copy of a medical record of a telehealth consultation.~~

~~(4) Documentation of a telehealth consultation by the referring health care provider shall be included in the recipient's medical record and shall include:~~

~~(a) The diagnosis and treatment plan resulting from the telehealth consultation and a progress note by the referring health care provider if present at the spoke site during the telehealth consultation;~~

~~(b) The location of the hub site and spoke site;~~

~~(c) A copy of the document signed by the recipient indicating the recipient's informed consent to the telehealth consultation;~~

~~(d) Documentation supporting the medical necessity of the telehealth consultation; and~~

~~(e) The referral order and complete information from the referring health care provider who requested the telehealth consultation for the recipient.~~

~~(5)(a) A telehealth provider's or telehealth practitioner's diagnosis and recommendations resulting from a telehealth consultation shall be documented in the recipient's medical record at the office of the health care provider who requested the telehealth consultation.~~

~~(b) Except as established in paragraph (c) of this subsection, a telehealth provider or telehealth practitioner shall send a written report regarding a telehealth consultation within thirty (30) days of the consultation to the referring health care provider.~~

~~(c) If a community mental health center was the referring health care provider and the provider of the telehealth consultation for a recipient, the requirement in paragraph (b) of this subsection shall not apply.~~]

Section 4[~~9~~]. Federal Financial Participation. A policy established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

Section 5[~~10~~]. Appeal Rights. (1) An appeal of a department determination regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

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

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

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

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 20, 2018

FILED WITH LRC: December 28, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Chase Coffey, Executive Administrative

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes Department for Medicaid Services (DMS) policies relating to telehealth. The coverage policies in this administrative regulation shall apply to a managed care organization's (MCO's) coverage of Medicaid services for individuals enrolled in the MCO for the purpose of receiving Medicaid or Kentucky Children's Health Insurance Program services. An MCO is only required to reimburse according to this administrative regulation depending on the rates negotiated with providers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS policies relating to telehealth in accordance with KRS 194A.125 and KRS 205.559.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS telehealth policies.

(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 DMS telehealth policies.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation provide new definitions for "telehealth", "telehealth service", "place of service", and "telehealth care provider". A new section relates to telehealth reimbursement. The administrative regulation is amended to allow a telehealth care provider to be reimbursed in an amount equal to the amount paid for a comparable in-person service until July 2020, after which time a telehealth care provider shall be reimbursed at least 85% of the amount paid for a comparable in-person service, and to require providers to appropriately denote telemedicine services. In addition, many of the previous provisions are being repealed.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that policies stated in the administrative regulation are consistent with policies approved by CMS for federal funding.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with KRS 205.559 and conforming the administrative regulation's policies to those approved by CMS; thus, ensuring federal funding for the policies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by conforming the administrative regulation's policies to those approved by CMS; thus, ensuring federal funding for the policies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, MCOs, any enrolled and credentialed provider who could provide appropriate telehealth services, and Medicaid members.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: To be reimbursed for a telehealth service, a provider will have to comply with the policies and requirements established in this administrative regulation. Participation is optional, not mandatory.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the entities regulated by the administrative regulation as participation is optional.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Those who opt to perform telehealth services in compliance with this administrative regulation will be reimbursed for services rendered.

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

(a) Initially: The department anticipates that it will incur no additional expenses in the implementation of these amendments in the first year of operation.

(b) On a continuing basis: The department anticipates that it will incur no additional expenses in implementing these amendments on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering was not applied as telehealth services standards are applied equally to all affected individuals.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.010, 194A.030(2), 194A.125, 205.520, 205.559

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

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

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

(c) How much will it cost to administer this program for the first year? The department anticipates no additional costs in administering these amendments in the first year.

(d) How much will it cost to administer this program for subsequent years? The department anticipates no additional costs in administering these amendments in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Program Integrity
(Amendment)

907 KAR 5:005. Health Insurance Premium Payment (HIPP) Program.

RELATES TO: 42 C.F.R. 400.203, 430.110, 26 U.S.C. 500(b)(1), 4980B, 29 U.S.C. 1161-1169, 42 U.S.C. 1396e(a)-(e)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 42 U.S.C. 1396e(a)-(e)[.]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed[,] or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. 42 U.S.C. 1396e(a) through (e) authorizes states to establish a health insurance premium payment, or HIPP, program to provide health insurance coverage outside of Medicaid to Medicaid enrollees, and any family member of Medicaid enrollees, if the department determines that HIPP program participation would be cost effective for the department. This administrative regulation establishes the Kentucky integrated[Kentucky's] health insurance premium payment program requirements as authorized by 42 U.S.C. 1396e(a) through (e).

Section 1. Definitions.

(1) "Buying in" means purchasing benefits from Medicare on behalf of an individual.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(4) "Group health insurance plan" means any plan, including a self-insured plan, of, or contributed to by, an employer to provide health care directly or otherwise to the employer's employees, former employees, or the families of the employees or former employees, if the plan:

(a) Meets the criteria established in 26 U.S.C. 5000(b)(1); and

(b) Includes continuation coverage pursuant to 26 U.S.C. 4980B or 29 U.S.C. 1161 to 1169.

(5)[~~"Kentucky integrated health insurance premium payment program participant" or "KI-HIPP program participant" means an individual receiving health insurance benefits in accordance with this administrative regulation.~~

~~(6)~~] "Income" means:

(a) Wages, salary, or compensation for labor or services;

(b) Money received from a statutory benefit including Social Security, Veteran's Administration pension, black lung benefit, or railroad retirement benefit; or

(c) Money received from any pension plan, rental property, or an investment including interest or dividends.

(6)[~~(7)~~] "Income deduction" means a deduction from an individual's income for the
purpose of obtaining or trying to obtain Medicaid eligibility.

(7) "Kentucky integrated health insurance premium payment program participant" or "KI-HIPP program participant" means an individual receiving health insurance benefits in accordance with this administrative regulation.

(8) "Medicaid" means the Kentucky Medicaid program.

(9) "Medicaid enrollee" means an individual eligible for and participating in Medicaid pursuant to 907 KAR 1:005[1:011], 907 KAR 20:010[1:605], 907 KAR 20:020[1:640], and 907 KAR 20:025[1:645].

(10) "Spend-down program" means a program by which an individual becomes eligible for Medicaid benefits:

(a) By spending down income in excess of the Medicaid income threshold; and

(b) In accordance with 907 KAR 20:020[1:640].

(11) "State plan" is defined in 42 C.F.R. 430.10.

(12) "Wrap-around coverage" means coverage of a benefit not covered by an individual's group health insurance plan.

Section 2. KI-HIPP Program Eligibility and Enrollment.

(1) A Medicaid enrollee, or a person acting on the Medicaid enrollee's behalf, shall cooperate in providing information to the department necessary for the department to establish availability and cost effectiveness of a group health insurance plan by:

(a) Completing the Healthcare Coverage Form[~~Kentucky Health Insurance Premium Payment Program Application~~]; and

(b) Submitting the Healthcare Coverage Form[~~Kentucky Health Insurance Premium Payment Program Application~~] to the individual's local Department for Community Based Services office, the office administering the Kentucky integrated health insurance premium payment program, or on-line via the Kentucky Online Gateway self-service portal.

(2) A Medicaid enrollee or beneficiary shall participate in the KI-HIPP program if the department determines in accordance with this administrative regulation that the Medicaid enrollee or beneficiary's participation in the KI-HIPP program would be cost-effective.

(3) If a Medicaid enrollee, KI-HIPP program applicant, participant, parent, guardian, or caretaker fails to provide information to the department, within thirty (30)[~~ten (10)~~] days of the department's request, necessary to determine availability and cost effectiveness of a group health insurance plan, the department shall:

(a) Not enroll the applicant in the KI-HIPP program unless good cause for failure to cooperate is demonstrated to the department within thirty (30) days of the department's denial; and

(b) Terminate the individual from the Medicaid program pursuant to 907 KAR 20:060.

(4)[~~(3)~~] Good cause for failure to cooperate shall exist if:

(a) There was a serious illness or death of the applicant, participant, parent, guardian, or caretaker or of a member of the applicant's, participant's, parent's, guardian's, or caretaker's immediate family;

(b) There was a fire, tornado, flood, or similar family emergency or household disaster affecting the applicant, participant, parent, guardian, or caretaker or member of his or her immediate family;

(c) The applicant, participant, parent, guardian, or caretaker demonstrates that a good cause beyond that individual's control has occurred; or

(d) There was a failure to receive the department's request for information or notification for a reason not attributable to the applicant, participant, parent, guardian, or caretaker[~~occurred~~]. The lack of a forwarding address shall be attributable to the applicant, participant, parent, guardian, or caretaker.

(5)[~~(4)~~] For a Medicaid enrollee who is a KI-HIPP program participant:

(a) The department shall pay all group health insurance plan premiums and deductibles, coinsurance and other cost-sharing obligations for items and services otherwise covered under Medicaid, up to the Medicaid allowed amount, minus any Medicaid cost-sharing that would normally be paid, including the cost-sharing required under 895 KAR 1:010, 1:015, and 907 KAR 1:604, as applicable; and

(b)1. The individual's group health insurance plan shall be the primary payer; and

2. The department shall be the payer of last resort.

(6)[~~(5)~~] For a KI-HIPP program participating family member who is not a Medicaid enrollee:

(a) The department shall pay a KI-HIPP program premium; and

(b) The department shall not pay a deductible, coinsurance or other cost-sharing obligation.

(7)[~~(6)~~] If an individual who was a Medicaid enrollee at the time the department initiated a KI-HIPP program cost effectiveness review for the individual loses Medicaid eligibility by the time the cost effectiveness review has been conducted, the department shall not enroll the individual or any family member into the KI-HIPP program.

Section 3. Wrap-around Coverage.

(1) If a service to which a health insurance premium payment program participant would be entitled via Medicaid is not provided by the individual's group health insurance plan, the department shall reimburse for the service.

(2) For a service referenced in subsection (1) of this section, the department shall reimburse:

(a) The provider of the service; and

(b) In accordance with the department's administrative regulation governing reimbursement for the given service. For example, a wrap-around dental service shall be reimbursed in accordance with 907 KAR 1:626.

Section 4. Cost Effectiveness.

(1) Enrollment in a group health insurance plan shall be considered cost effective if the cost of paying the premiums, coinsurance, deductibles and other cost-sharing obligations, and additional administrative costs is estimated to be less than the amount paid for an equivalent set of Medicaid services.

(2) When determining cost effectiveness of a group health insurance plan, the department shall consider the following information:

(a) The cost of:

1. The insurance premium,

2. The coinsurance,

3. Medicaid's anticipated expenses for the:

a. KI-HIPP program participant;

b. KI-HIPP program participant's household; or

c. KI-HIPP program participant's subdivision of a household, and

4. The deductible;

(b) The scope of services covered under the insurance plan, including exclusions for pre-existing conditions, exclusions to enrollment, and lifetime maximum benefits imposed;

(c) The average anticipated Medicaid utilization:

1. By age, sex, and coverage group for persons covered under the insurance plan; and

2. Using a statewide average for the geographic component; and

(d)[~~The specific health-related circumstances of the persons covered under the insurance plan; and~~

~~(e)~~] Annual administrative expenditures of an amount determined by the department per Medicaid participant covered under the group health insurance plan.

Section 5. Cost Effectiveness Review.

(1) The department shall complete a cost effectiveness review[~~:~~

~~(a)~~] at least annually[~~once every six (6) months~~] for an employer-related group health insurance plan[~~,~~] or

[~~(b) Annually for~~] a non-employer-related group health insurance plan.

(2) The department shall perform a cost effectiveness re-determination if:

(a) A predetermined premium rate, deductible, or coinsurance increases;

(b) Any of the individuals covered under the group health insurance plan lose full Medicaid eligibility; or

(c) There is a:

1. Change in Medicaid eligibility;

2. Loss of employment if the insurance is through an employer; or

3. Decrease in the services covered under the policy.

(3)(a) A health insurance premium payment program participant who is a Medicaid enrollee, or a person on that individual's behalf, shall report all changes concerning health insurance coverage to the Third Party Liability Branch office within the Department for Medicaid Services that administers the Kentucky Integrated Health Insurance Premium Payment program, or to the participant's local Department for Community Based Services (DCBS), Division of Family Support, within ten (10) days of the change.

(b) Except as allowed in subsection (4) of this section, if a Medicaid enrollee who is a health insurance premium payment program participant fails to comply with paragraph (a) of this subsection, the department shall:

1. Disenroll[~~from the HIPP program~~] the KI-HIPP program participating Medicaid enrollee, and any family member enrolled in the KI-HIPP program directly through the individual, if applicable, from the KI-HIPP program; and

2. Terminate the KI-HIPP program participating enrollee, and any family member enrolled in the KI-HIPP program directly through the individual from the Medicaid program unless the family member qualifies for Medicaid eligibility independently of the KI-HIPP participating enrollee.

(4) The department shall not disenroll or terminate an individual, or any family member enrolled in the KI-HIPP program directly through the individual, from KI-HIPP program participation if the individual demonstrates to the department, within thirty (30) days of notice of KI-HIPP program disenrollment, good cause for failing to comply with subsection (3) of this section.

(5) Good cause for failing to comply with subsection (3) of this section shall exist if:

(a) There was a serious illness or death of the individual, parent, guardian, or caretaker or a member of the individual's, parent's guardian's, or caretaker's immediate family;

(b) There was a fire, tornado, flood, or similar family emergency or household disaster affecting the applicant, participant, parent, guardian, or caretaker or member of his or her immediate family;

(c) The individual, parent, guardian, or caretaker demonstrates that a good cause beyond that individual's control has occurred; or

(d) There was a failure to receive the department's request for information or notification for a reason not attributable to the individual, parent, guardian, or caretaker. The lack of a forwarding address shall be attributable to the individual, parent, guardian, or caretaker.

Section 6. Kentucky HEALTH participation in KI-HIPP.

(1) A Kentucky HEALTH member who has access to employer-sponsored health insurance through an employer shall be eligible for mandatory enrollment within KI-HIPP as follows:

(a) After concurrently or consecutively completing:

1. Twelve (12) months of Kentucky HEALTH enrollment; and

2. Twelve (12) months of employment with access to compatible employer-sponsored health insurance;

(b) If the employer-sponsored health insurance is compatible with the KI-HIPP program; and

(c) If the employer-sponsored health insurance is cost-effective for the entire household.

(2) A Kentucky HEALTH member who is not currently required to participate in KI-HIPP pursuant to subsection (1) of this section may elect to participate in KI-HIPP and submit documentation for an eligibility determination as provided in Section 2 of this administrative regulation.

(3)(a) A Kentucky HEALTH member may elect to participate in KI-HIPP as an employee if the beneficiary's employer sponsored insurance program is determined to be cost-effective for the employee, but not for the entire household; or

(b) A Kentucky HEALTH member may elect to participate in KI-HIPP as a cost-effective subdivision of the beneficiary's household if the employee participates in KI-HIPP but the entire household is determined to not be cost-effective.

(4) A Kentucky HEALTH beneficiary participating in the KI-HIPP program shall:

(a) Receive a MyRewards Account pursuant to 895 KAR 1:030;

(b) Accrue dollars in a MyRewards account by completing any applicable activities pursuant to 895 KAR 1:030;

(c) Receive an exemption from the PATH requirement established in 895 KAR 1:020;

(d) Receive wraparound services as provided pursuant to 895 KAR 1:010 depending on the beneficiary's benefits under the beneficiary's employer sponsored insurance program; and

(e) Comply with any cost-sharing requirement established pursuant to Title 895 KAR or 907 KAR 1:604.

Section 7. Coverage of Non-Medicaid Family Members.

(1) If determined to be cost effective, the department shall enroll a family member who is not a Medicaid enrollee into the KI-HIPP program if the family member has group health insurance plan coverage through which the department can obtain health insurance coverage for a Medicaid-enrollee in the family.

(2) The needs of a family member who is not a Medicaid enrollee shall not be taken into consideration when determining cost effectiveness of a group health insurance plan.

(3) The department shall:

(a) Pay a KI-HIPP program premium on behalf of a KI-HIPP program participating family member who is not a Medicaid enrollee; and

(b) Not pay a deductible, coinsurance, or other cost-sharing obligation on behalf of a KI-HIPP program participating family member who is not a Medicaid enrollee.

Section 8.[~~7.~~] Exceptions. The department shall not pay a premium:

(1) For a group health insurance plan if the plan is designed to provide coverage for a period of time less than the standard one-year coverage period;

(2) For a group health insurance plan if the plan is a school plan offered on the basis of attendance or enrollment at the school;

(3) If the premium is used to meet a spend-down obligation and all persons in the household are eligible or potentially eligible only under the spend-down program pursuant to 907 KAR 1:640. If any household member is eligible for full Medicaid benefits, the premium shall:

(a) Be paid if it is determined to be cost effective when considering only the household members receiving full Medicaid coverage; and

(b) Not be allowed as a deduction to meet the spend-down obligation for those household members participating in the spend-down program.

(4) For a group health insurance plan if the plan is an indemnity policy which supplements the policy holder's income or pays only a predetermined amount for services covered under the policy.

Section 9.[~~8.~~] Duplicate Policies.

(1) If more than one (1) group health insurance plan or policy is available, the department shall pay only for the most cost-effective plan except as allowed in subsection (2) of this section.

(2) If the department is buying in to the cost of Medicare Part A or Part B for an eligible Medicare beneficiary, the cost of premiums for a Medicare supplemental insurance policy shall also be paid if the department determines that it is likely to be cost effective to do so.

Section 10.[~~9.~~] Discontinuance of Premium Payments.

(1) If all Medicaid-enrollee household members covered under a group health insurance plan lose Medicaid eligibility, the department shall discontinue KI-HIPP program payments as of the month of Medicaid ineligibility.

(2) If one (1) or more, but not all, of a household's Medicaid-enrollee members covered under a group health insurance plan lose Medicaid eligibility, the department shall re-determine cost effectiveness of the group health insurance plan in accordance with Section 5(2) of this administrative regulation.

Section 11.[~~10.~~] Kentucky Integrated Health Insurance Premium Payment Program Payment Effective Date.

(1)(a) KI-HIPP program payments for cost-effective group health insurance plans shall begin with the month the health insurance premium payment program application is received by the department, or the effective date of Medicaid eligibility, whichever is later.

(b) If an individual is not currently enrolled in a cost effective group health insurance plan, premium payments shall begin in the month in which the first premium payment is due after enrollment occurs.

(2) The department shall not make a payment for a premium which is used as an income deduction when determining individual eligibility for Medicaid.

Section 12.[~~11.~~] Premium Refunds. The department shall be entitled to any premium refund due to:

(1) Overpayment of a premium; or

(2) Payment for an inactive policy for any time period for which the department paid the premium.

Section 13.[~~12.~~] Notice. The department shall inform a Kentucky integrated health insurance premium payment program:

(1) Applicant, in writing, of the department's initial decision regarding cost effectiveness of a group health insurance plan and KI-HIPP program payment; or

(2) Participating household, in writing:

(a) If KI-HIPP program payments are being discontinued due to Medicaid eligibility being lost by all individuals covered under the group health insurance plan;

(b) If the group health insurance plan is no longer available to the family; or

(c) Of a decision to discontinue KI-HIPP program payment due to the department's determination that the policy is no longer cost effective.

Section 14.[~~13.~~] Federal Financial Participation.

(1) The Kentucky integrated[~~department's~~] health insurance premium program shall be contingent upon the receipt of federal financial participation for the program.

(2) If federal financial participation is not provided to the department for the Kentucky integrated[~~department's~~] health insurance premium program, the program shall cease to exist.

(3) If the Centers for Medicare and Medicaid Services (CMS) disapproves a provision stated in an amendment to the state plan, which is also stated in this administrative regulation, the provision shall be null and void.

Section 15[~~14~~]. Incorporation by Reference.

(1) The "Healthcare Coverage Form", November 2018[~~"Kentucky Health Insurance Premium Payment Program Application", September 2010~~] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from the department's Web site at http://www.chfs.ky.gov/dms/incorporated.htm.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: December 21, 2018

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Chase Coffey, Executive Administrative

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) Kentucky integrated health insurance premium payment (KI-HIPP) program provisions. The KI-HIPP program is a program by which DMS purchases health insurance coverage for an individual by paying the individual's (and family members if applicable) health insurance premiums, deductibles and coinsurance if doing so would be cost effective to DMS. To qualify for the KI-HIPP program, an individual (or at least one individual in the case of a family enrolling in the KI-HIPP program) must be Medicaid eligible; however, the actual benefits are provided by the individual's group health insurance carrier.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide cost-effective medical benefits to Medicaid beneficiaries; thus, prudently utilizing DMS's resources.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing cost-effective medical benefits to Medicaid individuals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing cost-effective medical benefits to Medicaid beneficiaries.

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

(a) How the amendment will change this existing administrative regulation: The amendments change the administrative regulation by changing the name of the program to KI-HIPP, requiring that the cost-effectiveness analysis include the department's managed care capitation rate, requiring an annual cost-effectiveness review, terminating enrollees from Medicaid that do not report ESI, allowing reporting and submission of forms to the KI-HIPP office, and deleting an application form incorporated by reference. In addition, the amendments integrate the establishment of the Kentucky HEALTH program within the scope of this administrative regulation.

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to update the health insurance premium payment program.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by providing cost-effective medical benefits to Medicaid beneficiaries.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing cost-effective medical benefits to Medicaid beneficiaries.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid beneficiaries, MCOs, providers, and employers who employ Medicaid beneficiaries.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Potential KI-HIPP program enrollees will need to provide all required information, including their health insurance carrier's information, to DMS.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed on the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Medicaid beneficiaries who have access to private health insurance via their employers will still receive the full benefits provided through the Medicaid program as well as payment of the premiums for the health insurance through the Medicaid program.

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

(a) Initially: The Department for Medicaid Services (DMS) estimates savings of three-hundred and fifty dollars ($350) per KI-HIPP participant per month.

(b) On a continuing basis: The Department for Medicaid Services (DMS) estimates savings of three-hundred and fifty dollars ($350) per KI-HIPP participant per month. DMS intends to aggressively educate potential KI-HIPP program participants regarding the benefits of the KI-HIPP program in order to achieve a high participation rate.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds from state general fund appropriations.

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

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

(9) Tiering: Is tiering applied? Tiering is applied as children are exempt from Medicaid disenrollment pursuant to 42 U.S.C. 1396e(b)(2).

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520(3), 205.560(1), 194A.030(2), 194A.050(1), 194A.010(1) and 42 U.S.C. 1396e(a) through (e).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The Department for Medicaid Services projects no revenue to be generated by the administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The Department for Medicaid Services projects no revenue to be generated by the administrative regulation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services anticipates no additional costs in the administration of this program in the first year. The Department for Medicaid Services estimates savings of three-hundred and fifty dollars ($350) per KI-HIPP participant per month.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services anticipates no additional cost sin the administration of this program in subsequent years. The Department for Medicaid Services estimates savings of three-hundred and fifty dollars ($350) per KI-HIPP participant per month. The Department for Medicaid Services intends to aggressively educate potential KI-HIPP program

participants regarding the benefits of the KI-HIPP program in order to achieve a high participation rate.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396e(a) through (e).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid).

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter or different responsibilities than the federal requirements.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Behavioral Health
(Amendment)

908 KAR 1:370. Licensing procedures, fees, and general requirements for[and standards for persons and agencies operating nonmedical - and] nonhospital-based alcohol and other drug treatment entities[abuse treatment programs].

RELATES TO: KRS 13B.050, 13B.125, 17.500, 209.030, 214.181, 214.625, 216B.020(2), 222.003, 222.005, 222.231, 222.271, 222.441, 222.462, 222.990, 309.080, 309.0831, 309.130, 311.571, 314.011, 319.050, 319.056, 319.064, 335.080, 335.100, 335.300, 335.500, 422.317, 439.3401, 620.030, 42 C.F.R. Part 2, 45 C.F.R. Parts 160, 164, 42 U.S.C. 1320d-2–1320d-8, 42 U.S.C. 290ee-3[222.003(1), 222.005, 222.231, 222.990]

STATUTORY AUTHORITY: KRS 222.231(2)[KRS 194A.050, 222.231, EO 2004-726]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.231(2) requires the cabinet to promulgate administrative regulations to establish requirements and standards for treatment programs, including licensing fees, application, procedures for renewal and revocation, procedures for program evaluation, and minimum operating, training, and maintenance of patient records standards. This administrative regulation establishes licensing procedures, fees, responsibilities of the governing authority, quality assurance and utilization review, policies and procedures, staff qualifications and training, client rights, client records, assessment, treatment planning, and adverse action procedures for outpatient and residential alcohol and other drug treatment entities.[EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and Family and placed the Department for Behavioral Health, Developmental and Intellectual Disabilities within the cabinet. KRS 194A.050 and 222.231 require the cabinet to establish requirements and standards for licensing a person or an agency and approving nonmedical and nonhospital based alcohol and other drug abuse treatment programs. KRS 194A.050 places the Behavioral Health, Developmental and Intellectual Disabilities Services and its programs under the Cabinet for Health and Family Services. This administrative regulation establishes licensure requirements which establish minimum standards for a person or an agency operating a nonmedical or nonhospital based alcohol and other drug abuse detoxification, residential, residential transitional living, outpatient, or intensive outpatient program.]

Section 1. Definitions.

(1) "Adverse action" means action taken by the cabinet to deny, suspend, or revoke an alcohol and other drug treatment entity's license to operate.

(2) "Agency" is defined by KRS 222.005(2).

(3) "Alcohol and other drug treatment entity" or "AODE" means a nonhospital-based agency owned by an individual or entity that provides one (1) or more of the following services or operates one (1) or more of the following programs:

(a) Outpatient treatment services;

(b) Intensive outpatient services;

(c) Partial hospitalization;

(d) Withdrawal management services, including medication-assisted treatment;

(e) A non-physician owned facility that employs or has an affiliation with a physician or advanced practice registered nurse who provides office-based opiate treatment services to fifty (50) percent or more of the facility's patients;

(f) A narcotic treatment program (NTP) utilizing methadone or buprenorphine formulations;

(g) A residential treatment program;

(h) A family residential program;

(i) A residential transitional living program; or

(j) An adolescent residential program.

(4) "Cabinet" is defined by KRS 222.005(4).

(5) "Case management" means a collaborative process of assessment, planning, facilitation, care coordination, evaluation, and advocacy for options and services to meet a client's and his or her family's needs through communication and available resources to promote quality, cost-effective outcomes.

(6) "Co-occurring disorder" means concurrent substance use disorder and mental health disorder and shall not carry implication as to:

(a) Which disorder is primary and which secondary;

(b) Which disorder occurred first; or

(c) Whether one disorder caused the other.

(7) "Outpatient service" means an organized nonresidential service in which addiction and mental health treatment personnel provide professionally directed evaluation and treatment for substance-related, addictive, and mental disorders.

(8) "Residential" means a setting that provides twenty-four (24) hour structure and support in which addiction and mental health treatment personnel provide organized and intensive individual and group therapeutic activities to strengthen a client's recovery skills.

(9) "Significant financial interest" means lawful ownership of an AODE, whether by share, contribution, or otherwise in an amount equal to or greater than twenty-five (25) percent of total ownership of the AODE.

Section 2. Licensure Application and Fees.

(1) Unless exempt in accordance with subsection (2) of this section, any person, organization, corporation, community mental health center, or driving under the influence program planning to operate an outpatient or residential AODE shall submit the following to the cabinet:

(a) A completed Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) and any required documentation;

(b) A licensure fee of $500; and

(c) A fee of eighty (80) dollars per outpatient AODE extension site that is:

1. Separate from the outpatient parent facility; and

2. Not located in a school or other community-based setting that is not operated by the outpatient AODE.

(2) The following settings shall be exempt from licensure as an AODE:

(a) A program or activity of a voluntary self-help organization or community group exempt in accordance with KRS 222.003(1) or (2);

(b) A licensed chemical dependency treatment service exempt in accordance with KRS 222.231(1);

(c) A department, agency, or institution of the federal government exempt in accordance with KRS 222.231(1);

(d) A federally certified rural health clinic or a federally qualified health center that provides services to patients with behavioral health or psychiatric conditions, including substance use disorder;

(e) The private office or clinic of a practitioner in accordance with KRS 216B.020(2);

(f) A licensed psychiatric residential treatment facility that provides outpatient behavioral health services to individuals who are age twenty-one (21) or younger and have been diagnosed with substance use disorder; or

(g) A residential crisis stabilization unit licensed in accordance with 902 KAR 20:440.

(3) An outpatient or residential AODE program shall not admit clients until the program has obtained a license from the cabinet to operate the specific modality or modalities of treatment referenced on its application.

(4) An entity shall be subject to penalties in accordance with KRS 222.990(2) if the program operates a private facility without obtaining licensure as required by KRS 222.231(1).

(5) Once licensed, an outpatient or residential AODE shall submit a completed Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) accompanied by the same licensure fee identified in subjection (1)(b) and (c) of this section to the cabinet annually for license renewal.

(6) Extension site locations shall not be allowed for the following levels of care:

(a) A residential AODE program that operates in accordance with this administrative regulation and 902 KAR 1:372;

(b) A non-physician owned facility that provides office-based opiate treatment services in accordance with this administrative regulation and 902 KAR 1:374, Section 6; or

(c) An NTP that operates in accordance with this administrative regulation and 902 KAR 1:374, Section 7.

Section 3. Licenses and Authority to Enter Upon Premises.

(1) A license shall be conspicuously posted in a public area of the outpatient or residential AODE at all times.

(2) If more than one (1) AODE operates at the same location, each AODE shall maintain a separate organizational identity by:

(a) Conspicuously posting a sign in a public area showing the name of the AODE;

(b) Using a separate logo or letterhead on written materials;

(c) Maintaining client records in a separate and secure cabinet; and

(d) Providing treatment services separate from another AODE located at the same location.

(3) A survey visit or complaint investigation by cabinet staff shall be unannounced.

(4) A non-accredited outpatient or residential AODE shall be subject to an annual survey visit.

(5) An outpatient or residential AODE that provides the cabinet with documentation that the AODE is fully accredited by the Joint Commission, Commission on Accreditation of Rehabilitation Facilities, Council on Accreditation, or other nationally recognized accrediting organization with comparable standards shall be subject to an on-site survey visit at least once every two (2) years.

(6) 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 AODE more often than once every two (2) years if the cabinet deems necessary.

(7) For outpatient AODE programs operating an NTP, unannounced monitoring visits may:

(a) Be conducted more frequently; and

(b) Occur in conjunction with the Center for Substance Abuse Treatment (CSAT) and the Drug Enforcement Administration (DEA).

(8)(a) A representative of the cabinet shall have access to the AODE during business hours.

(b) An applicant for licensure or a current licensee shall not deny access to a representative of the cabinet, after proper identification, to make an inspection for determining compliance with the licensure requirements under:

1. 908 KAR 1:370;

2. 908 KAR 1:372; or

3. 908 KAR 1:374.

(c)1. Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet to enter the AODE, or deny access to records relevant to the inspection shall result in disciplinary action, including denial, revocation, modification, or suspension of the AODE's license.

2. Denial, revocation, modification, or suspension of an AODE's license shall be subject to appeal in accordance with KRS 222.231(6).

(d) An inspection of an AODE shall be conducted as follows:

1. The inspection shall be made at any time during the licensee's hours of operation;

2. The inspection shall be limited to ensure compliance with the standards set forth in 908 KAR 1:370, 908 KAR 1:372 or 908 KAR 1:374, and KRS Chapter 222; and

3. The inspection, if based on a complaint or a follow-up visit, shall not be limited in scope to the basis of the complaint or the implementation of a plan of correction.

Section 4. Change of Status.

(1) Name change.

(a) An outpatient or residential AODE shall:

1. Notify the cabinet in writing within ten (10) calendar days of the effective date of a change in the facility's name; and

2. Submit a processing fee of twenty-five (25) dollars.

(b) The cabinet shall issue a new license for the remainder of the licensure period unless the AODE is under investigation that may result in a negative licensure action in accordance with Section 20 of this administrative regulation.

(2) Change of location. An AODE shall not change the location where a program is operated, including a change in an outpatient extension site's location, until an Application for Licensure to Operate an Alcohol or Drug Treatment (AODE) accompanied by a processing fee of eighty (80) dollars is filed with the cabinet.

3) Change of ownership.

(a) The new owner of an AODE shall submit to the cabinet an Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) accompanied by a fee of $500 within ten (10) calendar days of the effective date of the ownership change.

(b) A change of ownership shall be deemed to occur if more than twenty-five (25) percent of an existing AODE or capital stock or voting rights of a corporation is purchased, leased, or otherwise acquired by one (1) person from another.

(c) An individual, shareholder, or legal entity shall not acquire a significant financial interest in an AODE if that individual, shareholder, or legal entity previously held a significant financial interest in a licensed facility that had its license or certificate to operate denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm within the preceding seven (7) years.

(4) Voluntary closure. If an outpatient or residential AODE voluntarily ceases to operate, the AODE shall notify the cabinet in writing within ten (10) calendar days of closure.

Section 5. Violations.

(1) The cabinet shall notify an outpatient or residential AODE in writing of a regulatory violation identified during an inspection.

(2) The outpatient or residential AODE shall submit to the cabinet, within ten (10) calendar days of the notice, a written plan for the correction of the regulatory violation.

(3) The plan of correction shall be signed by the AODE's administrator, the licensee, or a person designated by the licensee and shall specify:

(a) The date by which the violation shall be corrected;

(b) The specific measures utilized to correct the violation; and

(c) The specific measures utilized to ensure the violation will not recur.

(4) The cabinet shall review the plan of correction and notify the AODE in writing of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 222.231(6).

(5) The notice specified in subsection (4)(b) of this section shall:

(a) State the specific reasons the plan is unacceptable; and

(b) Require an amended plan of correction within ten (10) calendar days of receipt of the notice by the AODE.

(6) The cabinet shall review the amended plan of correction and notify the AODE in writing of the decision to:

(a) Accept the plan;

(b) Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 222.231(6); or

(c) Require the AODE to submit an acceptable plan of correction.

(7) An AODE that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked in accordance with KRS 222.231(6).

Section 6. Governing Authority.

(1) An outpatient or residential AODE shall have a governing authority that shall be legally responsible for the management, operation, and financial viability of the AODE.

(2) The governing authority shall:

(a) Establish the AODE's mission and purpose;

(b) Ensure that the AODE is operating in accordance with its mission and in the case of a non-profit, the purpose for which it was granted tax-exemption;

(c) Appoint an administrator who shall:

1. Be principally responsible for the day-to-day operation of the AODE; and

2. Ensure that information is provided in response to a request by the cabinet for data collected in accordance with KRS 222.462(2)(b);

(d) Establish a client fee schedule;

(e) Ensure that the client fee schedule is posted in a public area of the outpatient or residential AODE;

(f) Maintain financial records regarding the assessment and payment of client fees;

(g) Oversee the implementation of policies and procedures, and ensure that they are available to all personnel and maintained at the AODE's administrative office; and

(f) Ensure that an AODE's policies and procedures are reviewed every two (2) years and revised as needed.

Section 7. Quality Assurance and Utilization Review.

(1) An outpatient or residential AODE shall have a quality assurance and utilization review program designed to:

(a) Enhance treatment and care through the ongoing objective assessment of services provided, including the correction of identified problems; and

(b) Provide an effective mechanism for review and evaluation of the service needs of clients.

(2) An outpatient or residential AODE shall have a utilization review team that shall:

(a) Be made up of a representative sample of the AODE's clinical staff responsible for providing services;

(b) Assess the appropriateness and clinical necessity of client admissions;

(c) Evaluate the need for continuing services immediately upon a change in a client's service needs or a change in the client's condition to ensure that proper arrangements have been made for:

1. Discharge;

2. Transfer; or

3. Referral to another service provider, if appropriate; and

(d) Submit a written record of findings related to inappropriate patterns of service accompanied by recommended action for correcting a problem to the administrator or other individual with overall responsibility for the program's treatment services.

Section 8. Co-occurring Services.

(1) An outpatient or residential AODE shall:

(a) Screen for co-occurring disorders; and

(b) Treat or refer a client in need of co-occurring services.

(2) An outpatient or residential AODE that provides substance use disorder treatment to clients diagnosed with a co-occurring disorder shall have clearly written policies and procedures that:

(a) Govern the integrated treatment of substance use and mental health treatment, which shall include screening, assessment, diagnosis, and service provision;

(b) Allow for the use of psychiatric medication when indicated;

(c) Include developing and maintaining affiliation agreements, case consultation, and a referral mechanism to mental health treatment services in order to facilitate the provision of integrated treatment services; and

(d) Include the qualifications of clinical staff responsible for screening, assessing, diagnosing, and treating clients with co-occurring disorders as follows:

1. Only licensed individuals whose scope of practice allows them to render a diagnosis for both mental health disorder and substance use disorder may assess and diagnose clients with co-occurring disorders; and

2. The AODE shall ensure that clinical supervision is provided by staff possessing clinical credentials necessary to provide clinical supervision to any staff person who renders treatment and services to clients diagnosed with co-occurring disorders.

Section 9. Implementation of Policies and Procedures.

(1) An outpatient or residential AODE shall have written policies and procedures to:

(a) Establish a system for responding to an:

1. Accident or injury that requires hospitalization or results in death; or

2. Incident that involves fire damage, a natural disaster, or threat to security that substantially interrupts the delivery of services;

(b) Document the accident, injury, or incident in an incident file maintained at the AODE's administrative office; and

(c) Report an incident, injury, or accident to the:

1. AODE's administrator;

2. Parent or guardian of a client under the age of eighteen (18); and

3. Cabinet for Health and Family Services if the report is required by:

a. KRS 620.030 in the case of suspected child dependency, abuse, or neglect; or

b. KRS 209.030 in the case of suspected adult abuse, neglect, or exploitation.

(2) An outpatient or residential AODE shall have a written emergency plan for responding to a disaster at the facility, including safety procedures in the event of a fire, severe weather, or other threatening situation as follows:

(a) The emergency plan shall be conspicuously posted in a public area of each AODE;

(b) A copy of the emergency plan shall be provided to all personnel;

(c) The AODE shall provide training for all personnel on how to:

1. Report a fire;

2. Extinguish a small fire; and

3. Evacuate a building; and

(d) The AODE shall maintain a written record of practiced fire drills.

(3)(a) An outpatient or residential AODE shall have written policies and procedures that:

1. Establish a system to effectively respond to problems associated with domestic violence among clients served in the AODE; and

2. Include the requirements established in paragraphs (b), (c), and (d) of this section.

(b) The AODE shall provide training for clinical staff on the dynamics of domestic violence, including:

1. The effect of domestic violence on adult and child victims;

2. Legal remedies for protection;

3. Safety and risk issues;

4. Available community services;

5. Victim services; and

6. Applicable reporting requirements.

(c) The AODE shall assess a client with a history of domestic violence for current safety risks.

(d) The AODE shall implement measures to reduce safety risks to:

1. A client with a history of domestic violence;

2. Other clients; and

3. Staff.

(4) An outpatient or residential AODE shall have written policies and procedures that include:

(a) A written description of each program, including philosophy, mission statement, goals, objectives, and staffing;

(b) Admission, readmission, discharge, and transfer criteria; and

(c) Procedures for making a referral within the AODE or to another service provider, if appropriate.

(5) An outpatient or residential AODE shall have written policies and procedures for implementation of a language access plan to:

(a) Address reasonable accommodation for communication access services for a client who:

1. Has a visual impairment;

2. Is deaf or hard of hearing;

3. Is unable to comprehend or communicate due to a language barrier; or

4. Has a different linguistic background;

(b) Provide for appropriate auxiliary aids and services, including assistive listening devices, realtime captioning, or sign language interpreters, if needed;

(c) Ensure that programs and activities provided through electronic and information technology are accessible to a client with a disability; and

(d) Allow for language assistance services, including oral language assistance or written translation for a client with a different linguistic background.

(6) An outpatient or residential AODE shall have a written personnel policy that includes a:

(a) Job description and qualifications for each personnel category, including duties and reporting supervisor;

(b) Description of the duties and supervision of volunteers and student interns; and

(c) Written plan that describes a coordinated program for staff education, including:

1. Orientation of personnel to the policies and objectives of the organization;

2. On-the-job training, if necessary; and

3. Orientation and basic education about the prevalence of trauma, including training that:

a. Covers the dynamics of retraumatization;

b. Helps create a trauma-informed environment to ensure that all staff are knowledgeable in evidence-based practices that avoid institutional processes that may retraumatize a client with a history of trauma; and

c. Assists in the implementation of trauma-informed practices across domains and standards, which may include:

(i) Admissions;

(ii) Environmental standards;

(iii) Screening and assessment processes;

(iv) Referrals to other services;

(v) Treatment planning;

(vi) Confidentiality;

(vii) Ethics;

(viii) Overdose prevention; and

(ix) Discharge.

(7) An outpatient or residential AODE shall have written policies and procedures governing client grievances, including:

(a) Identification of an AODE ombudsman;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding to a grievance in writing;

(d) Protection of a client from interference, coercion, discrimination, or reprisal; and

(e) Conspicuous posting of the grievance procedures in a public area to inform a client of:

1. His or her right to file a grievance;

2. The process for filing a grievance; and

3. The address and telephone number of the AODE's and cabinet's ombudsman.

(8) If alcohol or drug testing is conducted as part of assessment, treatment, or discharge, an outpatient or residential AODE shall have written policies and procedures that outline the screening process and the indications for testing positive.

(9)(a) An AODE shall have a written policy to address the:

1. Use and misuse of alcohol or illegal drugs; and

2. Misuse of prescription drugs.

(b) The policy shall apply to all clients and their visitors while on the campus of the program.

(10) An AODE that provides services to clients under age eighteen (18) shall have written policies and procedures to ensure that:

(a) Services and educational materials are developmentally appropriate; and

(b) The client's family is involved in his or her treatment to the extent possible and appropriate with the written consent of a client.

Section 10. Qualifications and Responsibilities of the Clinical Services Supervisor.

(1) A clinical services supervisor hired by an AODE shall complete:

(a) Twelve (12) hours of specialized training in clinical supervision within six (6) months from the date of assuming the position of supervisor;

(b) At least three (3) hours of training in clinical supervision annually; and

(c) At least ten (10) hours of training in alcohol and other drug abuse counseling annually.

(2) The clinical services supervisor:

(a) May provide supervision at more than one (1) AODE facility;

(b) Shall not supervise a spouse, child, stepchild, sibling, parent, stepparent, grandparent, grandchild, aunt, uncle, niece, nephew, or in-law;

(c) Shall be responsible for all treatment services provided by the AODE;

(d) Shall ensure that the client treatment plan required by Section 19 of this administrative regulation addresses both of the client's co-occurring disorders, if applicable; and

(e) Shall maintain documentation of each clinical supervisory session with each clinician under supervision, including the:

1. Date;

2. Length of the session; and

3. Content of the supervision.

(3) The clinical services supervisor shall be:

(a) A certified alcohol and drug counselor (CADC) as defined by KRS 309.080(2) with 4,000 hours of clinical work experience post certification;

(b) A licensed clinical alcohol and drug counselor (LCADC) as defined by KRS 309.080(4); or

(c) An individual who meets the training requirements of subsection (4) of this section and is licensed or certified as one (1) of the following:

1. Physician licensed in Kentucky to practice medicine or

osteopathy in accordance with KRS 311.571, or a medical officer of the government of the United States while engaged in the performance of official duties;

2. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

3. Psychologist licensed and practicing in accordance with KRS 319.050;

4. Certified psychologist with autonomous functioning or a licensed psychological practitioner practicing in accordance with KRS 319.056;

5. Person currently authorized to use the title of "certified psychologist" under KRS 319.056(3) and has 6,000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology;

6. Psychological associate practicing in accordance with KRS 319.064 and has 6,000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology;

7. Clinical social worker licensed and practicing in accordance with KRS 335.100;

8. Social worker certified and practicing in accordance with KRS 335.080 and has 6,000 hours of postcertification clinical practice in psychiatric social work;

9. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university and 6,000 hours of clinical experience in psychiatric nursing;

10. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor's degree in nursing from an accredited college or university, who is certified as a psychiatric and mental health nurse by the American Nurses Association, and who has 6,000 hours of clinical experience in psychiatric nursing;

11. Marriage and family therapist licensed and practicing in accordance with KRS 335.300;

12. Professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

13. Licensed professional art therapist as defined by KRS 309.130(2).

(4) A clinical services supervisor who is a licensed or certified health care professional as described by subsection (3)(c) of this section shall:

1. Complete eighty (80) hours of training in alcohol and other drug abuse counseling within:

a. Four (4) years immediately prior to the date of assuming responsibility as a clinical services supervisor in the AODE; or

b. Two (2) years immediately after assuming responsibility as a clinical services supervisor in the AODE; and

2. Have 4,000 hours of work experience in the alcohol and other drug treatment field post degree.

Section 11. Qualifications and Responsibilities of Clinicians.

(1) An outpatient or residential AODE shall hire clinicians who:

(a) Shall be responsible for conducting assessments and treatment planning;

(b) Shall be responsible for leading counseling sessions; and

(c) May be responsible for providing case management.

(2) A clinician shall complete a minimum of ten (10) hours of training in alcohol and other drug abuse counseling annually.

(3) In addition to the annual training required by subsection (2) of this section, a clinician who provides case management shall complete twelve (12) hours of specialized training in case management within six (6) months from the date of assuming responsibility for case management services.

(4) A clinician shall be:

(a) An LCADC as defined by KRS 309.080(4);

(b) A CADC as defined by KRS 309.080(2);

(c) An individual who meets the training requirements of subsection (5) of this section and is licensed or certified as one (1) of the following:

1. Physician licensed in Kentucky to practice medicine or osteopathy in accordance with KRS 311.571, or a medical officer of the government of the United States while engaged in the performance of official duties;

2. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

3. Psychologist licensed and practicing in accordance with KRS 319.050;

4. Certified psychologist with autonomous functioning or a licensed psychological practitioner practicing in accordance with KRS 319.056;

5. Person currently authorized to use the title of certified psychologist in accordance with KRS 319.056(3);

6. Psychological associate practicing in accordance with KRS 319.064;

7. Clinical social worker licensed and practicing in accordance with KRS 335.100;

8. Social worker certified and practicing in accordance with KRS 335.080;

9. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university;

10. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with one (1) of the following combinations of education and work experience:

a. Bachelor of science in nursing from a four (4) year program from an accredited college or university and 2,000 hours of clinical work experience in the substance abuse or mental health field;

b. Diploma graduate in nursing from a three (3) year program and 4,000 hours of clinical work experience in the substance abuse or mental health field; or

c. Associate degree in nursing from a two (2) year program from an accredited college or university and 6,000 hours of clinical work experience in the substance abuse or mental health field;

11. Advanced practice registered nurse as defined by KRS 314.011(7);

12. Marriage and family therapist licensed and practicing in accordance with KRS 335.300;

13. Professional clinical counselor licensed and practicing in accordance with KRS 335.500; or

14. Licensed professional art therapist as defined by KRS 309.130(2); or

(d) An individual who has a bachelor's degree in any field from an accredited college or university and meets the following requirements:

1. Works under the supervision of a clinical services supervisor;

2. Receives at least four (4) hours of face-to-face clinical supervision monthly during at least two (2) supervisory meetings;

3. Meets the training requirements of subsection (5) of this section;

4. Has all treatment plans cosigned by the clinical services supervisor within ten (10) business days; and

5. Obtains temporary certification as an alcohol and drug counselor (TCADC) from the Kentucky Board of Alcohol and Drug Counselors within two (2) months of the date of employment as a clinician, if the clinician's bachelor's degree is in an area other than the field of human services.

(5) A clinician as described by subsection (4)(c) or (d) of this subsection shall complete eighty (80) hours of training in alcohol and other drug abuse counseling within:

(a) Four (4) years immediately prior to the date of assuming responsibility as a clinician in the AODE; or

(b) Two (2) years immediately after assuming responsibility as a clinician in the AODE.

Section 12. Qualifications and Responsibilities of Case Managers.

(1) A case manager employed by an outpatient or residential AODE shall:

(a)1. Have a bachelor's degree from an accredited college or

university; or

2. Be a CADC as defined by KRS 309.080(2);

(b) Successfully complete a department-approved case management training within six (6) months of employment as a case manager; and

(c) Successfully complete twenty (20) hours of continuing education in alcohol and other drug-relevant training annually.

(2) Case management services shall be based on the:

(a) Goals established in the client's clinical assessment; and

(b) Development of an individualized person-centered treatment plan that identifies the case management activities that support implementation of the plan.

(3) A case manager shall not exceed a case load size of thirty (30) unique clients.

Section 13. Peer Support Specialists. A peer support specialist employed by an outpatient or residential AODE shall:

(1) Complete six (6) hours of training in the area of substance use disorder annually;

(2) Attest in writing to at least one (1) year of recovery; and

(3)(a) Be a registered alcohol and drug peer support specialist in accordance with KRS 309.0831; or

(b) Meet the requirements of:

1. 908 KAR 2:220;

2. 908 KAR 2:230; or

3. 908 KAR 2:240.

Section 14. Personnel Records. A personnel record shall be kept at the outpatient or residential AODE's administrative office on each staff member and contain the following information:

(1) Name and address;

(2) Verification of all training and experience, including licensure, certification, registration, or renewals;

(3) Verification of submission to the background check requirements of Section 15 of this administrative regulation;

(4) Annual performance appraisals; and

(5) Employee incident reports.

Section 15. Background Checks.

(1) All staff of an outpatient or residential AODE who have job duties that involve providing services to a client, or who may have one-on-one contact with a client shall:

(a) Have a criminal record check performed upon initial hire through the Administrative Office of the Courts or the Kentucky State Police; and

(b) Not have a criminal conviction, or plea of guilty, to a:

1. Sex crime as specified in KRS 17.500;

2. Criminal offense against a minor as specified in KRS 17.500; or

3. Felony offense related to neglect, physical abuse, sexual abuse, or exploitation of a child.

(2) An outpatient or residential AODE that provides services to clients under age eighteen (18) shall not employ as clinical personnel anyone listed on the central registry established by 922 KAR 1:470.

(3) An outpatient or residential AODE shall perform annual criminal record checks as described in paragraph (a) of this subsection on a random sample of at least twenty-five (25) percent of all personnel.

Section 16. Client Rights.

(1) An outpatient or residential AODE shall establish, implement, and conspicuously post written policies and procedures regarding the rights of clients.

(2) The notice of client rights shall include the address and telephone number of the:

(a) Cabinet's ombudsman; and

(b) AODE's ombudsman or personnel responsible for handling client grievances.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a treatment program.

(4) During an outpatient or residential AODE's intake procedures, a client shall sign a statement that specifies that the client has the right to:

(a) Give informed consent to receive a service, in which case:

1. An adult shall sign an informed consent to receive a service; or

2. A client under age eighteen (18) who suffers from substance use disorder or a parent, caregiver, or person who has custodial control of a client under age eighteen (18) shall sign an informed consent for the client to receive a service in accordance with KRS 222.441;

(b) Have input into his or her treatment plan and be informed of the plan's content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation, or opinion regarding the services the client receives;

(e) Give informed written consent regarding participation in a research study, with the exception of a client under age eighteen (18) whose parent or guardian shall give informed written consent;

(f) Confidentiality of information in accordance with the following:

1. A federally-assisted AODE in accordance with 908 KAR 1:320; or

2. A nonfederally-assisted AODE in accordance with KRS 222.271(1);

(g) Request a written statement of charges for services and be informed of the policy for the assessment and payment of client fees;

(h) Be informed of the rules of client conduct, including the consequences for using alcohol or other drugs, or other infractions that may result in:

1. Further assessment;

2. Modification of the treatment approach;

3. Transfer to a higher intensity level of treatment; or

4. Disciplinary action or discharge, after review and consideration of alternative interventions, which shall be documented in the client's record with an explanation for any decision involving disciplinary action or discharge;

(i) Be treated with consideration, respect, and personal dignity;

(j) Review his or her client record in accordance with the AODE's policy; and

(k) Receive one (1) free copy of his or her client record in accordance with KRS 422.317.

(5) The statement of client rights shall be:

(a) Provided to the client;

(b) Provided to the client's parent, guardian, or other legal representative, in addition to the client, and upon consent of the client, if the client is under the age of eighteen (18) or incapacitated; and

(c) Read to the client or upon consent of the client, read to the client's parent, guardian, or other legal representative, if requested.

(6) A residential AODE providing twenty-four (24) hour care shall specify on the client rights statement that a client has the right to:

(a) Vote in a political election;

(b) Reasonable accommodations to afford privacy in bathing and toileting; and

(c) Privileges in accordance with KRS 222.271(2).

(7) An outpatient AODE that operates an NTP shall specify on the client rights statement that a client has the right to:

(a) Request a hearing, if the client is involuntarily discharged, so long as the hearing is requested within forty-eight (48) hours of receipt of written notice of discharge;

(b) Continued treatment pending the outcome of the hearing; and

(c) Representation at the hearing by an attorney or other person chosen by the client.

(8) If a client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record stating the reason for the restriction and the explanation given to the client.

Section 17. Client Records.

(1) A client record shall be maintained for each individual receiving services.

(2) Each entry shall be signed and include the date the service

was provided.

(3) All information regarding a client's human immunodeficiency virus status shall be kept confidential in accordance with KRS 214.181 and 214.625.

(4) Each client record shall contain:

(a) An identification sheet, including:

1. Client's name, address, age, gender, and marital status;

2. Expected source of payment; and

3. Referral source;

(b) Consent of appropriate family members or guardians for admission, evaluation, and treatment, if applicable;

(c) Application for admission, including intake information;

(d) A biopsychosocial assessment;

(e) Health status questionnaire or a copy of the record of a physical health examination;

(f) Consent form, fee agreement, and statement of client rights, each signed by the client;

(g) Client's treatment plan;

(h) Progress notes;

(i) Aftercare plan;

(j) Authorization for release of information, signed by the client; and

(k) Discharge summary.

(5) Ownership.

(a) Client records shall be the property of the AODE.

(b) The original client record shall not be removed from the AODE except by court order or subpoena.

(c) Copies of a client record or portions of the record may be used and disclosed in accordance with subsection (7) of this section.

(6) Retention of records. After a client's death or discharge, the completed client record shall be placed in an inactive file and:

(a) Retained for six (6) years; or

(b) Three (3) years after the client reaches the age of majority under state law, if a minor, whichever is the longer.

(7) Confidentiality and Security: Use and Disclosure.

(a) The AODE shall maintain the confidentiality and security of client records in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, as amended, including the security requirements mandated by subparts A and C of 45 C.F.R. Part 164, or as provided by applicable federal or state law, including 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(b) The AODE may use and disclose client records in accordance with:

1. HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164; or

2. 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

(c) An AODE may establish higher levels of confidentiality and security than required by HIPAA, 42 U.S.C. 1320d-2 to 1320d-8, and 45 C.F.R. Parts 160 and 164, or 42 U.S.C. 290 ee-3, and the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2.

Section 18. Client Assessment.

(1) Except in a residential transitional living program where counseling services are not provided on-site, a licensed clinician in an AODE shall complete a comprehensive biopsychosocial assessment of each client at the time of admission and document the following:

(a) Medical status;

(b) History of alcohol, tobacco, or other drug use, including any interventions;

(c) Acute intoxication and withdrawal potential;

(d) Pregnancy testing;

(e) Current or history of psychological problems or psychiatric disorders and treatment received, including:

1. Previous psychiatric admissions;

2. History of suicidal or homicidal ideation and attempts;

3. Outpatient psychiatric treatment; and

4. Psychotropic medications;

(f) Any legal proceedings involving the client;

(g) The client's family and relationships;

(h) The client's current living situation and any housing needs;

(i) Behavioral risk factors for human immunodeficiency virus (HIV) and Hepatitis, including the provision of information on HIV and AIDS to each client who shall also be offered testing for HIV infection;

(j) Readiness to change;

(k) Recreational interests;

(l) Cultural, ethnic, and spiritual beliefs or practices; and

(m) Employment and support, including assessment of the client's:

1. Employment status, current work or vocational skills, and potential for improving those skills or developing new ones;

2. Educational status and skills;

3. Aptitudes, interests, and motivation;

4. Physical abilities, impairments, or disabilities;

5. Relationships with co-workers and supervisors; and

6. Current and prior work or school related problems, including problems related to substance use disorder.

(2) To ensure that a client is placed in the appropriate treatment facility, the client shall be assessed for a level of care determination based upon the most recent version of The American Society of Addiction Medicine (ASAM) Criteria.

(3) Each biopsychosocial assessment shall be documented by the outpatient or residential AODE in the client record and include the following:

(a) The client's diagnosis as made by appropriately licensed treatment staff, in accordance with the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) for alcohol, tobacco, and other drug use;

(b) Screening for other co-occurring disorders;

(c) The ASAM level of care determination; and

(d) Referral for a full diagnostic evaluation and treatment planning, if appropriate.

(4) If the biopsychosocial assessment indicates that a client should be referred to another treatment program or level of care, the outpatient or residential AODE shall coordinate the client's referral to another program.

(5) If transfer to another facility or level of care is indicated, the outpatient or residential AODE shall provide interim services that are responsive at the client's current level of care until the transfer is made.

(6) A residential AODE shall ensure that a full physical examination is completed within seventy-two (72) hours of admission and includes:

(a) Certification by the examining physician or appropriate health care practitioner that the level of care needed by the client is available through the facility; and

(b) The results of the following laboratory tests and evaluations, subject to the client's written consent:

1. Blood work for chronic, incurable, or communicable diseases or conditions as indicated by the client's medical history and the health care practitioner's evaluation;

2. Serologic tests for syphilis, smears, and cultures for gonorrhea and other sexually transmitted diseases, as medically indicated;

3. Routine urinalysis, including pregnancy testing;

4. HIV antibody testing, as medically indicated, for which the residential AODE shall obtain a separate written consent and ensure that:

a. Each client receives HIV pre-test counseling and post-test counseling if the client elects to be tested; and

b. If HIV testing is performed, the residential AODE shall:

(i) Report positive results and maintain client confidentiality in accordance with KRS 214.645; and

(ii) Meet the registration and testing requirements of KRS 214.625(7);

5. Testing for Hepatitis A, Hepatitis B, and Hepatitis C, as medically indicated; and

6. Tuberculosis screening, testing, and treatment, as medically indicated.

Section 19. Client Treatment Planning.

(1) An outpatient or residential AODE shall establish a treatment plan for each client that:

(a) Is specific, measurable, and outcomes-focused;

(b) Is based on the biopsychosocial assessment made of the client in accordance with Section 18 of this administrative regulation;

(c) Is initiated upon the client's admission;

(d) If applicable, includes pharmacological treatment modalities to manage opioid use disorder;

(e) Is entered into the client's record within:

1. Seventy-two (72) hours following the client's admission to a residential AODE program; and

2. Thirty (30) days following the client's admission to an outpatient AODE program;

(f) Is reviewed at least:

1. Every two (2) weeks in a residential AODE program;

2. Quarterly in an outpatient AODE program providing intensive outpatient services or partial hospitalization; and

3. Every six (6) months for:

a. Outpatient treatment services;

b. Ambulatory withdrawal management services;

c. Office-based opiate treatment services; or

d. A narcotic treatment program; and

(g) Is revised as necessary based on a change in treatment needs.

(2) Each client shall be continually assessed by the outpatient or residential AODE using the most recent version of the ASAM criteria to assess level of care and needs.

(3) Problems, strengths, and needs identified in the placement, assessment, and treatment planning shall be addressed:

(a) Directly by the outpatient or residential AODE; or

(b) Through referral to appropriate services.

(4) An outpatient or residential AODE shall provide the following services in accordance with a client's treatment plan:

(a) Orders for medication, medical treatment, and other services, including the type and frequency of contact, if applicable;

(b) Treatment for substance use disorder, including a plan to:

1. Reduce symptoms and severity; and

2. Improve treatment outcomes;

(c) Integrated treatment of co-occurring disorders, either on-site or through the coordination of treatment services with an appropriate mental health facility, if applicable;

(d) Vocational and educational services if needed, either on-site or by referral to community resources;

(e) Opportunities for the client to voluntarily participate in support group meetings during treatment; and

(f) Family supports, recovery supports, spiritual, housing, and social support services as needed.

(5) An outpatient or residential AODE shall document in the client's record:

(a) Evidence of client participation in the development and implementation of the treatment plan;

(b) The staff responsible for implementation of the treatment plan;

(c) Dated signatures of the client and participating multidisciplinary team members;

(d) Long-term and short-term goals with timeframes for achievement;

(e) The assessment measures for determining the effectiveness of, and client satisfaction with, treatment or services including assessments of client adherence to and engagement with treatment and recovery support services;

(f) The time intervals for review of the client's response to treatment or services;

(g) Discharge plans; and

(h) Transfer plans, if applicable.

(6) Practitioners in each of the services providing care to a client shall participate in the development of the treatment plan relative to the services the practitioner shall provide.

(7) The client and the client's family, if indicated and considered appropriate, shall participate in the development of the client treatment plan, which shall include an aftercare plan to prepare the client for life after leaving rehabilitation.

(8) If a physician or other licensed clinician documents in the client's clinical record that the client's participation in the development of the client treatment plan is medically contraindicated, a member of the multidisciplinary team providing services to the client shall:

(a) Review the client's treatment plan with the client prior to implementation; and

(b) Inform the client's family or legal guardian of the treatment plan.

(9) If the family or legal guardian of a client does not agree to participate in the treatment planning, the outpatient or residential AODE shall document the:

(a) Attempt to engage the family or legal guardian in the treatment planning process; and

(b) Refusal to participate.

(10) The multidisciplinary team shall review the treatment plan and client treatment progress at least every thirty (30) days with the review and any revisions documented in the client's clinical record.

(11) Any revision of the treatment plan shall be based upon:

(a) The client's response to the care provided;

(b) The client's abilities and disabilities; and

(c) Each team member's continuing reassessment of services rendered.

(12) Results of random drug and alcohol screening shall be incorporated into therapeutic interventions and the treatment planning process.

Section 20. Denial, Emergency Suspension, and Revocation.

(1) The cabinet shall deny or revoke a license if it finds that:

(a) There has been substantial failure in accordance with KRS 222.231(6) by the AODE to comply with the provisions of:

1. KRS Chapter 222; or

2. AODE licensure administrative regulations under 908 KAR Chapter 1;

(b) The AODE fails to submit an acceptable plan of correction or fails to submit an acceptable amended plan of correction within the timeframes required by Section 5(2) or (5)(b) of this administrative regulation;

(c) The AODE fails to comply with the annual renewal process;

(d) The AODE denies access to the cabinet in accordance with Section 3(7) of this administrative regulation;

(e) The AODE's certification as a driving under the influence program is denied, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed clients at risk of death or serious harm;

(f) An individual having a significant financial interest in the AODE has, within the seven (7) year period prior to the application date, had significant financial interest in a facility or service that was licensed or certified by the cabinet, and the license or certificate to operate was denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm;

(g) An individual having significant financial interest in the AODE has been:

1. Previously discontinued or disqualified from participation in any governmental assistance program due to fraud or abuse of the program; or

2. The subject of disciplinary action taken against the individual by a professional licensing board for misconduct related to endangering a patient or client; or

(h) The cabinet finds that the applicant misrepresented or submitted false information on the application.

(2) For an outpatient AODE that operates an NTP, the cabinet shall deny or revoke a license in accordance with subsection (1) of this section or if it finds that:

(a) Take-home doses inconsistent with the dosage allowed by 908 KAR 1:374 Section 7 were issued without specific CSAT, DEA, or State Narcotic Authority (SNA) approval prior to issuance of the take-home doses;

(b) Take-home doses were outside the allowable difference

between the labeled dosage of the approved controlled substance and the actual dosage as determined by the United States Pharmacopeia error rate;

(c) More than five (5) percent of the medical and dosing records reviewed are out of compliance with the requirements of 908 KAR 1:374 Section 7;

(d) There are discrepancies in the inventory reconciliation greater than five (5) percent;

(e) Clients were issued doses prior to completion of the intake procedures, including physical exam, except under SNA-approved circumstances;

(f) There is evidence in the client's record that the physician is not in control of the client's treatment;

(g) There is a pattern of issuing doses to clients before obtaining a signed consent to treatment with controlled substances; or

(h) There is a pattern of failing to perform the drug screening required by 908 KAR 1:374, Section 7.

(3) The denial or revocation of an AODE's license shall be issued in accordance with KRS 222.231(6).

(4) In accordance with KRS 222.231(6), the denial or revocation shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee submits a written request for a hearing within the thirty (30) day period.

(5) If an AODE requests a hearing in accordance with the timeframe established by KRS 222.231(6) and subsection (4) of this section, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed in accordance with KRS 13B.050 and KRS 222.231(7).

(6) Emergency action to suspend a license.

(a) The cabinet shall take emergency action in accordance with KRS 13B.125 to suspend an AODE's license if the cabinet has probable cause to believe that the continued operation of the AODE would constitute an immediate danger to the health, welfare, or safety of its clients.

(b) Notice of an emergency suspension shall identify the particular reasons for the action.

(c) If requested, an emergency hearing shall take place in accordance with the requirements of KRS 13B.125(3).

(d) The sole issue of the hearing shall be whether there is immediate danger.

(e) The decision shall be rendered in accordance with KRS 13B.125(4).

Section 21. Incorporation by Reference.

(1) "Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE)", 12/2018 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Behavioral Health, Developmental and Intellectual Disabilities, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.[~~Section 1. Definitions. (1) "Accredited college or university" means an institution listed in the most recent college handbook published by the College Board.~~

~~(2) "Agency" is defined in KRS 222.005(2).~~

~~(3) "Alcohol and other drug abuse" is defined in KRS 222.005(12).~~

~~(4) "AODE" means a nonmedical and nonhospital based alcohol and other drug abuse treatment entity owned by an individual or agency which operates one (1) or more of the following programs: detoxification, residential, family residential, residential transitional living, outpatient, or intensive outpatient.~~

~~(5) "Cabinet" is defined in KRS 222.005(3) and means the Office of Inspector General, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621.~~

~~(6) "Case management" means an activity which brings services, agencies, resources, or people together to take actions toward the achievement of a client's goals.~~

~~(7) "Client" means an individual who receives treatment services in a licensed AODE.~~

~~(8) "Client record" means a file containing documentation of client services and other client data.~~

~~(9) "Clinical services supervisor" means an individual responsible for monitoring and directing assessment and treatment services and providing consultation and instruction to clinical staff.~~

~~(10) "Clinician" means an individual who conducts clinical assessments, is responsible for developing a client's treatment plan, leads counseling sessions and provides case management.~~

~~(11) "Counseling" means a relationship where a clinical staff person helps a client mobilize resources to resolve problems and modify attitudes and behavior.~~

~~(12) "Daily living skills" means budgeting, meal planning, shopping, personal hygiene, housekeeping and using public transportation.~~

~~(13) "Detoxification program" means a supervised nonmedical withdrawal from an alcohol or other drug induced intoxication and an assessment of a client's need for further care resulting in referrals to appropriate resources.~~

~~(14) "Facility" means the physical area where a treatment program is operated by an AODE.~~

~~(15) "Family residential program" means an organized intensive set of therapeutic activities provided in an environment where the client resides twenty-four (24) hours a day with the client's children.~~

~~(16) "Federally-assisted" means a program that meets the requirements established in 42 C.F.R. 2.12(b).~~

~~(17) "Governing authority" means the person or agency in which the ultimate responsibility and authority for the operation of the AODE is vested.~~

~~(18) "Immediate danger" means a condition in the program which could or has caused death or serious physical injury.~~

~~(19) "Intake" means an administrative and initial assessment procedure completed at the time of a client's admission to a program.~~

~~(20) "Intensive outpatient program" means a structured comprehensive program of individual and group therapeutic activities delivered in a nonresidential setting, where a client is assisted in recovery from alcohol or other drug abuse on a scheduled and intense basis.~~

~~(21) "Mental status screening" means a screening of a client's current mental condition including the identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality.~~

~~(22) "Outpatient program" means individual and group therapeutic activities, assisting a client in recovery from alcohol or other drug abuse, provided in a nonresidential setting on a scheduled and unscheduled basis.~~

~~(23) "Program" is defined in KRS 222.005(10).~~

~~(24) "Recovery" means rehabilitation from alcohol or other drug abuse.~~

~~(25) "Registered dietitian" means an individual registered with the American Dietetic Association.~~

~~(26) "Residential transitional living program" means a therapeutic group setting, where counseling is provided either on site by staff or off site, and where a client resides twenty-four (24) hours a day, and makes a social and vocational adjustment prior to returning to family or independent living in the community.~~

~~(27) "Residential treatment program" means a set of organized and intensive individual and group therapeutic activities, provided in a twenty-four (24) hour setting, which assists a client in recovering from alcohol or other drug abuse.~~

~~(28) "Self-help group" means activities provided in a self-directed peer group setting, for a person recovering from alcohol or other drug abuse or the effects of another person's alcohol or other drug abuse, where support and direction in achieving or maintaining an alcohol and drug free life style or in learning to cope with a problem related to another person's alcohol or other drug abuse is provided.~~

~~(29) "Service" means a therapeutic activity provided in a program to meet a client's rehabilitation needs as they relate to the use of alcohol or other drugs.~~

~~(30) "Treatment" is defined in KRS 222.005(13).~~

~~(31) "Withdrawal" means the physiological readjustment of the body after an individual stops using alcohol or other drugs.~~

Section 2. Licensing Requirements. (1)(a) An AODE shall obtain a license from the cabinet before operating a program unless exempted under KRS 222.003(1) or 222.231(1).

(b) An AODE shall be issued:

1. One (1) license which shall apply to all facilities operated by the AODE where an outpatient or an intensive outpatient program is provided; and

2. A separate license for each facility where a twenty-four (24) hour program is operated.

(c) An AODE operating without a license, unless otherwise exempted, shall be subject to the penalties established in KRS 222.990(2).

(d) For a period of one (1) year following the effective date of this administrative regulation, an entity operating a nonmedical alcohol or other drug abuse treatment program under the authority of 908 KAR 1:010 through 908 KAR 1:260 or 902 KAR 20:091 may continue to operate the program until licensing as an AODE can be attained.

(2) If more than one (1) AODE operates at the same location, each AODE shall maintain a separate organizational identity by:

(a) Conspicuously posting a sign in a public area showing the name of the AODE;

(b) Utilizing a separate logo or letterhead on written materials;

(c) Maintaining client records in a separate and secure cabinet; and

(d) Conducting treatment services separate from another AODE located at the same location.

(3) The license shall:

(a) Be conspicuously posted in:

1. A public area of the AODE's administrative office; and

2. Each facility where a twenty-four (24) hour program is operated; and

(b) Specify the date the license expires.

(4) The cabinet shall make available to the public upon request a list of licensed AODEs, showing the location of each facility and the type of program operated at each facility.

(5) Application for licensure or relicensure. An Application for Licensure to Operate an Alcohol or Drug Treatment Entity (AODE) shall be obtained from and submitted to the cabinet and shall include:

(a) The AODE name, owner and mailing address;

(b) Facility address, phone number, hours of operation for each facility where a program is operated and the location where client records are kept; and

(c) Type of programs to be operated at each facility.

(6) An application for licensure shall be accompanied by a fee of $155 for each facility.

(7) An application for relicensure shall be accompanied by a fee of eighty (80) dollars for each facility.

(8) An application for licensure or relicensure shall be processed according to the following:

(a) The cabinet may conduct an unannounced on-site inspection of a facility;

(b) An AODE shall provide the cabinet access to each facility and to documents needed to complete an inspection during normal business hours;

(c) The cabinet shall notify an AODE in writing of the violation of a licensure standard identified during an inspection on Form L&R 18, Statement of Deficiencies and Plan of Correction; and

(d) An AODE shall, within ten (10) calendar days from receipt of the Form L&R 18, submit to the cabinet a written plan of correction on the Form L&R 18 specifying the corrective action to be taken and the date when each violation shall be corrected.

(9) The cabinet shall issue a license for a period of one (1) year to the owner of the AODE named in the application. The license shall be effective on the date approval is granted by the cabinet.

(10) Change in AODE status.

(a) Name change.

1. An AODE shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

2. An AODE shall submit a processing fee of twenty-five (25) dollars to the cabinet.

3. The cabinet shall issue a new license for the remainder of the licensure period unless the AODE is under investigation that may result in a negative licensure action pursuant to subsection (12) of this section.

(b) Change of location. An AODE shall not change the location where a program is operated until an Application for Licensure to Operate an Alcohol or Drug Treatment (AODE) accompanied by a fee of eighty (80) dollars is filed with the cabinet.

(c) Change of ownership. The new owner of an AODE shall submit to the cabinet an Application for Licensure to Operate an Alcohol or Drug Treatment Entity (AODE) accompanied by a fee of $155 for each facility within ten (10) calendar days of the effective date of change.

(d) Discontinuing a program. An AODE shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

(11) Denial of a license. If an AODE fails to meet the requirements of this administrative regulation, the cabinet may deny the application for licensure or relicensure.

(12) Negative licensure actions.

(a) Complaints. If a complaint is received by the cabinet, the cabinet may conduct an unannounced on-site inspection to determine if a violation of a licensure standard has occurred. An inspection shall be conducted in accordance with subsection (8)(b), (c) and (d) of this section.

(b) Revocation of a license. If an AODE fails to meet the requirements of this administrative regulation, the cabinet may revoke a license.

(c) Immediate revocation of a license. The cabinet shall immediately revoke a license in the case of immediate danger.

Section 3. Appeals. (1) If the cabinet takes action to deny, revoke or immediately revoke an AODE license, the cabinet shall notify an AODE in writing stating a reason for the adverse action and the AODE's right to appeal in accordance with KRS 222.231(6) and (7).

(2) An AODE may appeal a negative action by the cabinet in writing to the Secretary, Cabinet for Health and Family Services, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) calendar days from the date of the notice of action from the cabinet.

(3) Upon receipt of an appeal, the secretary, or designee, shall notify the AODE in writing within fifteen (15) calendar days of the time and place of the hearing. The secretary, or designee, shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(4) Based upon the record and upon the information obtained at the hearing, a hearing officer shall make a recommendation to the secretary to affirm or overturn the initial decision of a negative action. The final decision shall be issued by the secretary in accordance with KRS 222.231(7).

(5) Immediate revocation. If an AODE's license is immediately revoked pursuant to Section 2(12)(c) of this administrative regulation, and the AODE requests a hearing, the cabinet shall conduct a hearing within five (5) working days of the cabinet's receipt of a request from the AODE. A hearing shall be continued at the request of an AODE.

(a) The sole issue of the hearing shall be whether there is immediate danger.

(b) The cabinet shall render a decision within five (5) working days of the hearing. If the decision overturns the negative action, an AODE shall have its license returned and be allowed to operate and continue the appeals process in accordance with subsections (1), (2), (3), and (4) of this section.

(c) If the cabinet determines there was immediate danger, the action by the cabinet to immediately revoke the AODE's license shall be upheld pending action by the cabinet to accept a plan of correction or to permanently revoke the license.

(6) An AODE that continues to operate after a closing date established by the secretary, or designee, shall be subject to legal action by the cabinet pursuant to KRS 222.990(2).

Section 4. Physical Plant. (1) An AODE shall ensure that a

facility is in compliance with building, fire, safety, and health standards specified by federal, state and local laws and regulations.

(2) An AODE shall have a policy to ensure the following requirements are met in a non-twenty-four (24) hour program:

(a) A facility, including the equipment, shall be kept in good repair, neat, clean, free from all accumulations of dirt and rubbish and free from foul, stale and musty odors;

(b) A facility shall be kept free from insects and rodents with their harborages eliminated;

(c) A counseling session shall be conducted in an area where a client is ensured privacy and confidentiality; and

(d) State Fire Marshal approval of a facility shall be obtained at the time of application for initial licensure or if a program changes location. If a program is located in a public building, which receives a regular inspection from the State Fire Marshal, the AODE may submit a copy of the most recent inspection by the State Fire Marshal at the time of application for initial licensure or if a program changes location.

(3) In addition to the standards in subsection (1) of this section, an AODE operating a treatment program which provides twenty-four (24) hour care shall meet the following additional requirements:

(a) Including the square feet available within the entire facility, there shall be at least 120 square feet of space for each client residing in the facility;

(b) There shall be at least one (1) toilet and one (1) sink per eight (8) clients, and at least one (1) shower or tub per fifteen (15) clients;

(c) There shall be a bed with clean bedding which includes sheets, pillowcase, blanket, and a pillow for each client;

(d) There shall be adequate lighting, heating, heated water and ventilation;

(e) There shall be space for a client to store personal belongings, including a receptacle where personal property may be stored and locked;

(f) There shall be an area provided for the following:

1. Sleeping;

2. Dining;

3. Bathing and toileting;

4. Lounge;

5. Laundry;

6. Visiting;

7. Private consultation; and

8. Telephone;

(g) State Fire Marshal approval of a facility shall be obtained at the time of application for licensure, relicensure or if a program changes location;

(h) A facility, including the equipment, shall be kept in good repair, neat, clean, free from all accumulations of dirt and rubbish and free from foul, stale and musty odors;

(i) A facility shall be kept free from insects and rodents with their harborages eliminated; and

(j) A counseling session shall be conducted in an area where a client is ensured privacy and confidentiality.

Section 5. Organization and Administration. (1) There shall be a governing authority with overall responsibility for the management and operation of an AODE.

(2) A governing authority shall:

(a) Be responsible for the direction of an AODE by establishing written policies and procedures for the operation of the AODE;

(b) Develop a mission statement outlining an AODE's purpose;

(c) Identify an administrator who shall be principally responsible for the day-to-day operation of an AODE;

(d)1. Develop a policy to establish a fee schedule;

2. Conspicuously post the fee schedule in a public area of each facility;

3. Abide by the fee schedule;

4. Maintain financial records regarding the assessment and payment of client fees; and

5. Provide a receipt for all client services delivered;

(e) Ensure that an AODE's policies and procedures are available to all personnel and a copy is maintained at the AODE's administrative office; and

(f) Document that an AODE's policies and procedures are reviewed every two (2) years and revised as needed.

Section 6. Personnel Policies. (1) An AODE shall develop written policies and procedures governing personnel and employment practices.

(2) There shall be a written job description for each position stating qualifications, duties, and reporting supervisor.

(3) There shall be evidence that all personnel are qualified for their position through documentation of education, work experience, and professional licensure, certification or registration.

(4) An individual who has had a criminal conviction for the neglect, physical abuse, sexual abuse or sexual exploitation of a child or for endangering the welfare of a child shall not be allowed to work with a juvenile client.

(5) A separate personnel record shall be maintained at the AODE's administrative office for each individual working in the AODE and shall contain:

(a) Job description;

(b) Documentation of education, work experience, and any professional licensure, certification or registration required for performance of the assigned job duties;

(c) Documentation of each training completed by the individual, to include the topic, length, and date of the training; and

(d) Documentation of the annual performance evaluation.

(6) There shall be written policies and procedures governing the duties and supervision of volunteers and student interns in the AODE.

Section 7. Quality Assurance. (1) An AODE shall have written policies and procedures to ensure that quality services are delivered and that the health and safety of the client population is protected while receiving a service.

(2) The policies and procedures shall establish a system of utilization review which includes:

(a) The quality of services shall be evaluated by a utilization review team composed of a representative sample of the clinical staff responsible for providing services;

(b) The utilization review shall assess the appropriateness and clinical necessity of client admissions as well as the accuracy, completeness and appropriateness of treatment plans and discharge;

(c) The utilization review shall evaluate a sample of client cases at regularly scheduled intervals; and

(d) A written record of the utilization review identifying inappropriate patterns of service and the recommended action for correcting a problem shall be submitted to the individual in the AODE with overall responsibility for the program's treatment services.

(3) The policies and procedures shall establish a system for responding to an accident or injury at a facility that requires hospitalization or results in death, or an incident at a facility involving fire damage, natural disaster or a threat to security that substantially interrupts the delivery of services, which includes:

(a) Documenting an incident or accident in an incident file which shall be maintained at an AODE's administrative office; and

(b) Reporting an incident or accident to the individual who is responsible for the day-to-day operation of an AODE and to the Cabinet for Health and Family Services according to the following:

1. An incident of child abuse or neglect in accordance with KRS 620.030; and

2. An incident of adult abuse or neglect in accordance with KRS 209.030.

(4) The policies and procedures for a twenty-four (24) hour program shall establish an infection control system which includes orientation for all new personnel and annual in-service training for all personnel on proper hygiene related to infections prevalent among alcohol and other drug abusers.

(5) The policies and procedures shall establish an emergency plan for responding to a disaster at the facility, including fire and severe weather, which includes:

(a) An emergency plan shall be conspicuously posted in a

public area of each facility;

(b) A copy of the emergency plan shall be provided to all personnel;

(c) An AODE shall provide training for all personnel on how to report a fire, extinguish a small fire, and evacuate a building; and

(d) An AODE shall conduct a fire drill in accordance with 815 KAR 10:060.

(6) The policies and procedures shall establish a system to effectively respond to the problems associated with domestic violence among clients served in the AODE to include the following:

(a) Training for clinical staff on the dynamics of domestic violence, its effect on adult and child victims, legal remedies for protection, safety and risk issues, available community services and victim services, and applicable reporting requirements;

(b) A client with a history of domestic violence shall be assessed as to their current safety risks; and

(c) Mechanisms for reducing safety risks to the client with a history of domestic violence, staff and other clients.

Section 8. Clinical Staff Requirements. (1) An AODE shall ensure that all personnel receive ongoing training and supervision which enables them to carry out their job duties. The training and supervision shall be documented.

(a) A clinician shall complete a minimum of twenty (20) hours of training in alcohol and other drug abuse counseling annually.

(b) A clinical services supervisor shall complete twelve (12) hours of specialized training in clinical supervision, and a clinician who provides case management shall complete twelve (12) hours of specialized training in case management, within one (1) year from the effective date of this administrative regulation or within six (6) months from the date of assuming responsibility for that function, whichever is later.

(2) An AODE shall designate a clinical services supervisor, who shall provide supervision at one (1) or more facilities and who has overall responsibility for treatment services in a detoxification, residential, residential transitional living pursuant to Section 13(1) and (2) of this administrative regulation, outpatient or intensive outpatient program.

(a) Except as provided in paragraph (c) of this subsection, the clinical services supervisor shall be:

1. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089, who has 4000 hours of clinical work experience post certification; or

2. An individual who is licensed or certified as one (1) of the following and who meets the requirements of paragraph (b) of this subsection:

a. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

b. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

c. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

d. Certified psychologist with autonomous functioning certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

e. Certified psychologist with 6000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology in accordance with the requirements and limitations established in KRS 319.056;

f. Psychological associate with 6000 hours of postcertification practice certified by the Kentucky Board of Examiners of Psychology in accordance with the requirements and limitations established in KRS 319.064;

g. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Social Work in accordance with KRS 335.100;

h. Certified social worker with 6000 hours of postcertification clinical practice in psychiatric social work licensed by the Kentucky Board of Social Work in accordance with KRS 335.080;

i. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university and 6000 hours of clinical experience in psychiatric nursing;

j. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a bachelor's degree in nursing from an accredited college or university who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has 6000 hours of clinical experience in psychiatric nursing;

k. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335;

l. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or

m. Certified professional art therapist certified by the Kentucky Board of Certification for Professional Art Therapists in accordance with the provisions of KRS 309.130.

(b) A certified or licensed professional meeting the requirements established in paragraph (a)2 of this subsection shall have:

1. Completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to the date of assuming responsibility as a clinician in the AODE or within two (2) years immediately after assuming responsibility as a clinician in the AODE; and

2. 4000 hours of work experience in the alcohol and other drug treatment field post degree.

(c) A person shall qualify as a clinical services supervisor under this administrative regulation if, on the effective date of this administrative regulation, the person:

1. Met the requirements for clinical services supervisor as established in 908 KAR 1:050 and 908 KAR 1:190;

2. Had been a clinical services supervisor for at least five (5) years; and

3. Was employed as a clinical services supervisor in a licensed nonmedical alcohol treatment and education (NATE) center program or drug abuse treatment and education (DATE) center program.

(3) An AODE shall establish a policy prohibiting a clinical services supervisor from supervising a spouse, child, stepchild, sibling, parent, stepparent, grandparent, grandchild, aunt, uncle, niece, nephew, or in-law of the clinical services supervisor.

(4) Clinicians.

(a) A clinician shall be:

1. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089;

2. An individual who is licensed or certified as one (1) of the following and who meets the requirements of paragraph (b) of this subsection:

a. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

b. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

c. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

d. Certified psychologist with autonomous functioning certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

e. Certified psychologist certified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

f. Psychological associate certified by the Kentucky Board of

Examiners of Psychology in accordance with KRS 319.064;

g. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Social Work in accordance with KRS 335.100;

h. Certified social worker certified by the Kentucky Board of Social Work in accordance with KRS 335.080;

i. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in nursing from an accredited college or university;

j. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with one (1) of the following combinations of education and work experience:

(i) Bachelor of science in nursing from a four (4) year program from an accredited college or university and 2000 hours of clinical work experience in the substance abuse or mental health field;

(ii) Diploma graduate in nursing from a three (3) year program and 4000 hours of clinical work experience in the substance abuse or mental health field; or

(iii) Associate degree in nursing from a two (2) year program from an accredited college or university and 6000 hours of clinical work experience in the substance abuse or mental health field;

k. Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing in accordance with KRS 314.042;

l. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335;

m. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or

n. Certified professional art therapist certified by the Kentucky Board of Certification for Professional Art Therapists in accordance with the provisions of KRS 309.130; or

3. An individual with a bachelors degree or greater in any field from an accredited college or university, working under the supervision of a clinical services supervisor in accordance with subsection (2) of this section, and who, under supervision:

a. Receives at least four (4) hours of face-to-face supervision monthly; and

b. Has all treatment plans cosigned by the clinical services supervisor.

(b) A certified or licensed professional meeting the requirements established in paragraph (a)2 of this subsection shall have completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to the date of assuming responsibility as a clinician in the AODE, or within two (2) years immediately after assuming responsibility as a clinician in the AODE.

(5) A clinical services supervisor shall maintain documentation of each supervisory session for each clinician supervised which includes the date, length of the session and content of the supervision.

(6) Staff working in a residential transitional living program, where counseling services are not provided on site, shall meet the credentialing and training requirements established in Section 13(3)(g) of this administrative regulation.

Section 9. Client Rights. (1) An AODE shall have written policies and procedures to ensure that the rights of a client are protected while participating in a treatment program.

(2) An AODE shall have a policy requiring that a notice of client rights is conspicuously posted in a public area of each facility and shall include the address and telephone number of the AODE's and the cabinet's ombudsman. If there is only one (1) individual working in the AODE, a notice of client rights shall include the address and telephone number of the cabinet's ombudsman.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a treatment program.

(4) During a program's intake procedures, a client shall sign a statement which specifies a client has the right to:

(a) Give informed consent to receive a service.

1. An adult shall sign an informed consent to receive a service.

2. A juvenile, or the parent or guardian of a juvenile, shall sign an informed consent for a juvenile to receive a service in accordance with KRS 222.441;

(b) Have input into treatment and case management plans and be informed of their content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation or opinion regarding the services a client receives;

(e) Give informed written consent regarding participation in a research study with the exception of a juvenile whose parent or guardian shall give informed written consent;

(f) Confidentiality according to the following:

1. A federally-assisted AODE in accordance with 908 KAR 1:320; or

2. A nonfederally-assisted AODE in accordance with KRS 222.271(1);

(g) Request a written statement of the charge for a service and be informed of the policy for the assessment and payment of fees;

(h) Be informed of the rules of client conduct, including the consequences for the use of alcohol and other drugs or other infractions that may result in disciplinary action or discharge;

(i) Be treated with consideration, respect, and personal dignity;

(j) Review client record in accordance with AODE policy; and

(k) Receive one (1) free copy of client record in accordance with KRS 422.317.

(5) A program providing twenty-four (24) hour care shall also specify on the client rights statement that a client has the right to:

(a) Vote in a political election;

(b) Reasonable accommodations to afford privacy in bathing and toileting; and

(c) Privileges in accordance with KRS 222.271(2).

(6) If the client is restricted from exercising a client right because it is contraindicated by the client's physical or mental condition, there shall be documentation in the client record of the reason for the restriction and of the explanation given to the client.

Section 10. Program Operations. (1) AODE's policies and procedures shall include:

(a) A written description for each program including philosophy, mission statement, goals, objectives and staffing;

(b) Admission, readmission, discharge, and transfer criteria including the categories of individuals accepted and not accepted into a program; and

(c) Procedures for making a referral within or outside an AODE.

(2) An AODE which provides services to juveniles shall have written policies and procedures to ensure the following:

(a) Services and educational materials shall be age appropriate; and

(b) With the written consent of a juvenile, the family shall be involved in a juvenile's treatment to the extent possible and appropriate.

(3) An AODE shall have a uniform client record system for each program which shall include the following requirements:

(a) A separate legible written or electronic record shall be established for each client and shall be:

1. Retained for five (5) years from the last date of service for an adult client age eighteen (18) and over;

2. Retained until age twenty-one (21) for a client who received a service under age eighteen (18), or for five (5) years from the last date of a service, whichever is longer;

3. Kept in a locked container accessible only to authorized personnel and maintained in a licensed AODE facility unless being transported to another licensed AODE facility; and

4. Kept confidential;

(b) A client record shall include the:

1. Application for admission including intake information;

2. Psychosocial, except in a detoxification program, or a residential transitional living program where counseling services are not provided on site;

3. Health status questionnaire or a copy of the record of a physical health examination;

4. Consent form, fee agreement, and client rights statement, each signed by the client;

5. Treatment plan, or in a detoxification program, a treatment

plan or a standard treatment protocol;

6 Aftercare plan;

7. Progress notes;

8. Authorization for release of information signed by a client; and

9. Discharge summary;

(c) An entry in a client record shall include a signature and credential of the individual who delivered a service and the date the service was provided; and

(d) All information regarding a client's human immunodeficiency virus status shall be kept confidential in accordance with KRS 214.181 and 214.625.

(4) An AODE shall have written policies and procedures governing client grievances to include the following requirements:

(a) Identification of an AODE ombudsman;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding to a grievance in writing;

(d) Protection for a client from interference, coercion, discrimination, or reprisal; and

(e) Conspicuously posting in a public area of each facility grievance procedures informing a client of:

1. A right to file a grievance;

2. A process for filing a grievance; and

3. The address and telephone number of the AODE's and cabinet's ombudsman. In an AODE where only one (1) individual is working, the notice shall contain the address and telephone number of the cabinet's ombudsman.

(5) If alcohol or drug testing is conducted as part of assessment, treatment, or discharge, there shall be written policies and procedures outlining the screening process and the consequences for testing positive.

(6) An AODE shall have a written policy prohibiting the use of alcohol and illegal drugs by a client or visitors while in the program.

Section 11. Detoxification Program. In addition to the requirements established in Sections 1 through 10 of this administrative regulation, the following requirements shall be met in a detoxification program.

(1) At admission, a client shall receive an assessment to determine if the client is intoxicated or in withdrawal, the severity of the client's physical and mental condition, and a need for emergency medical care. The assessment shall be in accordance with an assessment protocol developed in consultation with a physician and documented in the client's record.

(2) Within twenty-four (24) hours of admission, the following information shall be obtained from a client and documented in the client record:

(a) Client identifying and demographic information;

(b) Emergency contact person;

(c) Presenting problem;

(d) History of alcohol and other drug use including problems and previous treatment related to the abuse of alcohol or other drugs;

(e) History and previous treatment for a physical problem including delirium tremens, seizures, heart disease, liver disease, and infectious disease including tuberculosis, hepatitis, and human immunodeficiency virus;

(f) History and previous treatment for a behavioral health problem, developmental and intellectual disability;

(g) Assessment of pregnancy based on a client's self-report; and

(h) Signed consent to treatment.

(3) A written treatment plan based on the assessment shall be completed for the client within forty-eight (48) hours of admission, revised as new information is received, and include:

(a) Presenting problem;

(b) Identification of a client problem;

(c) Type of service to be provided including referrals;

(d) Criteria for discharge;

(e) Staff person primarily responsible for coordinating the client's care; and

(f) Client's signature.

(4) A treatment plan protocol may be used in place of an individualized treatment plan. An exception to the protocol shall be documented in the client record.

(5) A progress note shall be recorded following the delivery of a professional service and include the service provided, an observation of the client's behavior and response to the service, and the client's progress toward meeting the goals and objectives of the treatment plan.

(6) An aftercare plan shall be developed with a client's participation and include a referral to alcohol and other drug abuse treatment or a community service which may include a self-help group, housing, medical, and social services needed by the client.

(7) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

(a) Date of admission and discharge;

(b) Presenting problem;

(c) Summary of treatment and response to treatment; and

(d) Referrals made to another organization or provider.

(8) The pulse and blood pressure of a client shall be monitored three (3) times daily and documented in the client record.

(9) A client shall receive counseling, education, and orientation to self-help groups specific to addiction recovery, as soon as the client is physically and mentally capable, with a primary focus on motivating a client to continue in treatment after discharge.

(10) A client shall be provided an opportunity to meet with a self-help group and other outside service providers as soon as the client is physically and mentally capable.

(11) There shall be written policies and procedures on the use of medication by a client which shall include:

(a) Prescription and over-the-counter medication brought with a client shall be recorded in the client's record upon admission;

(b) A policy on self-administration of an over-the-counter medication to include the identification of medication which requires physician approval prior to use by a client;

(c) A program without a physician on staff shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in paragraph (b) of this subsection is not contraindicated with the treatment plan, and the verification shall be documented in the client record;

(d) Prescription and over-the-counter medication shall be stored in a locked, secure location inaccessible to a client;

(e) Medication shall be available to a client only at the time it is scheduled to be taken according to a prescription or as directed on the label; and

(f) Self-administration of prescription and over-the-counter medication shall be documented in the client record and include:

1. Name of the medication;

2. Date and time of self-administration;

3. Dosage and amount of medication; and

4. Name of the staff person who monitored the self-administration of the medication.

(12) Food services shall be provided according to the following:

(a) In accordance with 902 KAR 45:005. A copy of the food service permit shall be maintained on site; and

(b) There shall be documentation that meal planning is approved by a registered dietician.

(13) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and staff shall include:

(a) A program manager, supervisor or coordinator;

(b) At least two (2) staff per shift with one (1) trained in crisis intervention, cardiopulmonary resuscitation and standard first aid; and

(c) Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet the staffing requirements.

(14) Before working alone, a staff person shall be trained in:

(a) Monitoring the vital signs of pulse and blood pressure;

(b) Crisis intervention;

(c) Cardiopulmonary resuscitation and standard first aid conducted by a certified instructor;

(d) The recognition of problems associated with alcohol and other drug use, symptoms requiring referral for emergency care, degree of intoxication, stages of withdrawal, and the physical or mental complications that may occur at each stage;

(e) Techniques for motivating a client to continue in treatment after discharge;

(f) Local and state resources including the procedure for making a client referral; and

(g) Effects of alcohol and other drug use on a pregnant woman and her fetus including special detoxification needs during pregnancy, and recognition of when to refer a pregnant client for medical detoxification.

Section 12. Residential Treatment Programs. In addition to the requirements established in Sections 1 through 10 of this administrative regulation, the following requirements shall be met in residential programs.

(1) General residential.

(a) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from the client.

(b) An assessment shall be completed on each client and include:

1. A psychosocial which shall include:

a. Presenting problem;

b. History and treatment of alcohol and other drug abuse;

c. Current living arrangement;

d. Family relationships;

e. Legal, employment, military, educational and vocational history;

f. Peer group relationships;

g. Religious background and practices;

h. History and treatment of behavioral health problem, developmental disability, or intellectual disability including emotional, physical and sexual abuse;

i. Ethnic and cultural background;

j. Leisure and recreational activities;

k. Client strengths and limitations; and

l. An evaluation of the client's alcohol and other drug abuse or dependency;

2. A mental status screening;

3. Completion of a physical health status questionnaire, which has been developed in consultation with a physician or a copy of the record of a physical health examination, which includes at least:

a. History of medical problems;

b. Client's self-report on current status of pregnancy, tuberculosis, hepatitis and human immunodeficiency virus;

c. Use of prescription and over-the-counter medication;

d. Allergies; and

e. Identification of a medical condition that may affect the client's participation in treatment; and

4. A summary of the client's needs based on an analysis of all information from the client's assessment and which includes a recommended course of treatment.

(c) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation within six (6) calendar days of admission and include:

1. An evaluation of the client's alcohol and other drug abuse or dependency;

2. The client's problem;

3. Goals, measurable objectives and criteria for discharge;

4. Duration, frequency and type of service to be provided;

5. Referrals;

6. Staff person primarily responsible for developing the treatment plan; and

7. The client's signature.

(d) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client every two (2) weeks and be documented in the client's record.

(e) Alcohol and other drug abuse counseling, including a focus on relapse prevention, shall be provided to each client. If provided in a group, there shall be a maximum of fifteen (15) clients per clinician.

(f) Education shall be provided to each client on the effects of alcohol and other drug abuse, the disease and recovery from alcoholism and other drug dependency, consistent with the client's treatment plan.

(g) Orientation to self-help groups specific to addiction recovery shall be provided to each client.

(h) Organized recreational activities shall be:

1. Provided to each client under the direction of staff; and

2. Part of the client's schedule.

(i) A written aftercare plan shall:

1. Be developed for each client with the client's participation;

2. Be based on the client's needs at discharge; and

3. Include activities and referrals supporting recovery from alcohol and other drug abuse.

(j) A client shall have access to films, printed materials, and audio and video tapes related to the treatment of alcohol and other drug abuse.

(k) Information or education about alcohol and other drug dependency and recovery shall be made available to a client's family or significant other. If a service is requested, it shall be provided either directly or through referral to a qualified outside provider.

(l) A client shall receive forty (40) hours of structured activities weekly including alcohol and other drug abuse education; individual, group or family counseling; self-help group meetings and recreation. Ten (10) of the forty (40) hours of structured weekly activities shall be counseling services.

(m) A progress note which includes the service provided, an observation of a client's behavior and response to the service and a client's progress toward meeting the goals and objectives of the treatment plan shall be recorded after an individual counseling session, and weekly in a summary note if a client receives multiple services.

(n) A discharge summary shall be completed within thirty (30) calendar days of discharge and include the date of admission and discharge, presenting problem, an evaluation of the client's alcohol and other drug abuse or dependency, summary of treatment and response to treatment and referrals made to another organization or provider.

(o) A client shall be provided an opportunity to meet with a self-help group and other outside service providers.

(p) If a client performs work in a program, other than a personal care or housekeeping task, which is part of a therapeutic activity, the work shall be voluntary and consistent with the treatment plan.

(q) There shall be written policies and procedures on the use of medication by a client which shall include:

1. Prescription and over-the-counter medication brought with a client shall be recorded in the client's record upon admission;

2. A policy on self-administration of over-the-counter medication to include the identification of medication which requires physician approval prior to use by a client while in the program;

3. A program without a physician on staff shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in subparagraph 2 of this paragraph is not contraindicated with the client's treatment plan, and the verification shall be documented in the client's record;

4. Prescription and over-the-counter medication shall be stored in a locked and secure location inaccessible to clients;

5. Medication shall be available to a client only at the time it is scheduled to be taken according to a prescription or as directed on the label; and

6. Self-administration of prescription and over-the-counter medication shall be documented in the client's record and include:

a. Name of the medication;

b. Date and time of self-administration;

c. Dosage and amount of medication; and

d. Name of the staff person who monitored the self-administration of the medication.

(r) Food services shall be provided according to the following:

1. In accordance with 902 KAR 45:005. A copy of the food service permit shall be maintained on site; and

2. There shall be documentation that meal planning is approved by a registered dietician.

(s) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and staff shall include:

1. A program manager, supervisor or coordinator;

2. Staffing capability to ensure that an appropriate staff person is responsible for managing a program in the absence of a program manager, supervisor or coordinator; and

3. Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.

(t) There shall be at least one (1) staff person on duty at all times who has completed training in crisis intervention and standard first aid, which includes cardiopulmonary resuscitation and is conducted by a certified instructor.

(2) Family residential program. In addition to the requirements established in subsection (1) of this section, the following requirements shall be met for a family residential program.

(a) A client with a need identified in a treatment plan shall receive training on parenting.

(b) There shall be written policies on children to include:

1. Maximum number of children permitted to reside in the facility at one (1) time;

2. Age of children permitted to reside in the facility;

3. A client shall sign a statement outlining a client's responsibility for the client's children while in the facility to include:

a. A client shall have primary responsibility for ensuring that a child's needs are met regarding food, clothing, hygiene, safety, discipline, supervision and follow-up on a referral to a community resource for the children who reside with him in the facility;

b. A client shall make prior arrangements for the care of the client's children if leaving the facility without the client's children; and

c. A client shall identify, in writing, an emergency contact person, who will be responsible for the care of the client's children if leaving the facility;

4. Identification of community resources including education and child care;

5. Education about the effect on a family and children when a parent or a parent's partner abuses alcohol or other drugs; and

6. Organized recreational activities shall be provided under the direction of staff and posted on a schedule.

Section 13. Residential Transitional Living Program. In addition to the requirements established in Sections 1, 2, 3, 4, 5, 6, 7, 9 and 10 of this administrative regulation, the following requirements shall be met in a residential transitional living program.

(1) General requirements.

(a) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from the client.

(b) A physical health status questionnaire, which has been developed in consultation with a physician, or a copy of the record of a physical health examination, shall be completed for each client and include at least:

1. History of medical problems;

2. Client's self-report on current status of pregnancy, tuberculosis, hepatitis and human immunodeficiency virus;

3. Use of prescription and over-the-counter medication;

4. Allergies; and

5. Identification of a medical condition that may affect a client's participation in treatment.

(c) A written aftercare plan shall:

1. Be developed for each client with the client's participation;

2. Be based on the client's needs at discharge; and

3. Include activities and referrals supporting recovery from alcohol and other drug abuse.

(d) Orientation to self-help groups specific to addiction recovery shall be provided to each client.

(e) A client shall be provided an opportunity to meet with a self-help group and other outside service providers.

(f) An AODE shall have a policy requiring that if a client performs work in the program, other than a personal care or housekeeping task, which is part of a therapeutic activity, the work shall be voluntary and consistent with the treatment plan.

(g) There shall be written policies and procedures on the use of medication by a client which shall include:

1. Prescription and over-the-counter medication brought with a client shall be recorded in the client's record upon admission;

2. A policy on self-administration of over-the-counter medication to include the identification of medication which requires physician approval prior to use by a client while in the program;

3. A program without a physician on staff shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in subparagraph 2 of this paragraph is not contraindicated with the client's treatment plan and the verification shall be documented in the client's record;

4. Prescription and over-the-counter medication shall be stored in a locked and secure location inaccessible to clients;

5. Medication shall be available to a client only at the time it is scheduled to be taken according to a prescription or as directed on the label; and

6. Self-administration of prescription and over-the-counter medication shall be documented in the client's record and include:

a. Name of the medication;

b. Date and time of self-administration;

c. Dosage and amount of medication; and

d. Name of the staff person who monitored the self-administration of the medication.

(h) Food services shall be provided according to the following:

1. In accordance with 902 KAR 45:005;

2. A copy of the food service permit shall be maintained on-site; and

3. There shall be documentation that meal planning is approved by a registered dietician.

(2) Residential transitional living program where counseling services are provided on-site. In addition to the requirements established in subsection (1) of this section, the following requirements shall be met:

(a) An assessment shall be completed on each client and include:

1. A psychosocial which shall include:

a. Presenting problem;

b. History and treatment of alcohol and other drug abuse;

c. Current living arrangement;

d. Family relationships;

e. Legal, employment, military, educational, and vocational history;

f. Peer group relationships;

g. Religious background and practices;

h. History and treatment of mental retardation, a developmental disability or a mental health problem including emotional, physical and sexual abuse;

i. Ethnic and cultural background;

j. Leisure and recreational activities;

k. Client strengths and limitations; and

l. An evaluation of the client's alcohol and other drug abuse or dependency;

2. A mental status screening; and

3. A summary of a client's needs based on an analysis of all information from the client's assessment and which includes a recommended course of treatment.

(b) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation within seven (7) calendar days of admission and include:

1. An evaluation of the client's alcohol and other drug abuse or dependency;

2. The client's problem;

3. Goals, measurable objectives and criteria for discharge;

4. Duration, frequency and type of service to be provided;

5. Referrals;

6. Staff person primarily responsible for developing the treatment plan; and

7. The client's signature.

(c) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client monthly and be documented in the client's record.

(d) Alcohol and other drug abuse counseling, including a focus on relapse prevention, shall be provided to each client. If provided in a group there shall be a maximum of fifteen (15) clients per clinician.

(e) A progress note which includes the service provided, an observation of a client's behavior and response to the service, and a client's progress toward meeting the goals and objectives of the treatment plan shall be recorded after an individual counseling session, and weekly in a summary note if a client receives multiple services.

(f) There shall be documentation in a client's record that the client is:

1. Employed;

2. Pursuing employment;

3. Participating in vocational education, training or rehabilitation; or

4. Receiving a disability benefit.

(g) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

1. The date of admission and discharge;

2. Presenting problem;

3. An evaluation of the client's alcohol and other drug abuse or dependency;

4. Summary of the client's progress in relation to the treatment plan; and

5. Referrals made to another organization or provider.

(h) A program shall meet the staffing requirements established in Section 8 of this administrative regulation, be staffed twenty-four (24) hours a day, seven (7) days a week, and include:

1. A program manager, supervisor or coordinator;

2. Staffing capability to ensure that an appropriate staff person is responsible for managing a program in the absence of a program manager, supervisor or coordinator; and

3. Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.

(i) There shall be at least one (1) staff person on duty at all times who has completed training in crisis intervention and standard first aid, which includes cardiopulmonary resuscitation conducted by a certified instructor.

(3) Residential transitional living program where counseling services are not provided on-site. In addition to the requirements established in subsection (1) of this section, the following requirements shall be met.

(a) At admission, an evaluation of the need for each of the following shall be completed for each client:

1. Alcohol and other drug abuse services;

2. Employment services;

3. Vocational education, training or rehabilitation services;

4. Disability services;

5. Other health and human services; and

6. Assistance in developing daily living skills.

(b) A written individualized treatment plan based on the evaluation of a client's needs shall be developed for each client with the client's participation within seven (7) calendar days of admission, documented in the client's record and include the following:

1. A client's problem;

2. Goals, measurable objectives and criteria for discharge;

3. Duration, frequency and type of service to be provided;

4. Referrals;

5. Staff person primarily responsible for developing the treatment plan; and

6. The client's signature.

(c) A treatment plan and a client's progress shall be reviewed by a caseworker and the client monthly and be documented in the client's record.

(d) Training in daily living and relapse prevention skills shall be provided to each client.

(e) A progress note shall be recorded weekly in a summary note documenting the client's progress in:

1. Employment;

2. Pursuing employment;

3. Participation in vocational education, training or rehabilitation;

4. Participation in self-help groups;

5. Training in daily living and relapse prevention skills; and

6. Following through on referrals to needed services.

(f) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

1. Date of admission and discharge;

2. Presenting problem;

3. Summary of the client's progress in relation to the treatment plan; and

4. Referrals made to another organization or provider.

(g) A program shall meet the following staffing requirements.

1. A program manager shall be responsible for the day-to-day management of the program, supervising and documenting supervision of caseworkers and for the implementation and monitoring of program policies and procedures.

2. A program manager may be responsible for more than one (1) facility.

3. A program manager shall:

a. Meet the requirements of a clinical services supervisor in accordance with Section 8(2)(a)1 or 2 of this administrative regulation; or

b. Have a bachelors degree from an accredited college or university, plus 4000 hours of work experience in social services and eighty (80) hours of alcohol and other drug abuse training, within four (4) years immediately prior to the date of assuming responsibility as a program manager or within two (2) years immediately after assuming responsibility as a program manager.

4. A caseworker shall be responsible for:

a. Developing a client's treatment plan;

b. Monitoring a client's progress in relation to the treatment plan;

c. Conducting a client's training on daily living skills and relapse prevention skills; and

d. Making referrals.

5. A caseworker shall:

a. Be a certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089;

b. Have a bachelors degree from an accredited college or university and forty (40) hours of alcohol and other drug abuse training within four (4) years immediately prior to the date of assuming responsibility as a caseworker or within one (1) year of employment in this position or within one (1) year from the effective date of this administrative regulation whichever is later; or

c. Have an associate degree from an accredited college or university, or be an individual without a degree with at least three (3) years of recovery from alcohol or other drug abuse, plus have the following:

(i) Forty (40) hours of alcohol and other drug abuse training within four (4) years immediately prior to the date of assuming responsibility as a caseworker or within one (1) year of employment in this position or within one (1) year from the effective date of this administrative regulation whichever is later;

(ii) Four (4) hours of face-to-face supervision per month; and

(iii) Treatment plans cosigned by the program manager.

6. There shall be sufficient staff to ensure that an appropriate staff person is responsible for managing a program in the absence of the program manager.

7. There shall be sufficient staff to meet client needs based on the number of clients and the need for assistance by clients. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.

8. At least one (1) staff person on duty shall have completed training in crisis intervention and standard first aid, which includes cardiopulmonary resuscitation conducted by a certified instructor.

9. Staff training requirements shall include:

a. A program manager shall complete a minimum of twenty (20) hours of alcohol and other drug abuse related training annually; and

b. A caseworker shall complete a minimum of ten (10) hours of alcohol and other drug abuse related training annually.

Section 14. Outpatient Program. In addition to the requirements established in Sections 1 through 10 of this administrative regulation, the following requirements shall be met in an outpatient program.

(1) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from a client.

(2) An assessment shall be completed on each client and include:

(a) A psychosocial which shall include:

1. Presenting problem;

2. History and treatment of alcohol and other drug abuse;

3. Current living arrangement;

4. Family relationships;

5. Legal, employment, military, educational and vocational history;

6. Peer group relationships;

7. Religious background and practices;

8. History and treatment of behavioral health problem, developmental disability, or a mental health problem or a mental health problem including emotional, physical and sexual abuse;

9. Ethnic and cultural background;

10. Leisure and recreational activities;

11. Client strengths and limitations; and

12. An evaluation of the client's alcohol and other drug abuse or dependency;

(b) A mental status screening;

(c) Completion of a physical health status questionnaire, which has been developed in consultation with a physician or a copy of the record of a physical health examination which includes at least:

1. History of medical problems;

2. Client's self-report on current status of pregnancy, tuberculosis, hepatitis and human immunodeficiency virus;

3. Use of prescription and over-the-counter medication;

4. Allergies; and

5. Identification of a medical condition that may affect a client's participation in treatment; and

(d) A summary of a client's needs based on an analysis of all information from the client's assessment and which includes a recommended course of treatment.

(3) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation before the fourth client session and include:

(a) An evaluation of the client's alcohol and other drug abuse or dependency;

(b) The client's problem;

(c) Goals, measurable objectives and criteria for discharge;

(d) Duration, frequency and type of service to be provided;

(e) Referrals;

(f) Staff person primarily responsible for developing the treatment plan; and

(g) The client's signature.

(4) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client every six (6) months and be documented in the client's record.

(5) Alcohol and other drug abuse counseling, including a focus on relapse prevention, shall be provided to each client. If provided in a group there shall be a maximum of fifteen (15) clients per clinician.

(6) Education shall be provided to each client on the effects of alcohol and other drug abuse, the disease and recovery from alcohol and other drug dependency, consistent with the client's treatment plan.

(7) A referral to self-help groups specific to addiction recovery shall be provided to each client.

(8) A written aftercare plan shall:

(a) Be developed for each client with the client's participation;

(b) Be based on a client's needs at discharge; and

(c) Include activities and referrals supporting recovery from alcohol and other drug abuse.

(9) A progress note shall be recorded following each client contact. If the contact is the delivery of a professional service, an observation of the client's behavior and response to the service and the client's progress toward meeting the goals and objectives of the treatment plan shall be recorded.

(10) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

(a) The date of admission and discharge;

(b) Presenting problem;

(c) An evaluation of the client's alcohol and other drug abuse or dependency;

(d) Summary of treatment and response to treatment; and

(e) Referrals made to another organization or provider.

(11) A program shall have a procedure for informing clients of the availability of emergency services after a program's normal hours of operation.

(12) Staff shall include:

(a) A program manager, supervisor or coordinator; and

(b) Sufficient staff to meet client needs based on the number of clients, the need for assistance by clients, and the type of services delivered.

(13) If narcotic maintenance is provided, it shall be provided in accordance with 908 KAR 1:340.

Section 15. Intensive Outpatient Program. In addition to the requirements established in Sections 1 through 10 and 14(1), (2), (5), (6), (7), (8), (10), (11), and (12) of this administrative regulation, the following requirements shall be met for an intensive outpatient program.

(1) A client shall receive a variety of structured comprehensive individual and group therapeutic activities for a minimum of six (6) hours over a period of two (2) or more days weekly.

(2) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation before the client's fourth session and include:

(a) An evaluation of the client's alcohol and other drug abuse or dependency;

(b) The client's problem;

(c) Goals, measurable objectives and criteria for discharge;

(d) Duration, frequency and type of service to be provided;

(e) Referrals;

(f) Staff person primarily responsible for developing the treatment plan; and

(g) The client's signature.

(3) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client monthly and be documented in the client's record.

(4) Information or education about alcohol and other drug dependency and recovery shall be made available to a client's family or significant other. If a service is requested, it shall be provided either directly or through referral to a qualified outside provider.

(5) An AODE shall have a policy requiring that a schedule of all planned therapeutic activities shall be given to each client or conspicuously posted in the facility.

(6) A progress note which includes the service provided, the length of the session, an observation of the client's behavior and response to the service, and the client's progress toward meeting the goals and objectives of the client's treatment plan shall be recorded after an individual counseling session, and weekly in a summary note if the client receives multiple services.

(7) If a client receives services for at least five (5) consecutive hours daily, food services shall be provided either:

(a) Directly by the program according to the following:

1. In accordance with 902 KAR 45:005. A copy of the food service permit shall be maintained on site; and

~~2. There shall be documentation that meal planning is approved by a registered dietician; or~~

~~(b) By allowing the client adequate time to eat food obtained outside the facility.~~

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

~~(a) Application for Licensure to Operate an Alcohol or Drug Treatment Entity (AODE), 11-99; and~~

~~(b) Form L&R 18, Statement of Deficiencies and Plan of Correction, 11-99.~~

~~(2) This material may be inspected, copied, or obtained at the Office of Inspector General,, Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

WENDY MORRIS, Commissioner
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: January 14, 2019
FILED WITH LRC: January 15, 2019 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In accordance with KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Justin Dearinger, email: Justin.Dearinger@ky.gov, phone 502-782-7212; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for outpatient and residential alcohol and other drug treatment entities (AODE).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 222.231(2), which requires the cabinet to promulgate administrative regulations to establish health, safety, and patient care standards for AODE programs according to type and range of services. Moreover, this administrative regulation is necessary to comply with the passage of HB 124 from the 2018 legislative session, a measure that required the cabinet to conduct a comprehensive review of all current state licensure and quality standards applicable to substance use disorder treatment programs and develop enhanced standards for treatment and recovery services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 222.231(2) by establishing licensure requirements for outpatient and residential AODE programs.

(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 licensure requirements for outpatient and residential AODE programs.

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

(a) How the amendment will change this existing administrative regulation: This amendment establishes licensure requirements for outpatient and residential AODE programs, including licensing procedures, fees, responsibilities of the governing authority, quality assurance and utilization review, policies and procedures, staff qualifications and training, client rights, client records, assessment, treatment planning, and adverse action procedures.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with HB 124 passed during the 2018 legislative session, a measure that required the cabinet to conduct a comprehensive review of all current state licensure and quality standards applicable to substance use disorder treatment programs and develop enhanced standards for treatment and recovery services, including residential, outpatient, and medication-assisted treatment. Specific changes include: The amendment updates the process for identifying regulatory violations and accepting plans of correction to align with the same process established for health care facilities in 902 KAR 20:008; The amendment adds licensed clinical alcohol and drug counselors (LCADC) to the list of professionals who may serve as the AODE program's clinical services supervisor or otherwise work as a clinician in the facility; and If a clinician possesses a bachelor's degree in an area other than the field of human services, the amendment includes a new standard to require that the individual obtain temporary certification as an alcohol and drug counselor within two months from the date of employment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 222.462(2)(a) by establishing a set of comprehensive quality standards and criteria based on nationally recognized and evidence-based standards for substance use disorder treatment and recovery programs.

(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 establishing licensure and quality standards for outpatient and residential AODE programs. In addition, this amendment is being filed concurrently with 908 KAR 1:372, Licensure of residential alcohol and other drug treatment entities, and 908 KAR 1:374, Licensure of nonhospital-based outpatient alcohol and other drug treatment entities, each of which establishes additional standards specific to each setting.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed AODE programs. Currently, there are approximately 210 outpatient AODE programs and approximately 60 residential AODE programs. In an effort to engage external stakeholders, the Cabinet hosted a webinar with AODE licensees and other interested groups on October 11, 2018. A preliminary draft of this administrative regulation, 908 KAR 1:372, and 908 KAR 1:374 was distributed to stakeholders during that webinar and drafts of these regulations were sent via email and posted online. Subsequent feedback from stakeholders was taken into consideration by the Cabinet and used to make changes to the drafts during the development of these administrative regulations.

(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 that operate residential or outpatient AODE programs must demonstrate compliance with the standards established by this administrative regulation and 908 KAR 1:372 or 908 KAR 1:374. AODE providers will have to meet the following new requirements based on the amendment of this

administrative regulation: A new section on co-occurring services to require outpatient and residential AODEs to screen for co-occurring disorders and treat or otherwise refer clients for needed services. This enhancement recognizes that in the AODE programs that treat individuals with co-occurring disorders, policies and procedures are necessary to govern the integrated treatment of substance use and mental health disorder; A new requirement for implementation of a language access plan to assure that AODE programs address the needs of clients who may have a visual impairment, may be deaf or hard of hearing, or might not be able to communicate because of a language barrier; A new requirement that recognizes the prevalence of trauma and requires that staff training cover the dynamics of retraumatization in an effort to help create a trauma-informed environment that ensures all staff are knowledgeable in evidence-based practices to avoid institutional processes that may re-traumatize clients; A new requirement for AODE programs to conduct a check of the child abuse and neglect central registry for staff members who work with adolescents; and The amendment clarifies that the client's treatment plan must be entered into the client's record within 72 hours of admission in a residential AODE and within 30 days of admission to an outpatient AODE. Review of the treatment plan must occur every two weeks in residential AODE programs, quarterly for intensive outpatient services (IOP) or partial hospitalization, and every six months for other outpatient services, such as outpatient treatment, ambulatory withdrawal management, office-based opiate treatment services, or narcotic treatment program services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Under this amendment, the fee for initial licensure and annual renewal as a residential or outpatient AODE program is $500. The fee for each outpatient extension site is $80 per location. The processing fee for a change of name is $25. The processing fee for a change of location is $80. The processing fee for a change of ownership is $500. Under this amendment AODE licensed programs will no longer need a BHSO license to bill Medicaid for services. A BHSO license is $500 annually.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The following benefits will accrue to the entities identified in question 3 as a result of compliance to this amendment: All AODE providers are currently subject to an annual licensure inspection. However, under the proposed amendment, fully accredited AODE programs will be subject to inspection every two years instead of annually. If necessary, the Cabinet may inspect a fully accredited AODE program more often, such as in the case of a complaint investigation. Non-accredited AODE programs will continue to be subject to annual survey visits; and The Cabinet has streamlined the licensing process by eliminating the requirement for dual licensure as a BHSO-AODE as a condition of enrollment in Medicaid. Licensure as an AODE that is fully accredited without the need for separate licensure as a BHSO will be acceptable for Medicaid payment.

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

(a) Initially: There is no anticipated cost to the administrative body to implement this amendment.

(b) On a continuing basis: There is no anticipated cost to the administrative body to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no anticipated cost to the administrative body to implement 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: In effect since April 12, 2000, the fee for initial licensure of a residential or outpatient AODE program is $155 and the fee for annual renewal is $80. However, this amendment proposes to increase the licensure fee to $500 for both initial licensure and annual renewal. The proposed increase is comparable to the $500 fee currently established under 908 KAR 20:008 for initial licensure and annual renewal of other licensure categories, including home health agencies, hospice providers, psychiatric residential treatment facilities, freestanding or mobile technology units, private duty nursing agencies, and prescribed pediatric extended care facilities. It is important to note that this amendment does not increase the $80 fee for outpatient extension sites. Additionally, this amendment does not increase the $25 processing fee for a change of name or the $80 processing fee for a change of location. A change of ownership is treated like an initial application for a fee of $500. Under this amendment AODE licensed programs will no longer need a BHSO license to bill Medicaid for services. A BHSO license is $500 annually.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment proposes to increase the initial and annual licensure fees, which have remained unchanged since adoption of this administrative regulation on April 12, 2000. The additional revenue generated by the increased fees will assist, but not offset all of the cabinet's costs associated with the licensure and inspection of Kentucky's 270 AODE programs. Therefore, the cabinet will continue to absorb a significant portion of the programmatic costs.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts licensed outpatient and residential AODE programs and the Department for Behavioral Health, Developmental and Intellectual Disabilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 222.231 and 222.462

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There are approximately 270 outpatient and residential AODE programs that will be subject to an annual renewal fee of $500, however, under this amendment AODE licensed programs will no longer need a BHSO license to bill Medicaid for services. A BHSO license is $500 annually.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There are approximately 270 AODE programs that will be subject to an annual renewal fee of $500, however, AODE licensed programs will no longer need a BHSO license to bill Medicaid for services. A BHSO license is $500 annually.

(c) How much will it cost to administer this program for the first year? It is difficult to ascertain the direct cost of administering the AODE program because it is a part of daily business and not coded to one particular fund. There are no new costs anticipated from this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no new costs anticipated from this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 C.F.R. Part 2, 45 C.F.R. Parts 160, 164, 42 U.S.C.

1320d-2 - 1320-8, 42 U.S.C. 290ee-3

(2) State compliance standards. KRS 222.231

(3) Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 2 is a federal law governing confidentiality for individuals seeking treatment for substance use disorders. 45 C.F.R. Part 160, Part 164, and 42 U.S.C. 1320d-2 – 1320d-8 establish the HIPAA privacy rules to protect individuals' medical records and other personal health information. 42 U.S.C. 290ee-3 requires that the records of individuals undergoing treatment for substance use disorders are kept confidential.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose requirements that are more strict than federal laws or regulations.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for 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)[~~(2)~~] "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)[~~(3)~~] "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)[~~(4)~~] "Department" means the Department for Community Based Services or its designee.

(6)[~~(5)~~] "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)[~~(6)~~] "Private residence" means a dwelling that meets requirements of Section 4(2)(d) of this administrative regulation.

(9)[~~(7)~~] "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)[~~(8)~~] "Qualified mental health professional" is defined by KRS 202A.011(12).

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

(12)[~~(10) "Specialized personal care home" means a licensed personal care home that receives funding from the Department for Behavioral Health, Developmental and Intellectual Disabilities to employ a mental health professional who has specialized training in the care of a resident with mental illness or intellectual disability.~~

~~(11)~~] "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[~~11~~];

(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 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 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 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 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 is as follows:

(a) For a resident of a personal care home on or after January 1, 2019, $1,291[~~2018, $1,270~~];

(b) For a resident of a family care home on or after January 1, 2019, $943[~~2018, $922~~];

(c) For individuals who 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[~~2018, $812~~];

2. An eligible couple, both aged, blind, or having[~~have~~] a disability and one (1) requiring care on or after January 1, 2019, $1,218[~~2018, $1,186~~]; or

3. An eligible couple, both aged, blind, or having[~~have~~] a disability and both requiring care on or after January 1, 2019, $1,272[~~2018, $1,240~~]; or

(d) For an individual who resides in a private residence and has SMI on or after January 1, 2019, $1,291[~~2018, $1,270~~].

(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 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 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 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;[and]

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

4. Is marked appropriately for each resident to indicate the resident[Annotates the form, in order to maintain confidentiality, as follows with a]:

a.[Star indicating a resident] Has a mental illness[or intellectual disability] diagnosis;

b. Has an intellectual disability diagnosis[Check mark indicating a resident receives state supplementation]; or[and]

c. Receives state supplementation[Star and a check mark indicating the resident has a mental illness or intellectual disability diagnosis and is a recipient of 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) To the extent cabinet funds are available to support the training, a personal care home's licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training shall complete[attend] 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[attend] 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)[(e)] Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or intellectual disability; [and]

(h)[(f)] 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; and

(j) Adult learning principles.

(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[To assure that a] staff member who has received training [is always employed at the personal care home, a maximum of five (5) may be trained during a year].[(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician or Kentucky medication aide training and four (4) other staff have been trained, the personal care home shall request in writing to the department an exemption of the five (5) staff maximum, in order to train another staff member.]

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

1. Has successfully completed certified medication technician 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[at the closest location].

(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)[Unless staff turnover occurs as specified in subsection (4)(a) of this section,] 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[the] maximum of five (5) staff per year.[(7) Attendance of the training workshop shall be optional for a specialized personal care home.]

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 Inspector General that the personal care home is ready for an inspection for eligibility.

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

(a) Observe and interview residents and staff; and

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

1.[Except for a specialized personal care home,] Certification is on file at the personal care home to verify staff's completion[attendance] 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[~~attendance~~] 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 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 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 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 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 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 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 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 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[~~01/13/14~~]; and

(d) "STS-4, Mental Illness or Intellectual Disability (MI/ID) Supplement Certification Survey", 01/19[~~01/17~~].

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

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

APPROVED BY AGENCY: December 18, 2018

FILED WITH LRC: December 28, 2018 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held February 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Laura Begin, Phone: (502) 564-3798, Email: Laura.Begin@ky.gov; and Chase Coffey

(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 amendment to this administrative regulation will increase the standard of need in the State Supplemental Program to reflect the cost of living adjustment (COLA) to be implemented in calendar year 2019 by the Social Security Administration for Supplemental Security Income (SSI) recipients. The Social Security Administration deemed the COLA to be an increase of 2.8%. In addition, the training requirement is being amended to add serious mental illness, activities of daily living, and adult learning principles to the topics included in the training and to require attendance once every two years rather than every year. The term "specialized personal care home" and references to it are being deleted because they are no longer necessary. The STS-3 and STS-4 forms are being amended for consistency with the regulatory amendment.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will increase the standard of need in the State Supplemental Program to reflect the COLA to be implemented in calendar year 2019 by the Social Security Administration for SSI recipients.

(c) How the amendment conforms to the content of the authorizing statutes: 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. This administrative regulation establishes the provisions of the supplementation program. The amendment to this administrative regulation will increase the standard of need in the State Supplemental Program to reflect the COLA to be implemented in calendar year 2019 by the Social Security Administration for SSI recipients.

(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 2019 2.8% COLA for the Supplemental Security Income benefit by modifying the standard of need for all levels of care for the State Supplementation Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: In SFY 18, there were 3,085 individuals who received State Supplementation Program benefits. As of fall 2018, there are 23 personal care homes participating in the 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: There is no new action required of regulated entities.

(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 is no new or additional cost to the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): A 2.8% increase in the COLA for SSI 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 COLA pass-through money.

(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 2019 SSI COLA. 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.
42 U.S.C. 1382 e-g, 20 C.F.R. Part 416

2. State compliance standards. KRS 194A.050(1), 205.245

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1382 e-g, 20 C.F.R. Part 416

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements than those required by federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, 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 194A.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? This administrative regulation will not generate additional revenue in the first year.

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

(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

FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(New Administrative Regulation)

102 KAR 1:163. Collection of life insurance benefits.

RELATES TO: KRS 161.655
STATUTORY AUTHORITY: KRS 161.310, KRS 161.655
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of Teachers' Retirement System (TRS) to promulgate administrative regulations for the administration of funds of the retirement system and for the transaction of business. KRS 161.655 provides that upon the death of a member or retiree, a life insurance benefit shall be provided. This administrative regulation establishes the process for issuance of the benefit upon the death of a member or retiree.

Section 1. Following notification of the death of a member or retiree, TRS shall contact the named beneficiary or estate of the deceased.

Section 2. The Application for Life Insurance Benefit (Form 9) shall be executed by the designated beneficiary or representative of the estate. The application shall be accompanied by the following:
(1) A copy of the member's or retiree's certified death certificate;
(2) If the benefit is payable to the estate, or the member failed to designate a beneficiary, or the designated beneficiary has died, a copy of the court order:
(a) Appointing the executor, administrator or personal representative of the estate; or
(b) Dispensing with formal administration of the estate and a completed Affidavit for Collection of Life Insurance Benefit.
(3) If the benefit is payable to a minor child, a copy of the child's birth certificate. If the child has a court appointed guardian or conservator, a copy of the court order appointing the guardian or conservator;
(4) If the benefit is payable to an existing trust, a copy of the trust document;
(5) If the benefit is payable to an individual and the individual has experienced a name change since the beneficiary designation was made, a copy of the individual's signed Social Security card;
(6) If the member or retiree marries after designating a beneficiary, a copy of the certified marriage certificate; and
(7) If the member or retiree obtains a divorce after designating a beneficiary, a copy of the divorce decree.

Section 3. The life insurance benefit shall be paid after all required information, documents and completed forms are received by TRS.

Section 4. Incorporation by Reference.
(1) The following material is incorporated by reference:
(a) "Application for Life Insurance Benefit" (Form 9), January 2019; and
(b) "Affidavit for Collection of Life Insurance Benefit", January 2019.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

RON SANDERS, Chairperson
APPROVED BY AGENCY: December 17, 2018
FILED WITH LRC: January 15, 2019 at noon
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, February 27, 2019, at 9:00 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, February 20, 2019, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Thursday, February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:
CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, telephone (502) 848-8508, facsimile (502) 573-0199 or email at Beau.Barnes@trs.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes procedures for issuance of the life insurance benefit following the death of a member or retiree.
(b) The necessity of this administrative regulation: KRS 161.655 requires application to the retirement system to obtain a member or retiree's life insurance benefits. This regulation sets forth the procedures, forms and documentation required to process a request.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.655(3) requires application for life insurance benefits be filed with the retirement system.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the detailed procedures for filing an application for life insurance benefits as contemplated by KRS 161.655.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statues:
(3) List the type and number of individuals, businesses, organizations, or state and local governments 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 comply with this administrative regulation or amendment: Designated beneficiaries or representatives of a deceased member or retiree's estate will have to file an application with specific attachments in order to obtain the deceased member or retiree's life insurance benefit.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Designated beneficiaries or representatives of a deceased member or retiree's estate will have to pay copying costs and postage.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Designated beneficiaries or representatives of a deceased member or retiree's estate will receive the deceased member or retiree's life insurance benefit.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310, 161.655.

3. Estimate the effect of this administrative regulation on the 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.

4. (a) How much 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? Administrative costs will be dependent upon the number of applications processed and cannot be quantified at this time.

(d) How much will it cost to administer this program for subsequent years? Administrative costs incurred will be dependent upon the number of applications processed and cannot be quantified 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Teachers' Retirement System
(New Administrative Regulation)

102 KAR 1:168. Survivor's benefits.

RELATES TO: KRS 161.520

STATUTORY AUTHORITY: KRS 161.310, 161.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of the Teachers' Retirement System (TRS) to promulgate administrative regulations for the administration of funds of the retirement system. KRS 161.520(8) requires the board to promulgate administrative regulations for the administration of survivor's benefits for a deceased member's spouse, dependent parent or dependent sibling. KRS 161.520(7) provides that the board may require application for survivor's benefits. This administrative regulation establishes the guidelines for applying for survivor's benefits.

Section 1. (1) If a deceased member's survivor meets the requirements set forth in KRS 161.520(1), (4), or (5), an Application for Survivor Benefits form may be filed and shall include a photocopy of:

(a) The survivor's signed Social Security card;

(b) The survivor's certified birth certificate; and

(c) The deceased member's certified death certificate.

(2) If the survivor is a dependent parent or dependent, adult sibling, the application shall also include a copy of the most recent Federal Income Tax Return listing the parent or sibling as a dependent.

(3) If the survivor is the deceased member's spouse, the application shall also include a copy of the parties' certified marriage certificate.

(4) If the application is approved, the survivor's monthly payment shall continue until one (1) of the conditions for termination of benefits in KRS 161.520(6) is met.

(5) If the surviving spouse or legal dependent meets the requirements of KRS 161.525, he or she may elect to receive an actuarially equivalent annuity. The annuity shall be calculated, processed and disbursed in accordance with the provisions of KRS 161.525.

(6) Payments shall not be made until all required information, documents, and completed forms are received at the retirement system office.

Section 2. Incorporation by Reference.

(1) The "Application for Survivor Benefits" Form 15, January, 2019 is incorporated by reference.

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

RON SANDERS, Chairperson

APPROVED BY AGENCY: December 17, 2018

FILED WITH LRC: January 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Wednesday, February 27, 2019, at 9:00 a.m. at the offices of the retirement system at 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, February 20, 2019, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation until the end of the calendar day on Thursday, February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert B. Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the procedures for applying for survivor's benefits.

(b) The necessity of this administrative regulation: KRS 161.520 requires application to the retirement system to obtain survivor's benefits. This regulation sets forth the procedures, forms and documentation required to process a request.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 161.520 requires application for survivor's benefits be filed with the retirement system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the procedures for filing an application for survivor's benefits as contemplated by KRS 161.520.

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

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statues:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Surviving spouses, dependent parents or dependent, adult siblings of a deceased member.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to comply with this administrative regulation or amendment: Surviving spouses, dependent parents or dependent, adult siblings of a deceased member will have to file an application with specific attachments in order to obtain survivor's benefits.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Surviving spouses, dependent parents or dependent, adult siblings of a deceased member will have to pay copying costs and postage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Surviving spouses, dependent parents or dependent, adult siblings of a deceased member will receive survivor's benefits.

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

(a) Initially: There is no cost to implement this regulation.

(b) On a continuing basis: There is no continuing cost.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the retirement system are paid by trust and agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required.

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

(9) TIERING: Is tiering applied? Tiering is not applied, as all members are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Teachers' Retirement System.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 161.310, 161.520.

3. Estimate the effect of this administrative regulation on the 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? Administrative costs will be dependent upon the number of applications processed and cannot be quantified at this time.

(d) How much will it cost to administer this program for subsequent years? Administrative costs incurred will be dependent upon the number of applications processed and cannot be quantified 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 (+/-): N/A

Expenditures (+/-): N/A

Other Explanation:

FINANCE AND ADMINISTRATION CABINET
Department for Facilities and Support Services
(New Administrative Regulation)

200 KAR 3:020. Use of state-owned facilities and grounds.

RELATES TO: KRS 42.019, 42.425, 56.010, 56.463

STATUTORY AUTHORITY: KRS 42.019, 42.425, 56.010, 56.463

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes uniform rules for the governance of state facilities and grounds. While all state facilities and grounds are owned by the people of the Commonwealth at large, it is sometimes detrimental to the effective carrying-out of the people's business for persons, or groups of persons, to disregard reasonable conditions established for use of state facilities and state grounds. The purpose of this regulation is to balance the interests of the citizens of the Commonwealth at large with the interests of individual citizens, or groups of citizens, to use state facilities and grounds in a reasonable fashion in order to redress their grievances and coordinate various uses of public buildings and grounds, to preserve historic properties, to ensure the health and safety of the public and state employees while on state property, and to protect the public from unnecessary financial losses. KRS 42.019 directs that the Division of Historic Properties shall be responsible for management and preservation of state-owned historic properties. KRS 42.425 entrusts the Department for Facilities and Support Services with primary responsibility for developing and implementing policies applicable to all state agencies to ensure effective planning for and efficient operation of state office buildings. KRS 56.010 states that the Finance and Administration Cabinet is empowered to institute civil proceedings in the name of the Commonwealth for any trespass or injury to state property under its control. KRS 56.463 authorizes the Finance and Administration Cabinet to adopt rules and promulgate administrative regulations as may be necessary to govern the acquisition, control, and disposition of the real property.

Section 1. Definitions.

(1) "Agency" means a "Budget unit," defined by KRS 48.010(9).

(2) "Agency Application" means a form created and maintained by a state agency that allows individuals, organizations, and entities to request the ability to conduct an event at a facility or on grounds assigned to that agency.

(3) "Applicant" means a visitor who has submitted an Application to Use Commonwealth Facilities and all visitors present at a state facility or on state grounds pursuant to an approved application.

(4) "Application" means an Application to Use Commonwealth Facilities form created and maintained by the Division of Historic Properties that allows individuals, organizations, and entities to request the ability to conduct an event at historic properties.

(5) "Cabinet" means the Finance and Administration Cabinet.

(6) "Commissioner" means the Commissioner of the Department for Facilities and Support Services.

(7) "Department" means the Department for Facilities and Support Services.

(8) "Division" means the Division of Historic Properties, established pursuant to KRS 45.425(1)(d)(4).

(9) "Event" means any performance, ceremony, presentation, meeting, or rally held in a state facility or on state grounds.

(10) "Guest" means an individual who has booked or paid for overnight accommodations at a state facility or on state grounds, or an individual who has been provided with living accommodations by the state in connection to his or her employment with the Commonwealth.

(11) "Historic Properties" means state-owned historic properties under the management and preservation authority of the Division of Historic Properties, pursuant to KRS 42.019.

(12) "Organization" means any group or association of individuals joined together to accomplish shared goals or to advance shared interests or values, inclusive of its employees, agents, invitees, or guests.

(13) "Public Meeting" means a "Meeting," as defined by KRS 61.805(1).

(14) "Normal Business Hours" means the hours in which a facility is declared or posted as open and accessible to individuals other than employees or agents of the Commonwealth.

(15) "Rally" means a gathering of four (4) or more visitors for the purpose of actively promoting a cause.

(16) "Solicit" and "Solicitation" are defined by KRS 367.650(4).

(17) "Spontaneous Event" means an event where four (4) or more visitors gather to exercise their First Amendment rights in facilities and on grounds open to the general public in response to a triggering event that has occurred within the preceding calendar week, or is currently occurring.

(18) "State Facilities" or "Facilities" means any building owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

(19) "State Grounds" or "Grounds" means any lands owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463.

(20) "Tenant" means an individual or organization, excepting Commonwealth agencies, occupying land or property rented from the Commonwealth; limited to the specific state facility or state grounds where the land or property is located.

(21) "Visitor" means any person, organization, or entity present at a state facility or on state grounds that is not employed or contracted to perform work there on behalf of the Commonwealth. A person or organization employed or contracted to perform work on behalf of the Commonwealth is a visitor if at a state facility or on state grounds for reasons other than performing work on behalf of the Commonwealth. The term "Visitor" includes those persons present at state facilities or state grounds by virtue of an approved application.

Section 2. Request to Use State Facilities or Grounds.

(1) Within all areas assigned to it, a state agency may specify an Agency Application and approval process for public use of its facilities, so long as:

(a) The specified process does not conflict with the requirements of this administrative regulation, or with other state or federal law; and

(b) The agency prominently posts the Agency Application and approval process on its website.

(2) Each visitor seeking to hold an event at a state historic property shall submit a completed "Application to Use Commonwealth Facilities" to the division at least ten (10) calendar days prior to the anticipated date of the event.

(a) Applications may not be submitted, and an event may not be scheduled, more than 365 calendar days prior to the date of an event.

(b) An applicant, or related visitors, organizations, or entities may only make one (1) application for one (1) event at a time.

(c) Applications shall be reviewed and approved on a first come, first served basis, except that state sponsored activities shall be given priority.

(d) The division may impose fees for the use of specific state facilities or grounds by visitors, as well as fees for the use of equipment at state facilities or on state grounds.

(e) The division may deny an application if:

1. The application is incomplete;

2. The proposed event requests space allocated for a state sponsored activity, a previously scheduled event, the normal operation of state business, or a legislative session;

3. The proposed event poses a safety or security risk;

4. Applicant, or related visitors, organizations, or entities has made material misrepresentations regarding the nature or scope of an event or solicitation, inclusive of misrepresentations contained in prior applications; or

5. Applicant, or related visitors, organizations, or entities has failed to pay costs or damages due for a prior event.

(f) If an application is approved, the division shall issue a written approval specifying:

1. The property or portion of property for which approval is granted;

2. The date and time period for which approval is granted;

3. Any fee or costs to be paid for use of state property or equipment;

4. The amount of any advance deposit required; and

5. Whether proof of liability insurance shall be required for the requested use.

(g) Any written approval to use Commonwealth facilities is non-transferable and the purpose, time, place, or other conditions specified for use may not be changed without the written consent of the division.

(h) The division may revoke prior approval to hold an event at a state historic property if the property is requested for a state sponsored activity. If the division revokes prior approval for an applicant to use a historic property, it shall either:

1. Provide a refund of any fee paid for the use of the state property, or

2. Provide alternate dates that the facility is available for use.

(3) Except for spontaneous events, visitors who make use of a state facility or state grounds without a permit:

(a) May be charged a fee equal to the amount normally charged for approved uses, and

(b) May be removed from a state facility or state grounds if their use interferes with a use approved by the division, or with a state sponsored activity.

Section 3. Conditions Governing Use of State Facilities and Grounds.

(1) General conditions governing all state facilities and grounds to which visitors, applicants, and other persons visiting under application agree to abide.

(a) Visitors shall agree to be, and are, responsible for any vandalism, damage, breakage, loss, or other destruction caused by that individual or organization. In regards to state historic properties, costs may include costs for the services of specialists in relevant historical restoration skills.

(b) An agency agrees to reimburse, and shall reimburse, the department for any damage caused to state facilities assigned to its use.

(c) This administrative regulation is not intended to waive or preclude recovery by an agency from visitors for damages caused by them.

(d) Visitors shall indemnify and hold harmless the Commonwealth of Kentucky, its departments, agents, employees, and contractors from and against any and all suits, damages, claims, or liabilities due to personal injury or death; damage to or loss of property; or for any other injury or damage arising out of or resulting from the use of state facilities or grounds, except as provided by in KRS Chapter 44.

(e) Visitors are prohibited from digging, excavating, or using metal detectors.

(f) Visitors are prohibited from posting or affixing signs, announcements, or other documents on any exterior or interior wall, ceiling, floor, door, window, or other surface not specifically designated for that purpose.

(g) Visitors must promptly remove items or materials owned or used by them after an exhibit, event, or visitation. Failure to do so may result in the department billing the individuals or organizations with the costs of disposal, inclusive of use of staff time, which the individuals or organizations agree to be responsible for as a condition of their use of state facilities.

(h) Smoking is not permitted in state facilities or on state grounds.

(i) Visitors may not wear masks or hoods which conceal the identity of the wearer, with the exception of religious dress of a generally recognized religion or minor children celebrating Halloween.

(j) Public use of state facilities by visitors shall not interfere with the conduct of normal public business, any legislative session, court proceedings, or any other public business.

(k) Use of state facilities and state grounds by visitors shall conform to any applicable limits or requirements contained in the Kentucky Building Code, the Kentucky Standards of Safety contained in 815 KAR 10:060, orders of the State Fire Marshall, and local fire codes, inclusive of any applicable occupancy limits.

(l) Visitors shall not be permitted to obstruct passageways in a manner that would impair the normal conduct of state business or the safe evacuation of people in the event of a fire or similar emergency.

(m) Use or parking of a motorized vehicle on lawns, sidewalks, or terraces shall be restricted to emergency, maintenance, construction, development, delivery, or authorized building access purposes as determined by the department.

(n) The operation of aircraft, other than at designated landing areas, is prohibited.

(o) The mass release of birds, butterflies, or other living creatures is prohibited.

(p) In addition to any use limitations imposed by this administrative regulation, within areas assigned to its use, an agency may impose such additional use restrictions as are necessary and proper to ensure:

1. Efficient operation and conduct of state business;

2. The safety of state employees and visitors;

3. The security of public assets and data; and

4. Restrictions necessary to conform to requirements of state and federal law.

(q) The following items are prohibited, unless owned or controlled by the state:

1. Hot-air balloons and similar lighter-than-air objects and aircraft;

2. Powered aircraft, drones, and remotely-operated aircraft;

3. Remotely controlled toys and vehicles;

4. Rockets and similar missiles; and

5. Fireworks and other explosive items.

(r) The following items are not permitted in any state facility or on any state grounds, unless such items are owned or controlled by the state:

1. Any equipment, apparatus, or machinery that fails to conform with local fire codes;

2. Skateboards, roller skates, rollerblades, bicycles, mopeds, motor bicycles, motorcycles, and hoverboards; exclusive of mobility devices used by a disabled individual; and

3. Any personal property that interferes with any electrical or mechanical system in a state facility.

(s) The terms of this administrative regulation shall not apply to:

1. Guests of the state;

2. Tenants of state facilities;

3. Inmates and other incarcerated persons; or

4. Other individuals in the care, custody, or control of the state.

(2) Operating hours and access requirements.

(a) The commissioner, in consultation with agencies using each facility, shall establish normal business hours to designate when state facilities and grounds are open for public access. The commissioner may delegate authority to set normal business hours for all state facilities and grounds or for specific state facilities and grounds.

(b) Normal business hours of operation shall be posted at public entrances of state facilities and prominently posted on state grounds.

(c) Public entrances, operating hours, and scope of access are subject to change due to maintenance, emergency, disaster, safety threats, and similar concerns as determined by the commissioner.

(d) For purposes of public security and safety, all packages, backpacks, purses, bags, briefcases, or other similar items brought into a state facility are subject to search.

(e) No visitor may enter or remain on state facilities or grounds after normal business hours of operation without express approval, except state employees, contract workers for the state, or members of the public who are:

1. Meeting with an agency or legislator in regard to a public matter;

2. Attending a scheduled public meeting; or

3. Escorted by a state employee for the purpose of conducting state business.

(f) For purposes of this administrative regulation, any time period during which a state facility hosts a legislative session, public meeting, or court session shall be considered normal business hours in addition to any regular posted hours of operation.

(g) Visitors present at a state facility or on state grounds may be given up to thirty (30) minutes after normal business hours have ended to vacate the state facility or state grounds before being subject to immediate removal.

(h) When an agency allows individuals to remain in a state facility after normal business hours, it may be found to be jointly liable for damage caused by unescorted visitors.

(i) Visitors may not camp or remain overnight in state facilities or on state grounds.

(j) As a condition to their use of, or presence on, state facilities and grounds, applicant and visitors agree that state and local law enforcement officers may physically remove them from state facilities and grounds if they remain longer than thirty (30) minutes after normal business hours have ended and waive any claim against said law enforcement officers and the Commonwealth unless undue force is used resulting in serious bodily injury.

(3) Commercial activity.

(a) The following commercial activity is prohibited in state facilities or on state grounds:

1. Selling, displaying, or vending commercial products;

2. Solicitation; and

3. Advertising.

(b) The above restrictions regarding commercial activity shall not apply to:

1. State agencies;

2. State-affiliated or approved charitable fund-raising campaigns;

3. Individuals or organizations who have contracted with the state to conduct commercial activity at state facilities or on state grounds;

4. Nominal employee activity, provided that it otherwise conforms with applicable employee ethics restrictions and does not interfere with state business; and

5. Notice boards specifically set-aside for public posting.

(4) Administration of usage conditions.

(a) In addition to any civil or criminal penalties provided for under Kentucky law, visitors who violate the restrictions contained in this administrative regulation, agree to be, and are subject to immediate removal from state grounds and gacilities as follows:

1. When a violation concerns damage to state facilities or grounds, or disruption of state business, the commissioner or agency head of the affected agency may request removal by officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers; or

2. When a violation concerns a safety concern or threat,

removal may be done at the request of the commissioner or agency head of the affected agency, or upon exercise of independent discretion of the Kentucky State Police, contract security staff assigned to the state facility or grounds, or other state and local law enforcement offices.

(b) The commissioner, agency head of a tenant agency, officers of the Kentucky State Police, contract security staff, or other state or local law enforcement officers may place limitations on the area in which an event may be conducted, or may direct the clearing of an area or separation of groups, in order to ensure compliance with applicable health and safety standards, to maintain public order, and to ensure that normal public business may be conducted.

(c) Nothing in this administrative regulation shall be interpreted as:

1. Prohibiting the regular conduct of agency operations in a state facility or on state grounds after normal business hours regarding state facilities or grounds assigned to the agency's use.

2. Limiting the ability of an agency to make full and unencumbered use of state facilities or grounds assigned to them, subject to any specific conditions placed upon their use by the department.

Section 4. Additional Conditions Regarding Access and Use for Historic Properties.

(1) The Division of Historic Properties, established by KRS 42.425, may impose additional restrictions and use guidelines as are necessary and proper to ensure the responsible management, use, and preservation of state historic properties for the benefit of future generations.

(2) The Department of Parks and Kentucky Horse Park may advise and consult the division in regard to any restrictions or use guidelines relating to state shrines or museums.

(3) Any additional restrictions or use guidelines imposed by the Division of Historic Properties shall be prominently posted for public viewing on the Web site of the division, as well as being readily available to the public, in hardcopy form, at the main business office of the division.

Section 5. Enforcement.

(1) Authority to initiate civil proceedings in the name of the Commonwealth for any trespass or injury to state property under the cabinet's control shall be vested with the cabinet's Office of General Counsel.

(2) The cabinet's Office of General Counsel may delegate authority to initiate civil proceedings to counsel for an agency affected by a trespass or injury to state property, to another state agency or to outside counsel.

(3) Nothing in this administrative regulation is intended to waive or restrict in any way any normal criminal or civil remedies available under law that relates to improper trespass on, or misuse of, state facilities; disruption of public business; nuisance; or any other legal remedy otherwise available to the Commonwealth or its subdivisions.

(4) Nothing in this administrative regulation is intended to limit, waive, or otherwise alter the authority the rules for the operation and parking of motor vehicles on state grounds, as enumerated in 200 KAR 3:010.

Section 6: Documents Incorporated by Reference:

(1) "Application to Use Commonwealth Facilities"

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of General Counsel, Capital Annex Room 392, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

ROBERT M. BURNSIDE, Commissioner
WILLIAM M. LANDRUM III, Secretary

APPROVED BY AGENCY:January 4, 2019

FILED WITH LRC: January 4, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019, from 10 a.m. to 12 p.m., in Room 386, Capitol Annex Building, 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 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Judy Piazza, Executive Director, Office of Legislative and Intergovernmental Affairs, Finance and Administration Cabinet, Capitol Annex Building Room 392, Frankfort, Kentucky 40601, phone (502) 564-4240, fax (502) 564-6785, email Judith.Piazza@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Judy Piazza

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes uniform rules for the governance of state facilities and grounds.

(b) The necessity of this administrative regulation: Sets standards to ensure safety and security of state facilities and grounds, as well as staff and visitors. Provides uniform guidelines for visitors to prevent damage to state properties, as well as to ensure for the efficient operation of state business.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Finance and Administration Cabinet and its subdivisions are authorized by KRS 42.019, KRS 42.425, KRS 56.463, and KRS 56.010 to ensure the preservation and efficient operation of state facilities, as well as to seek redress for damage to state property. This regulation establishes uniform standards for the use of state-owned properties by the public, in furtherance of those goals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear notice, to agencies and visitors, of any standards and rules which exist in regard to the use of state facilities and grounds.

(2) If 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. Regulation is a new administrative regulation, rather than an amendment.

(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 statues: N/A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Regulation offers clarity to state agencies and visitors to state properties regarding standards for use of Commonwealth facilities and grounds.

(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: State agencies, in cooperation with the Commissioner for Facilities and Support Services, must establish normal business hours. Visitors must comply with normal business hours at state properties, avoid actions which cause damage to state facilities and grounds, and observe reasonable safety and security requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The incorporated "Application to Use Commonwealth

Facilities" contains fees for the use of state historic facilities. The application, and its included fees, has been in use by the Division of Historic Properties since 2007.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies and the Department for Facilities and Support Services will be provided clarity regarding standards and rules which allow for the public right of access to state facilities and grounds while preserving the ability to conduct regular public business, ensuring the safety of staff and visitors, and avoiding damage to state properties.

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

(a) Initially: No additional costs are expected. Current staff and funding will be utilized.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budgetary funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: None.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Application to Use Commonwealth Facilities, which is incorporated by reference, establishes fees for use and set-up services regarding state historic properties. Authorizes state agencies to create application process for facilities assigned to their use, which may include fees. Authorizes agencies to assess costs for damages done to state facilities and grounds.

(9) TIERING: Is tiering applied? Tiering is not applied. All state agencies follow identical requirements regarding the setting of normal business hours and their authority to establish an application process for public use of facilities assigned to them. Similarly, visitors to state facilities and grounds are uniformly subject to the conditions set forth in this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The regulation impacts all state facilities and grounds owned or managed by the Finance and Administration Cabinet pursuant to KRS 56.463. Agencies occupying these state properties must observe the requirements of the regulation. State or local government agencies not occupying state facilities and grounds owned or managed by the Finance and Administration Cabinet will not be affected.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 42.019, KRS 42.425, KRS 56.463, and KRS 56.010

3. Estimate the effect of this administrative regulation on the 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 estimated effect on the expenses or revenues of any state or local agency from this administrative regulation. The regulation does not require any new labor-intensive administrative tasks, which may require additional staff, it merely clarifies standards to be applied regarding public use of state facilities and grounds.

(a) How much 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 additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

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

Revenues (+/-): $0

Expenditures (+/-): $0

Other Explanation:

PUBLIC PROTECTION CABINET
Kentucky Boxing and Wrestling Commission
(Repealer)

201 KAR 27:022. Repeal of 201 KAR 27:017.

RELATES TO: KRS 229.171

STATUTORY AUTHORITY: KRS 229.171

NECESSITY, FUNCTION, AND CONFORMITY: KRS 229.171(2) authorizes the commission to promulgate administrative regulations it considers necessary or expedient to the performance of its functions provided in KRS Chapter 229. This administrative regulation repeals 201 KAR 27:017 because it is unnecessary as there have only been three (3) elimination events held in the Commonwealth over the last thirteen (13) years. The commission has determined that it no longer wishes to license or regulate such low-frequency events.

Section 1. The following administrative regulation is hereby repealed:

(1) 201 KAR 27:017, Requirements for elimination events.

JASON P. SMITH, Vice-Chairman
K. GAIL RUSSELL, Acting Secretary

APPROVED BY AGENCY: December 19, 2018

FILED WITH LRC: January 15, 2019 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 a.m. at 656 Chamberlin Ave, Suite B, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on February 28, 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: Cindy Stinnett, Executive Director, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601; phone 502-564-0085; fax 502-696-3938; email kbwc@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cindy Stinnett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 201 KAR 27:017 regarding elimination events.

(b) The necessity of this administrative regulation: This repealer is necessary because the current regulation governing elimination events is no longer necessary. There have only been three (3) elimination events in the last thirteen (13) years, and the commission has determined such events shall no longer be offered or regulated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the commission's authority established in KRS 229.171 to

promulgate administrative regulations to perform its functions pursuant to KRS Chapter 229.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will reduce risk to the commission and licensees by no longer offering elimination events previously permitted under 201 KAR 27:017.

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

(a) How the amendment will change this existing administrative regulation: This is a repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statues: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 50 commission licensees per event, as well as any potential licensees interested in pursuing elimination events in the future.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will not have to take any action to comply with this repealer.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The repeal of 201 KAR 27:017 will reduce risk to the commission and licensed entities by no longer offering elimination events.

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

(a) Initially: There will be no initial cost to implement this repealer.

(b) On a continuing basis: There will be no continuing cost to implement this repealer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation or enforcement of this repealer.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increase in fees or funding will be necessary to implement this repealer.

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

(9) TIERING: Is tiering applied? Tiering is not applied – this is a repealer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Boxing and Wrestling Commission.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 229.171

3. Estimate the effect of this administrative regulation on the 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 repealer will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? There is no cost for this repealer.

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Decrease.

Other Explanation: Putting an end to regulated elimination events will reduce travel and labor expenses for KBWC staff overseeing these rare events.

DEPARTMENT OF AGRICULTURE
Office of Consumer and Environmental Protection
(Repealer)

302 KAR 27:031. Repeal of 302 KAR 27:030.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.185

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.185 requires the department to establish a licensure program for pesticide sales agents. This administrative regulation establishes classifications of pesticide sales agent licenses and rules for the sales of pesticides by pesticide sales agents.

Section 1. 302 KAR 27:030, Pesticide sales agents, is hereby repealed.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019 at 10:00 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 February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This filing repeals

the regulation for pesticide sales agents.

(b) The necessity of this administrative regulation: This regulation is necessary as another revision in this chapter makes this regulation no needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS Chapter 217B authorizes the Commissioner of the Department of Agriculture to promulgate administrative regulations for pesticide use and applications in addition to our delegated authority under FIFRA.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists by providing the clear communication of the proper definitions the KDA intends to use for our regulated community, by eliminating an unneeded regulation.

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

(a) How the amendment will change this existing administrative regulation: This in a repealer, not an amendment.

(b) The necessity of the amendment to this administrative regulation: This in a repealer, not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This in a repealer, not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This in a repealer, not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 10,539 private applicators, 11,736 Ag applicators, including 1,950 Dicamba certification participants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities would need do nothing to comply with this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No costs are associated or anticipated with this filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will be permitted to apply pesticides.

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

(a) Initially: No additional cost to this program.

(b) On a continuing basis: No additional cost to this program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fees are associated with this filing.

(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.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Agriculture.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 217B

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This filing will not create 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 filing will not create revenue, now nor in the future.

(c) How much will it cost to administer this program for the first year? No changes to current costs will occur.

(d) How much will it cost to administer this program for subsequent years? No changes to current costs will occur.

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:

LABOR CABINET
Department of Workers' Claims
(New Administrative Regulation)

803 KAR 25:270 Pharmaceutical formulary.

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 or KRS Chapter 13A. KRS 342.035 requires the commissioner to develop or adopt a pharmaceutical formulary and promulgate administrative regulations to implement the developed or adopted pharmaceutical formulary. This administrative regulation establishes the formulary and provides guidance to implement the adopted formulary.

Section 1. Definitions.

(1) "Carrier" or "Insurance Carrier" means any insurer authorized to insure the liability of employers arising under Chapter 342 of the Kentucky Revised Statutes, an employer authorized by the commissioner to pay directly the compensation provided in Chapter 42 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) "Compound/compounding" means the process of combining, mixing, or altering ingredients to create a medication that is tailored to meet the needs of an individual patient.

(4) "Department" or "Department of Workers' Claims" means the governmental agency whose responsibilities are provided in KRS 342.228.

(5) "Dispense" means to deliver a drug to an ultimate user pursuant to the lawful order of a medical provider, including the packaging, labeling, or compounding necessary to prepare the drug for delivery.

(6) "Drug" means a substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or any supplement to them, which is intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man.

(7) "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.

(8) "Employer" means those persons constituting an employer

as defined in KRS 342.630, the employer's insurance carrier, self-insured group or other payment obligor, third party administrator, other person acting on behalf of the employer in a workers' compensation matter, and the employer's legal counsel.

(9) "Formulary" or "Pharmaceutical Formulary" means the pharmaceutical formulary developed or adopted by the commissioner pursuant to KRS 342.035(8)(b).

(10) "Medical Provider" means a natural person who has prescriptive authority for drugs under the professional licensing laws of Kentucky, another state, or federal law, unless that person's license has been revoked, suspended, restricted or probated.

(11) "N" or "N status" means the drug is a non-preferred drug.

(12) "Natural person" means a biological human being.

(13) "Non-prescription drug" or "over-the-counter-drug" means a drug that may be sold without a prescription.

(14) "Person" means an individual, corporation, government, or governmental subdivision or agency, business, estate, trust, partnership, association, or any other legal entity.

(15) "Pharmacist" means a natural person lawfully licensed to engage in the practice of the profession of pharmacy.

(16) "Preauthorization" means the process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(17) "Prescription" or "prescribed" means a written, electronic, or oral order for a drug, signed or given or authorized by a medical provider and intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man.

(18) "Prescription Drug" means:

(a) A substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(b) A drug that under federal law is required, before being dispensed or delivered, to be labeled with the statement: "Caution: federal law prohibits dispensing without prescription"; "Rx only"; or another legend that complies with federal law; or

(c) A drug that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a medical provider only.

(19) "Refill" means a prescription for the same drug, at the same dose or strength, and in the same quantity and frequency, and with the same instructions as was initially prescribed.

(20) "Utilization Review" means utilization review as defined in 803 KAR 25:190 §1 (6).

(21) "Y" or "Y status" means the drug is a preferred drug.

Section 2. Purpose and Adoption.

(1) The purpose of the formulary is to facilitate the safe and appropriate use of prescription drugs in the treatment of work-related injury and occupational disease.

(2) The commissioner adopts the current edition and any future published updates of the ODG formulary currently published by MCG Health. The commissioner shall review the formulary not less than annually and update or amend this regulation, if necessary, to ensure that the formulary is consistent with the provisions of KRS 342.020 and KRS 342.035.

(3) The formulary shall be made available by the department. Subsequent updates shall be effective on the first day of the month following the update.

(4) To the extent this regulation or the formulary conflict with any state or federal statute or regulation limiting prescriptive authority, including KRS 218A.172, KRS 218A.020(3), KRS 314.011(8) and 201 KAR 9:260, the statute or administrative regulation limiting prescriptive authority shall apply.

Section 3. Application.

(1) An employer or its payment obligor is liable for payment of up to a seven (7)-day supply of a "Y" drug dispensed to or prescribed for an injured employee within seven (7) days of a work-related injury in treatment of that work-related injury even if the employer ultimately denies liability for the claim. Payment by the employer or its payment obligor pursuant to this subsection does not waive the employer's right to contest its liability for the claim or benefits to be provided.

(2) Unless the employer, in good faith, denies the claim as not compensable, drugs assigned "Y" status in the formulary on the date the prescription is issued shall be filled without the need for preauthorization and without delay if prescribed for and appropriate for the work injury or occupational disease. Utilization review shall not be required for a "Y" drug but may be conducted retrospectively to determine medical reasonableness and necessity. A denial of a "Y" drug based on retrospective utilization review shall apply only to refill prescriptions of that drug after the date of the utilization review.

(3) Unless the employer, in good faith, denies the claim as not compensable, drugs assigned "N" status in the formulary on the date the prescription is issued shall require preauthorization. A prescription for a drug with an "N" status issued without articulated sound medical reasoning does not constitute a request for preauthorization nor a request for payment. Within two (2) business days of presentation of a prescription for a drug with an "N" status without articulated sound medical reasoning, the insurance carrier shall notify the medical provider that preauthorization is required for the prescribed drug.

(4) Except as provided in subsection (1) of this Section, drugs dispensed for outpatient use by any person other than a pharmacist require preauthorization.

(5) Any prescription drug not listed in the formulary shall require preauthorization. Any non-prescription drug shall not require preauthorization.

(6) Compound medications require preauthorization even if all of the components of the compound are listed as "Y" drugs in the formulary.

(7) Medical providers are required to prescribe in accordance with the formulary unless the medical provider can sufficiently articulate sound medical reasoning for deviating from the formulary, which may include:

(a) Documentation that reasonable alternatives allowable in the formulary 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 the approved formulary options.

(8) Before an employer denies authorization for a drug that requires preauthorization, the employer must consider any sound medical reasoning furnished by the medical provider for prescribing that drug.

Section 4. Preauthorization.

(1) Requests for preauthorization shall be subject to utilization review unless the employer waives utilization review.

(2) Except as modified in this Section, 803 KAR 25:190 Sections 5, 7, and 8 apply to all prescriptions for which preauthorization is required under this administrative regulation. If the medical provider has provided sound medical reasoning for the prescription, the employer shall not deny a prescribed drug based solely on the status of the drug in the formulary.

(3) If as a result of utilization review the carrier denies a request for preauthorization, the medical provider may request reconsideration of the denial to include a peer-to-peer conference with a utilization review physician. The request for a peer-to-peer conference shall be made by electronic communication and shall provide:

(a) A telephone number for the reviewing physician to call;

(b) A date for the conference not less than two (2) business days after the date of the request; and

(c) A one (1) - hour period during which the requesting medical provider (or its designee) will be available to participate in the conference between the hours of 8:00 a.m. and 6:00 p.m. (Eastern Time), Monday through Friday.

(4) The peer-to-peer conference must be conducted by a physician of the same specialty as the medical provider requesting reconsideration.

(5) Failure of the reviewing physician to participate in the peer-to-peer conference during the date and time specified shall result

in the approval of the request for preauthorization and approval of the requested prescription. 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 ten (10) 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 a prescribed drug 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 a prescribed drug 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) 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) For claims with a date of injury or last exposure on or after January 1, 2019, the formulary applies to all drugs that are prescribed or dispensed on or after July 1, 2019, for outpatient use;

(2) For claims with a date of injury or last exposure prior to January 1, 2019, the formulary applies as follows:

(a) For a prescription that is not a refill prescription, the formulary applies to all drugs prescribed or dispensed on or after July 1, 2019, for outpatient use;

(b) For a refill prescription of a drug initially prescribed prior to July 1, 2019, the formulary applies to all drugs prescribed or dispensed on or after January 1, 2020, for outpatient use.

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: December 27, 2018

FILED WITH LRC: December 27, 2018 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 22, 2019, at 10:00 a.m. (EDT) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email dale.hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation adopts a pharmaceutical formulary for medications prescribed 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 promulgate an administrative regulation to implement the pharmaceutical formulary.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.035 requires the commissioner to adopt a pharmaceutical formulary for medications prescribed for the cure of and relief of a work injury or occupational disease and to promulgate an administrative regulation to implement that formulary.

(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 adopt a pharmaceutical formulary for medications prescribed 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 that pharmaceutical formulary.

(2) If 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 pharmaceutical formulary adopted by the commissioner. Employers and their payment obligors will apply the pharmaceutical formulary when 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 of completing the medical report cannot exceed $100. 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 prescription drugs and more likely to receive the appropriate prescription drugs in a more timely fashion. 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 the pharmaceutical formulary on the Cabinet's website.

(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 the pharmaceutical formulary on the Cabinet's website is nominal.

(d) How much will it cost to administer this program for subsequent years? Other than the cost to maintain the pharmaceutical formulary on the Cabinet's website, 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 pharmaceutical formulary will cause drug costs to stabilize or reduce, providing a reduction of costs to the workers' compensation system as a whole.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Data and Analytics
Division of Health Benefit Exchange
(Repealer)

900 KAR 10:021. Repeal of 900 KAR 10:010, 900 KAR 10:020, and 900 KAR 10:110.

RELATES TO: KRS 194A.050(1)

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Office of Health Data and Analytics, Division of the Health Benefit Exchange, has responsibility to administer the state-based American Health Benefit Exchange. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth; to operate the programs and fulfill the responsibilities vested in the cabinet; and to implement programs mandated by federal law or to qualify for the receipt of federal funds. In accordance with KRS 13A.310(3)(a), this administrative regulation repeals 900 KAR 10:010, 900 KAR 10:020, and 900 KAR 10:110 as these administrative regulations were rendered obsolete with the promulgation of 900 KAR 10:200, Kentucky State Based Exchange on the Federal Platform.

Section 1. The following administrative regulations are hereby repealed:

(1) 900 KAR 10:010, Exchange participation requirements and certification of qualified health plans and qualified stand-alone dental plans;

(2) 900 KAR 10:020, KHBE Small Business Health Options Program; and

(3) 900 KAR 10:110, KHBE formal resolution process related to SHOP employers and employees.

ROBERT E. PUTT, Executive Director
ADAM MEIER, Secretary

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Melea Rivera, email: meleaj.rivera@ky.gov, Phone: 502-564-7940; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals three (3) administrative regulations, 900 KAR 10:010, 900 KAR 10:020, and 900 KAR 10:110.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal three (3) outdated regulations. These administrative regulations are now obsolete with the promulgation of 900 KAR 10:200, Kentucky State Based Exchange on the Federal Platform.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 13A.310, which authorizes the repeal of administrative regulations that are no longer to be effective.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to repeal three (3) outdated regulations. These administrative regulations are now obsolete with the promulgation of 900 KAR 10:200, Kentucky State Based Exchange on the Federal Platform.

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

(a) How the amendment will change this existing administrative

regulation: This is a repealer.

(b) The necessity of the amendment to this administrative regulation: This is a repealer.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a repealer administrative regulation and will not affect anyone, except the cabinet, which will no longer have three (3) obsolete administrative regulations in effect.

(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 is a repealer administrative regulation and the only impact is to remove three (3) obsolete administrative regulations from effectiveness.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are expected to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This is a repealer administrative regulation and the only impact is to remove three (3) obsolete administrative regulations from effectiveness. The only benefit is to the cabinet, which will have three (3) obsolete administrative regulations removed from effectiveness.

(5) Provide an estimate of how much it will cost the administrative body 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: The source of funding for the implementation and enforcement of this administrative regulation will be the Office of Health Data and Analytics' existing budget. No new funding will be needed to implement this administrative regulation. This is a repealer administrative regulation and will not have costs of implementation or enforcement,

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No fee or funding increase 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: The administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as this administrative regulation repeals three (3) obsolete 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? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Health Data and Analytics.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050

3. Estimate the effect of this administrative regulation on the 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 is a repealer administrative regulation and will not generate revenue.

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

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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 Behavioral Health, Developmental
Division of Behavioral Health
(Repealer)

908 KAR 1:341. Repeal of 908 KAR 1:340.

RELATES TO: KRS 218A.180, Chapter 222, 315.020, 42 C.F.R. Part 8

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 222.231, 42 C.F.R. Part 8, EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.010 authorizes the Secretary for the Cabinet for Health and Family Services to prescribe administrative regulations for the administration of the cabinet and of the institutions under the control of the cabinet. This administrative regulation repeals 908 KAR 1:340. This administrative regulation is being repealed due to the content of this regulation being included in new administrative regulation 908 KAR 1:372.

Section 1. The following administrative regulations are hereby repealed, 908 KAR 1:340, Narcotic treatment programs.

WENDY MORRIS, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2019 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Justin Dearinger, email:Justin.Dearinger@ky.gov, phone 502-782-7212; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 908 KAR 1:340.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 908 KAR 1:340 as the requirements of 908 KAR 1:340 are now contained in 908 KAR 1:374.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 210.010 by effectively overseeing the administrative regulations.

(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 repealing 908 KAR 1:340 as the requirements of 908 KAR 1:340 are now contained in 908 KAR 1:374.

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

(a) How the amendment will change this existing administrative regulation: This regulation is a repealer and not an amendment.

(b) The necessity of the amendment to this administrative regulation: This regulation is a repealer and not an amendment.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation is a repealer and not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: This regulation is a repealer and not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts licensed AODE programs. Currently, there are approximately 28 Narcotic Treatment Programs.

(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 that operate NTPs will have to take no actions based on this repealer regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with this repealer regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities will have one set of updated requirements contained in 908 KAR 1:374.

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

(a) Initially: There will be no cost to the Cabinet to implement this repealer.

(b) On a continuing basis: There will be no cost to the Cabinet to implement this repealer.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be no fee change to implement this repealer.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There will be no fee changed or implemented to implement this repealer.

(9) TIERING: Is tiering applied? Tiering is not applicable to this repealer.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts narcotic treatment programs and the Department for Behavioral Health, Developmental and Intellectual Disabilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 210.010

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no fiscal effect from this repealer.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no fiscal effect from this repealer.

(c) How much will it cost to administer this program for the first year? There will be no fiscal effect from this repealer.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Behavioral Health
(New Administrative Regulation)

908 KAR 1:372. Licensure of residential alcohol and other drug treatment entities.

RELATES TO: KRS 222.231, 309.080(2)

STATUTORY AUTHORITY: KRS 222.231(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.231(2) requires the cabinet to promulgate administrative regulations to establish requirements and standards for treatment programs, including health and safety standards, patient care standards, and classification of alcohol and other drug programs according to type, range of services, and level of care provided. This administrative regulation establishes standards for residential alcohol and other drug treatment entities (AODE) that provide services to adult men, adult women, women with dependent children, or adolescents. Residential AODE programs include twenty-four (24) hour clinically managed residential withdrawal management, general residential treatment, family residential, residential transitional living, and adolescent residential treatment programs.

Section 1. General Requirements. Each type of residential AODE program as described in Section 2 through Section 6 of this administrative regulation shall implement written policies for separate housing of adult and adolescent clients, and male and female clients in accordance with the following:

(1) Adult and adolescent clients shall be physically separated by floor, wing, or other physical barriers; and

(2) Male and female sleeping quarters shall be physically separated by floor, wing, or other adequate physical barriers, ensuring the clients' rights to privacy and dignity in treatment.

Section 2. Clinically Managed Residential Withdrawal

Management.

(1) In addition to the licensing requirements of 908 KAR 1:370, a program offering clinically managed residential withdrawal management shall accept and provide services only to clients meeting the:

(a) Diagnostic criteria for substance-related disorder as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) for alcohol, tobacco, and other drug use; and

(b) Dimensional criteria for clinically managed residential withdrawal management as established in the most recent version of The American Society of Addiction Medicine (ASAM) Criteria.

(2) Clinically managed residential withdrawal management services shall:

(a) Be delivered by staff who:

1. Are qualified to meet the needs of clients; and

2. Provide twenty-four (24) hour supervision, observation, and support for clients who are intoxicated or experiencing withdrawal;

(b) Include care for clients whose intoxication and withdrawal signs and symptoms require twenty-four (24) hour structure and support without the need for medically monitored inpatient withdrawal management services; and

(c) Include:

1. Use of established clinical protocols to identify clients who are in need of:

a. Medical services beyond the capacity of the facility; and

b. Transfer to an appropriate level of care;

2. Availability of specialized clinical consultation and supervision for biomedical, emotional, behavioral, and cognitive problems;

3. Protocols that shall be developed and supported by a physician knowledgeable in addiction medicine for use in determining the nature of any medical or nursing interventions required if a client's condition deteriorates and the client appears to need the care of a physician or nurse;

4. Availability of medical evaluation and consultation twenty-four (24) hours per day;

5. Affiliation with other levels of care; and

6. Ability to arrange for appropriate laboratory and toxicology tests.

(3) Staff shall include clinical staff trained and competent to implement physician-approved protocols for:

(a) Patient observation and supervision;

(b) Determination of appropriate level of care; and

(c) Facilitation of the client's transition to continuing care.

(4) Each clinician who is responsible for assessing and treating clients shall be able to obtain and interpret information regarding the needs of the clients, including:

(a) The signs and symptoms of alcohol and other drug intoxication and withdrawal;

(b) Appropriate treatment and monitoring of intoxication and withdrawal; and

(c) How to facilitate entry into ongoing care.

(5) A program providing clinically managed residential withdrawal management that supervises self-administration of medication shall have written policies and procedures on the steps involved for self-administration, including:

(a) Identification in the client record of medication that requires physician approval prior to use; and

(b) The name of the staff person who monitored the self-administration of the medication.

(6) Therapies offered by a program providing clinically managed residential withdrawal management shall include:

(a) Daily clinical services to assess and address the needs of each client, including the following if needed:

1. Medical services, including:

a. Medically assisted withdrawal; or

b. Medication assisted treatment, provided onsite or through referral;

2. Individual counseling;

3. Group counseling; or

4. Withdrawal support;

(b) A range of cognitive, behavioral, medical, mental health, and other therapies as needed to enhance a client's understanding of:

1. Addiction;

2. Co-occurring disorders;

3. Completion of the withdrawal management process; and

4. Referral to an appropriate level of care for continuing treatment;

(c) Withdrawal rating scale tables and flow sheets that include tabulation of vital signs if needed;

(d) Interdisciplinary individualized assessment and treatment;

(e) Health education services; and

(f) Services to families and significant others.

(7) Elements of the assessment and treatment planning shall include:

(a) An individualized treatment plan established in accordance with 908 KAR 1:370, Section 19, including:

1. Problem identification in dimensions two (2) through six (6) of the most recent version of the ASAM criteria;

2. Development of treatment goals and measurable treatment objectives; and

3. Activities designed to meet the treatment objectives and management of withdrawal symptoms;

(b) Daily assessment of:

1. Progress during withdrawal management; and

2. Any treatment changes;

(c) Transfer and discharge planning, beginning at the point of admission; and

(d) Referral and linkage arrangements for:

1. Counseling;

2. Medical care, including medication assisted treatment if not provided onsite;

3. Psychiatric care; and

4. Continuing care.

(8) Progress notes shall:

(a) Be maintained in the client record in accordance with 908 KAR 1:370, Section 17(4)(h);

(b) Reflect implementation of the treatment plan;

(c) Document the client's response to treatment; and

(d) Include each amendment of the treatment plan.

(9) A client shall continue with clinically managed residential withdrawal management until:

(a) Withdrawal signs and symptoms are sufficiently resolved so that the client can be safely managed at a less intensive level of care;

(b) The client's signs and symptoms of withdrawal have:

1. Failed to respond to treatment; or

2. Intensified so that transfer to a more intensive level of withdrawal management is indicated; or

(c) The client is unable to complete clinically managed residential withdrawal management despite an adequate trial, due to increasing depression, suicidal impulses, or other severe complication.

Section 3. General Residential Treatment Programs.

(1) In addition to the licensing requirements in 908 KAR 1:370, a residential treatment program:

(a) Shall evaluate the client's need for each of the following at admission:

1. Alcohol and other drug abuse services;

2. Employment services;

3. Vocational education, training, or rehabilitation services;

4. Disability services;

5. Other health and human services; and

6. Assistance in developing daily living skills;

(b) Shall establish and implement a policy for off-site supervision and transportation of clients to services provided outside of the facility, which shall:

1. Indicate the method of transportation;

2. Address the security and accountability for each client and his or her personal possessions;

3. Address the transfer of client information to and from the provider of services;

4. Ensure that a copy of current registration and current

insurance information is maintained on file for each vehicle used to transport clients;

5. Ensure that the name of each driver responsible for transporting clients is maintained on file;

6. Identify the employee who accompanies the client, if appropriate; and

7. Identify the destination for each client; and

(g) May provide clinically managed residential withdrawal management as established in Section 2 of this administrative regulation.

(2) A residential treatment program shall provide each client with education regarding:

(a) The disease of addiction;

(b) The client's diagnosis;

(c) The effects of alcohol and other drug abuse;

(d) The risks of exposure to human immunodeficiency virus (HIV), hepatitis, and other health consequences of substance use disorder;

(e) Family issues related to substance use disorder;

(f) Recovery support groups specific to addiction recovery;

(g) Medication assisted treatment; and

(h) Understanding the interactions between mental health and addiction, including the most common types of co-occurring disorders.

(3) Information or education about alcohol and other drug abuse, including recovery shall be made available to a client's family or significant other.

(4) A client shall have access to printed materials, appropriate to the client's literacy level, and audio and video materials that are:

(a) Presented multi-lingually on the basis of client composition of the facility; and

(b) Related to the treatment of alcohol and other drug abuse.

(5) A residential treatment program shall ensure that each client spends at least seven (7) hours each day in structured activities, including participation in any of the following activities:

(a) Alcohol and other drug abuse education;

(b) Individual, group, or family counseling in which the client shall participate a minimum of ten (10) hours each week;

(c) On-site or off-site recovery support meetings;

(d) Life skills training;

(e) Vocational training or an educational activity; or

(f) Recreation.

(6) If counseling is provided in a group, there shall be a maximum of twelve (12) clients per clinician.

(7)(a) A residential treatment program shall provide a planned, diversified program of organized recreational activities that allow clients to participate on an individual or group basis as specified in the client treatment plan and coordinated with other client care services.

(b) Recreational activities shall be provided under the direction of staff as part of the client's schedule.

(8)(a) Progress notes shall be recorded in the client's treatment plan following the delivery of a clinical service or individual counseling session and shall include:

1. The type of service provided, including the:

a. Date of the service; and

b. Length of the service;

2. A description of the client's response to the service; and

3. Clinical impressions including the clinician's assessment of the client's progress or lack of progress toward achieving the objectives established in the treatment plan.

(b) In addition to paragraph (a) of this subsection, a progress note shall be made each week to document the client's progress in:

1. Employment;

2. Pursuing employment;

3. Participation in vocational education, training, or rehabilitation activities;

4. Participation in recovery support groups;

5. Training in daily living and recovery supports; and

6. Following through on referrals to services, if needed.

(9) A written recovery plan shall be:

(a) Developed by the client and the treatment team to identify and promote aspects of continuing care for substance use disorder that are associated with success in recovery;

(b) Provided to the client after he or she has achieved the initial stabilization goals of treatment; and

(c) Based on the client's needs at discharge, including activities and any referrals to support recovery.

(10) A discharge summary shall be completed within thirty (30) calendar days of discharge, including the client's:

(a) Date of admission;

(b) Date of discharge;

(c) Presenting problem;

(d) Evaluation of alcohol and other drug abuse or dependency;

(e) Summary of treatment;

(f) Response to treatment;

(g) Referrals made to other organizations or providers; and

(h) Reason for discharge.

(11) Other than a personal care or housekeeping task, if a client performs work in the residential treatment program that is part of a therapeutic activity, the work shall be voluntary and consistent with the treatment plan.

(12) A residential treatment program shall have written policies and procedures on the use of medication, including:

(a) Documentation in the client record of any medications the client is currently prescribed and taking;

(b) Documentation in the client record of any over-the-counter medication the client is taking;

(c) Steps involved for self-administration of over-the-counter medication, including identification in the client record of medication that requires physician approval prior to use;

(d) Written consent from the client, for physician verification, that the prescription or over-the-counter medication is not contraindicated with the client's treatment plan if the residential treatment program does not have a physician on staff;

(e) Documentation of the physician's verification in the client's record;

(f) Storage of all medications to ensure that all medications be kept in a locked, secure location inaccessible to clients;

(g) Administration of medication, including establishment of the times for administration of medication;

(h) Documentation in the client's record of self-administration of prescription or over-the-counter medication, including the:

1. Name of the medication;

2. Date and time of self-administration;

3. Dosage and amount of medication; and

4. Name of the staff person who monitored the self-administration of the medication.

(13) A residential treatment program shall have a first-aid kit with supplies necessary for use in responding to minor injury or illness.

(14)(a) Food services shall be provided in accordance with 902 KAR 45:005.

(b) A copy of the food service permit shall be maintained on site.

(c) There shall be documentation that meal planning is approved by a registered dietician.

(d) Drinking water shall be freely available throughout the day, including mealtime.

(15) A residential treatment program shall be staffed twenty-four (24) hours per day, seven (7) days per week and have:

(a) A program manager, supervisor, or coordinator, including a designated staff person responsible for managing a program in the absence of the manager, supervisor, or coordinator;

(b) A sufficient number of personnel to meet client needs based on the:

1. Number of clients;

2. Need for assistance; and

3. Services delivered; and

(c) At least one (1) staff person on duty and awake at all times who is trained in:

1. Crisis intervention;

2. Cardiopulmonary resuscitation; and

3. Standard first aid.

(16) A residential treatment program shall ensure that in

addition to the clients' rights established by 908 KAR 1:370, Section 16, the following clients' rights shall be fully protected:

(a) The right to visitation with family and friends, subject to written visiting rules and hours established by the program, except as provided in subsections (17) and (18) of this section;

(b) The right to conduct private telephone conversations, subject to written rules and hours established by the program, except as provided in subsections (17) and (18) of this section;

(c) The right to send and receive uncensored and unopened mail;

(d) The right to wear his or her own clothing subject to written program rules;

(e) The right to bring personal belongings, subject to limitation or supervision by the program;

(f) The right to communicate with his or her personal physician; and

(g) The right to practice his or her personal religion or attend religious services, within the program's policies and written policies for attendance at outside religious services.

(17) The administrator, program manager, or designee may impose limitations on any of the visitation or phone call procedures if limitations are:

(a) Therapeutically necessary; and

(b) Recorded in the client's record.

(18) The residential treatment program may require the client to open mail or packages in the presence of program staff for inspection.

(19) If more than one (1) type of residential AODE program operates in the same facility, staff may provide services in each program.

Section 4. Family Residential Program.

(1) In addition to the requirements of 908 KAR 1:370 and Section 3 of this administrative regulation, a family residential program in which a client's children reside with the client:

(a) Shall provide parenting education to the client if identified in the client's treatment plan;

(b) Shall ensure and document that the children:

1. Are immunized at admission;

2. Show no signs of illness; and

3. Continue to receive primary medical care as needed during their stay at the facility;

(c) Shall develop and implement written policies to:

1. Include the maximum number of children permitted to reside in the facility at one (1) time;

2. Include the age of children permitted to reside in the facility;

3. Ensure that the needs of the children are assessed and met during treatment;

4. Ensure that the health, safety, and well-being of the children is protected; and

5. Require the client to sign a statement that outlines the client's responsibility for care of the client's child, including that:

a. The client shall have primary responsibility for ensuring the child's needs are met regarding:

(i) Food;

(ii) Clothing;

(iii) Hygiene;

(iv) Safety;

(v) Discipline;

(vi) Supervision; and

(vii) Obtaining services in response to a referral made on behalf of the child; and

b. The client shall make prior arrangements for the care of the child before leaving the facility without the child; and

(d) May provide clinically managed residential withdrawal management as established by Section 2 of this administrative regulation.

(2) A family residential program shall:

(a) Identify and provide information to the client regarding community resources, including education and child care;

(b) Provide education about the effect on families and children regarding abuse of alcohol or other drugs; and

(c) Provide organized recreational activities:

1. Under the direction of staff; and

2. Posted on a schedule.

Section 5. Residential Transitional Living Program.

(1) In addition to the licensing requirements of 908 KAR 1:370, a residential transitional living program that provides counseling services on-site shall:

(a) Comply with the requirements established for general residential treatment programs in Section 3(1), (6), and (8) to (17) of this administrative regulation;

(b) Ensure that each client participates in counseling a minimum of five (5) hours per week; and

(c) Enable each client to attend recovery support meetings.

(2) A residential transitional living program that does not provide counseling services on-site shall:

(a) Comply with the requirements established for general residential treatment programs in Section 3(1)(a) and (b) and (d) through (f), and (8) through (17) of this administrative regulation;

(b) Ensure that a comprehensive biopsychosocial assessment is obtained on behalf of the client;

(c) Ensure that each client participates in counseling a minimum of five (5) hours per week;

(d) Enable each client to attend recovery support meetings;

(e) Have a program manager who may be responsible for more than one (1) facility and shall:

1. Be responsible for the day-to-day management of the program, including:

a. Supervising caseworkers; and

b. Monitoring the implementation of program policies and procedures;

2. Complete training in accordance with 908 KAR 1:370, Section 10(1); and

3. Meet the education and experience requirements of a clinical services supervisor in accordance with 908 KAR 1:370, Section 10(3), or have at least a bachelor's degree from an accredited college or university, in addition to:

a. 4,000 hours of work experience in the alcohol and other drug treatment field post degree; and

b. Eighty (80) hours of alcohol and other drug abuse training within four (4) years immediately prior to the date of assuming responsibility as a program manager or no longer than two (2) years immediately after assuming responsibility as a program manager;

(f) Have sufficient staff to ensure that an appropriate staff person is responsible for managing a program in the absence of the program manager; and

(g) Have caseworkers who:

1. Shall be responsible for:

a. Coordinating clinical services in accordance with a client's treatment plan;

b. Monitoring a client's progress in relation to the treatment plan;

c. Conducting training on daily living and recovery supports; and

d. Making referrals; and

2. Meet the training, education, and experience requirements of 908 KAR 1:370, Section 11(2) to (5).

Section 6. Adolescent Residential Treatment Program.

(1) An adolescent residential treatment program shall be a freestanding residential facility or a distinct part of a facility in which care is provided to two (2) or more adolescent clients who are:

(a) Under eighteen (18) years of age; or

(b) Eighteen (18) to twenty-one (21) years of age, if placement in an adolescent program is determined to be the appropriate level of care upon completion of the assessment described by 908 KAR 1:370, Section 18(1) and (2).

(2) In addition to the requirements of 908 KAR 1:370 and Section 3 of this administrative regulation, an adolescent residential treatment program:

(a) Shall admit adolescents only to areas within the facility approved by the cabinet for adolescent occupancy;

(b) Shall ensure that areas for adolescents are physically

separated from any part of a facility occupied by or accessible to adult clients;

(c) Shall ensure that adolescent clients in the facility be separated if the age range is more than five (5) years;

(d) Shall have no fewer than two (2) staff members present and on site at all times:

(e) Shall have at least one (1) staff member within sight and sound and responsible for the supervision of no more than:

1. Ten (10) adolescent clients during waking hours; and

2. Twenty (20) adolescent clients during sleeping hours;

(f) Shall provide or coordinate the provision of educational services; and

(g) May provide clinically managed residential withdrawal management as established in Section 2 of this administrative regulation.

(3) An adolescent residential treatment program shall:

(a) Make every effort to identify the resident's family dynamics, including family structure and patterns of relating, or interactions between family members;

(b) Engage and include the family in the resident's treatment as early as possible in accordance with 908 KAR 1:370, Section 9(9);

(c) Provide single family therapy, multi-family group therapy, and parental education sessions as clinically appropriate and as specified in the client's treatment plan;

(d) Assist the resident in developing a support system to help reinforce behavioral gains made during treatment; and

(e) Provide ongoing support with an emphasis on recovery supports.

(4) Educational services shall be provided by:

(a) The local school district in which the facility is located;

(b) An accredited private educational institution in the community; or

(c) An on-site school that:

1. Is operated by the facility and approved by the Kentucky Department of Education;

2. Is designed to maintain the educational and intellectual development of the adolescent;

3. If indicated, provides opportunities to remedy deficits in the educational level of an adolescent who has fallen behind as a result of involvement with substance use; and

4. Includes at least three (3) hours of instruction on days that education services are provided.

(5) Regardless of the method by which the educational services are delivered to clients, staff of the adolescent residential treatment program shall:

(a) Confer with teachers or their principals on the progress of each client; and

(b) If appropriate, encourage clients to become active in extracurricular school activities and make arrangements necessary to enable the client to participate.

(6) The adolescent residential treatment program shall ensure that any adolescent who legally is not attending school participates in a training program that provides:

(a) Necessary life skills;

(b) Vocational training; and

(c) Training on methods of job acquisition.

(7) Each resident shall be limited to no more than two (2) hours of entertainment-based screen time per day.

(8) Structured activities shall be developmentally appropriate to the resident.

(9) Food shall be served to residents in a common eating area and shall:

1. Include at least three (3) meals per day, served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast;

2. Include between-meal and unscheduled snacks;

3. Not be withheld as punishment and shall not be used as a reward;

4. Take into account the special dietary needs and tastes of residents, such as diabetes and allergies;

5. Be served in an amount appropriate to the age of the resident and include second servings, if requested; and

6. Not be served while viewing television or using electronics.

(10) The following practices shall be expressly forbidden:

(a) Corporal punishment;

(b) Use of restraints of any sort;

(c) Use of a behavior management room; and

(d) Sanctions that include verbal, mental, or physical abuse.

(11)(a) Computer and internet usage shall be monitored.

(b) Blocking software or other controls shall be used to restrict access to inappropriate web sites.

(12) A resident shall receive assistance with personal care and hygiene based upon his or her developmental skills.

Section 7. Infection Control. Each type of residential AODE program shall implement written policies and procedures for an infection control system, including orientation for all new personnel and annual in-service training for all personnel on proper hygiene related to infections prevalent among persons who use drugs.

Section 8. Physical Environment.

(1) Each type of residential AODE program shall:

(a) Comply with building codes, ordinances, and administrative regulations that are enforced by city, county, or state jurisdictions;

(b) Be approved by the State Fire Marshal's office:

1. Prior to initial licensure; or

2. If the AODE changes locations;

(c) Within the program's total square footage, have at least 120 square feet of space for each client residing in the facility;

(d) If licensed as a residential AODE program prior to the effective date of this administrative regulation, have at least:

1. One (1) toilet and one (1) sink per eight (8) clients; and

2. One (1) shower or tub per fifteen (15) clients;

(e) If licensed as a residential AODE program after the effective date of this administrative regulation, have at least:

1. Two (2) toilets and two (2) sinks per eight (8) clients; and

2. One (1) shower or tub per (8) clients;

(f) Provide space for a client to store clothing, linens, and personal belongings, including a receptacle that may be locked for the storage of personal property; and

(g) Have separate rooms for the following:

1. Sleeping;

2. Dining;

3. Bathing and toileting;

4. Living and recreation;

5. Laundry;

6. Visiting; and

7. Private consultation and counseling, which shall be conducted in an area where a client is assured privacy and confidentiality.

(2) A client's bed shall have:

(a) A clean mattress; and

(b) Two (2) sheets, a pillow, and bed covering of sufficient quality to maintain resident comfort.

(3) The premises shall be well kept and in good repair and meet the following requirements:

(a) The facility shall ensure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

(b) The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair; and

(c) Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly.

Section 9. Client Care Environment.

(1) Each type of residential AODE program shall meet the following housekeeping and sanitation conditions and implement policies that reflect the following:

(a) The facility and its contents shall be clean to sight and touch and free of dirt and debris;

(b) All rooms shall be free of condensation, mold growth, and noxious odors;

(c) All equipment and materials necessary for cleaning,

disinfecting, and sterilizing shall be available in the facility at all times, except as provided in subsection (3)(b) of this section;

(d) Thermometers, which are accurate to within three (3) degrees Fahrenheit shall be kept in a visible location in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration;

(e) Articles in storage shall be elevated from the floor and away from walls, ceilings, and air vents;

(f) Aisles in storage areas shall be kept unobstructed;

(g) Pest control methods that are safe for clients and staff shall be used to:

1. Minimize and eliminate the presence of rodents, flies, roaches, and other vermin in the facility; and

2. Prevent the breeding, harborage, or feeding of vermin;

(h) All openings to the outer air shall be effectively protected against the entrance of insects and other vermin;

(i) Toilet tissue, soap, and disposable towels or air driers shall be provided in each bathroom at all times, with soap and disposable towels or air driers provided at each hand washing sink;

(j) Bathrooms with multiple hand washing sinks shall provide at least one (1) soap dispenser and one (1) disposable towel dispenser or air drier for every two hand washing sinks;

(k) Except as provided in paragraph (j) of this subsection, a soap dispenser and towel dispenser shall be provided by each hand washing sink and utility sink throughout the facility;

(l) Mattresses, pillows, blankets, draperies, upholstery, and other fabrics or decorations shall be fire-resistant and flameproof;

(m) Latex foam pillows shall be prohibited;

(n) Equipment requiring drainage shall be drained to a sanitary connection;

(o) The temperature within client areas of the facility shall:

1. Be maintained at a minimum of seventy-two (72) degrees Fahrenheit; and

2. Not exceed eighty-two (82) degrees Fahrenheit;

(p) The facility shall maintain adequate ventilation in all areas used by clients; and

(q) The facility shall establish a written heat emergency action plan to be implemented if the indoor air temperature is eighty-two (82) degrees Fahrenheit or higher for four (4) consecutive hours.

(2) Each type of residential AODE program shall meet the following safety conditions and implement policies that reflect the following:

(a) Non-skid wax shall be used on all waxed floors;

(b) Throw rugs or scatter rugs shall not be used;

(c) All equipment shall be located in an unobstructed space that has been provided for operation;

(d) All household and cleaning products in the facility shall be identified, labeled, and securely stored in a cabinet, closet, or room that is inaccessible to clients;

(e) All furnishings shall be clean and in good repair, and mechanical equipment shall be in good working order; and

(f) All smoke detectors shall be fully operational.

(3) Each family residential program shall meet the following safety conditions in addition to the provisions set forth in subsections (1) and (2) of this section:

(a) Children shall not be exposed to lead-based paint hazards;

(b) Toxic chemicals, including cleaning agents shall be stored in locked cabinets or enclosed in areas not accessible to the children;

(c) All electrical outlets shall have protective covers;

(d) All fluorescent and incandescent light bulbs shall have protective covers or shields;

(e) All windows and other glass surfaces that are not made of safety glass and that are located three (3) feet above the floor or lower shall have protective guards;

(f) Non-permanent safety barriers shall be installed if the facility has stairs, ramps, balconies, porches, or elevated play areas;

(g) Materials and furniture for indoor and outdoor use shall be of sturdy and safe construction, be easy to clean and free of hazards;

(h) Children shall be kept away from hot stoves, irons and ironing boards, knives, glassware and other equipment within the facility that may cause injury;

(i) Poisons, insect traps, rodent traps, and similar products shall be kept out of reach of children; and

(j) All indoor and outdoor areas are maintained in a safe and sanitary manner.

WENDY MORRIS, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Justin Dearinger, email: Justin.Dearinger@ky.gov, Phone: 502-782-7212; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for residential alcohol and other drug treatment entities (AODE).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 222.231(2), which requires the cabinet to promulgate administrative regulations to establish health, safety, and patient care standards for AODE programs according to type and range of services. Moreover, this administrative regulation is necessary to comply with HB 124 passed during the 2018 legislative session, a measure that required the cabinet to conduct a comprehensive review of all current state licensure and quality standards applicable to substance use disorder treatment programs and develop enhanced standards for treatment and recovery services, including residential services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 222.231(2) by establishing licensure requirements for AODE programs that provide residential services, including clinically managed residential withdrawal management, general residential, family residential, residential transitional living, or adolescent residential treatment services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing licensure requirements for residential AODE programs that provide clinically managed residential withdrawal management, general residential, family residential, residential transitional living, or adolescent residential treatment services.

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

(a) How the amendment will change this existing administrative

regulation: This is a new administrative regulation that prescribes and amends requirements that are currently set out in 908 KAR 1:370. However, notable changes include the following: A new section on adolescent residential treatment programs because the current AODE regulation does not address programs that treat adolescents. For example, this administrative regulation clarifies that adolescent residential treatment programs must ensure that an age range of no greater than 5 years applies to adolescent clients, and there must be at least 1 staff member for no more than 10 adolescents during waking hours and 1 staff member for no more than 20 adolescents during sleeping hours; This administrative regulation requires that clients spend at least 7 hours each day in structured activities. Within this daily requirement, clients must spend at least 10 hours each week in counseling, unless the program is a residential transitional living program, in which case the client must participate in counseling a minimum of five hours per week; and The Cabinet revised outdated language where needed, such as replacing references to "detoxification programs" with "clinically managed residential withdrawal programs"

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation that prescribes and amends requirements that are currently set out in 908 KAR 1:370.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation that prescribes and amends requirements that are currently set out in 908 KAR 1:370. This regulation conforms to the content of KRS 222.462(2)(a) by establishing a set of comprehensive quality standards and criteria based on nationally recognized and evidence-based standards for substance use disorder treatment and recovery programs

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation that prescribes and amends requirements that are currently set out in 908 KAR 1:370. This regulation will assist in the effective administration of the statutes by establishing licensure and quality standards for outpatient AODE programs. In addition, this amendment is being filed concurrently with 908 KAR 1:370, Licensing procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities, and 908 KAR 1:374, Licensure of nonhospital-based outpatient alcohol and other drug treatment entities, each of which establishes additional standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the approximately 60 licensed residential AODE programs. In an effort to engage external stakeholders, the Cabinet hosted a webinar with AODE licensees and other interested groups on October 11, 2018. A preliminary draft of this administrative regulation, 908 KAR 1:370, and 908 KAR 1:374 was distributed to stakeholders during that webinar and drafts of these regulations were sent via email and posted online. Subsequent feedback from stakeholders was taken into consideration by the Cabinet and used to make changes to the drafts during the development of these administrative regulations.

(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 that operate residential AODE programs must demonstrate compliance with the standards established by this administrative regulation and 908 KAR 1:370. Changes for providers include: A new section on adolescent residential treatment programs because the current AODE regulation does not address programs that treat adolescents. For example, this administrative regulation clarifies that adolescent residential treatment programs must ensure that an age range of no greater than 5 years applies to adolescent clients, and there must be at least 1 staff member for no more than 10 adolescents during waking hours and 1 staff member for no more than 20 adolescents during sleeping hours; This administrative regulation requires that clients spend at least 7 hours each day in structured activities. Within this daily requirement, clients must spend at least 10 hours each week in counseling, unless the program is a residential transitional living program, in which case the client must participate in counseling a minimum of five hours per week; Residential AODE programs must ensure that the client's level of care determination is based on the most recent version of the ASAM Criteria; Residential AODE programs must screen for co-occurring disorders and treat or refer clients in need of co-occurring services; and Must have written policies and procedures for implementation of: A language access plan to address accommodation for communication access services;A process for creating a trauma-informed environment to avoid practices that might retraumatize a client; and If the facility provides services to clients under age eighteen (18), a process for ensuring that services and educational materials are developmentally appropriate and the client's family is involved in treatment to the extent possible and appropriate with the written consent of the client.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new anticipated cost for providers. The licensure fees for residential AODE programs are established in 908 KAR 1:370.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that demonstrate compliance with this administrative regulation and 908 KAR 1:370 will accrue the following benefits from this administrative regulation change versus the previous administrate regulations: Standards are more closely aligned with ASAM criteria to ease certification and standardize care; Withdrawal management is incorporated throughout the regulation similar to its use in care to allow easier understanding of requirements; Many requirements were adjusted to be consistent with ASAM and with the requirements of other states; and
A fully accredited outpatient AODE program with a license in good standing will now be eligible to participate in Kentucky's Medicaid program without having to obtain a separate BHSO license.

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

(a) Initially: There is no anticipated initial cost to the administrative body to implement this regulation. The program was already in place and administered under 908 KAR 1:370. The regulatory changes are not expected to result in any change in cost to the Cabinet.

(b) On a continuing basis: The program was already in place and administered under 908 KAR 1:370. The regulatory changes are not expected to result in any change in cost to the Cabinet.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not increase any fees, although the AODE application fee is increased in 908 KAR 1:370. No additional funding will be 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 any fees, although the AODE application fee is increased in 908 KAR 1:370.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the approximately 60 licensed residential AODE

programs and the Department for Behavioral Health, Developmental and Intellectual Disabilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 222.231 and 222.462

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

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

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

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

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and Intellectual Disabilities
Division of Behavioral Health
(New Administrative Regulation)

908 KAR 1:374. Licensure of nonhospital-based outpatient alcohol and other drug treatment entities.

RELATES TO: KRS 198B.260, 218A.180, 218A.202, 222.231, 222.462, 21 C.F.R. 1301.72, 1301.75, 1301.91, 1301.92, 42 C.F.R. Part 8, 15 U.S.C. 1471

STATUTORY AUTHORITY: KRS 222.231(2) and (12), 222.462

NECESSITY, FUNCTION, AND CONFORMITY: KRS 222.231(2) requires the cabinet to promulgate administrative regulations to establish requirements and standards for treatment programs, including health and safety standards, patient care standards, and classification of alcohol and other drug abuse programs according to type, range of services, and level of care provided. KRS 222.231(12) requires the cabinet to promulgate administrative regulations to establish standards of operation for narcotic treatment programs. KRS 222.462 requires the cabinet to develop enhanced licensure and quality standards for substance use disorder treatment and recovery. This administrative regulation establishes standards for nonhospital-based alcohol and other drug treatment entities (AODE) that provide ambulatory withdrawal management, outpatient treatment services, intensive outpatient services, partial hospitalization, or office-based opiate treatment services. This administrative regulation further establishes standards for the operation of narcotic treatment programs in accordance with KRS 222.231(12) and 42 C.F.R. Part 8.

Section 1. Definitions.

(1) "Approved controlled substance" means the drugs methadone, buprenorphine, or other FDA-approved drug used in the treatment of narcotic addiction in a Narcotic Treatment Program.

(2) "CHFS" or "cabinet" means the Cabinet for Health and Family Services.

(3) "CSAT" means the Center for Substance Abuse Treatment.

(4) "DEA" means the Drug Enforcement Administration.

(5) "Dose" means a one (1) day quantity of an approved controlled substance, administered on site at a narcotic treatment program, in not less than one (1) fluid ounce of an oral solution, formulated to minimize misuse by injection.

(6) "Drug screening" means the process by which a program determines the presence or the absence of drugs in the body fluids.

(7) "Main program" means the location where all administrative and medical information related to a narcotic treatment program is retained for the purpose of on-site reviews by federal agencies or the state narcotic authority.

(8) "Medication station" means any dosing location that obtains its drug supply from the main program site and retains all records (except dosing, drug screens) at the main location. Medication stations are not extension sites as described in 908 KAR 1:370 Section 2(1)(c).

(9) "Proposed program" means an individual or entity in the process of seeking a narcotic treatment license.

(10) "SNA" means the state narcotic authority. The Department for Behavioral Health, Developmental and Intellectual Disabilities is the SNA for Kentucky.

(11) "Take-home dose" means a quantity of an approved controlled substance which the client is eligible to take off the premises of a narcotic treatment program.

(12) "Treatment phase" means a stage in the client's progress through a narcotic treatment program's sequential treatment system.

(13) "Voluntary withdrawal management" means a medically supervised withdrawal from the approved controlled substance requested by a client of a narcotic treatment program.

Section 2. Ambulatory Withdrawal Management.

(1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that provides ambulatory withdrawal management or maintenance services shall accept and provide services
only to clients meeting the:

(a) Diagnostic criteria for a substance-related disorder for alcohol, tobacco, and other drug use as established by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM); and

(b) Dimensional criteria for outpatient services as established in the most recent version of The American Society of Addiction Medicine (ASAM) Criteria.

(2) Ambulatory withdrawal management services shall:

(a) Be provided in regularly scheduled sessions;

(b) Be delivered in accordance with:

1. Clinical protocols established for ambulatory withdrawal management in the most recent version of The ASAM Criteria; or

2. Nationally recognized, evidence-based clinical protocols approved by the cabinet; and

(c) Include the following features:

1. Specialized psychological and psychiatric consultation and supervision for biomedical, emotional, behavioral, and cognitive problems as indicated;

2. Completion of a comprehensive medical history and physical examination of the client at admission;

3. Affiliation with other levels of care, including other levels of specialty addiction treatment for additional problems identified through the comprehensive biopsychosocial assessment required by 908 KAR 1:370, Section 18;

4. Appropriate laboratory and drug testing; and

5. Twenty-four (24) hour access to emergency medical consultation services if needed.

(3) Staff shall include:

(a) Physicians and licensed health practitioners acting within their scope of practice who, if not present on-site at the time of admission, shall be readily available to evaluate and confirm that ambulatory withdrawal management is safe for the client; and

(b) Clinical staff who shall be knowledgeable about the biopsychosocial dimensions of alcohol, tobacco, and other substance use disorders, including the signs and symptoms of

alcohol and other drug intoxication and withdrawal.

(4) Therapies offered by ambulatory withdrawal management services shall include:

(a) Individual assessment;

(b) Medication or non-medication methods of withdrawal management;

(c) Monitoring, assessment, and management of signs and symptoms of intoxication and withdrawal by a physician or licensed health practitioner acting within his or her scope of practice;

(d) Patient education;

(e) Non-pharmacological clinical support;

(f) Involvement of family members or significant others in the withdrawal management process; and

(g) Discharge or transfer planning, including referral for counseling and involvement in community recovery support groups.

(5) A program shall establish an individualized treatment plan in accordance with 908 KAR 1:370, Section 19 that includes:

(a) An individualized treatment plan established in accordance with 908 KAR 1:370, Section 19, including:

1. Problem identification in dimensions two (2) through six (6) of the most recent version of The ASAM Criteria;

2. Development of treatment goals and measurable treatment objectives; and

3. Activities designed to meet the treatment objectives and management of withdrawal syndrome;

(b) Daily assessment of:

1. Progress during withdrawal management; and

2. Any treatment changes;

(c) Transfer and discharge planning, beginning at the point of admission; and

(d) Referral and linkage arrangements for:

1. Counseling;

2. Medical care;

3. Psychiatric care; and

4. Continuing care.

(6) Progress notes shall:

(a) Be maintained in the client record in accordance with 908 KAR 1:370, Section 17(4)(h);

(b) Reflect implementation of the treatment plan;

(c) Document the client's response to treatment; and

(d) Include each amendment of the treatment plan.

(7) Withdrawal rating scale tables and flow sheets that include tabulation of vital signs shall be used as needed.

(8) Treatment of a client shall continue until:

(a) Withdrawal signs and symptoms are sufficiently resolved so that the client can participate in:

1. Self-directed recovery; or

2. Ongoing treatment without the need for further medical or nursing withdrawal management monitoring;

(b) The client's signs and symptoms of withdrawal have:

1. Failed to respond to treatment; and

2. Intensified so that transfer to a more intensive level of withdrawal management is indicated; or

(c) The client is unable to complete ambulatory withdrawal management despite an adequate trial, e.g. the client is experiencing intense craving and evidences insufficient coping skills to prevent continued alcohol or other drug use concurrent with the withdrawal management medication, indicating a need for more intensive services.

Section 3. Outpatient Treatment Services.

(1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that offers outpatient treatment services:

(a) Shall provide alcohol and other drug abuse counseling to each client, with counseling provided to no more than twelve (12) clients per clinician if provided in a group;

(b) Shall provide each client with education regarding:

1. The disease of addiction;

2. The client's diagnosis;

3. The effects of alcohol and other drug abuse;

4. The risks of exposure to human immunodeficiency virus (HIV), hepatitis, and other health consequences of substance use disorder;

5. Family issues related to substance use disorder; and

6. Relapse prevention;

(c) Shall refer each client to recovery support services specific to addiction recovery which may include:

1. Support groups;

2. Peer support;

3. Recovery housing;

4. Community supports;

5. Supported employment;

6. Co-occurring disorders; and

7. Medication assisted treatment;

(d) Shall have a direct affiliation with, or close coordination through referral to more intensive levels of care and medication management if indicated;

(e) Shall have a procedure to inform clients of the availability of emergency services available twenty-four (24) hours a day, seven (7) days a week; and

(f) May provide additional therapies including:

1. Motivational enhancement;

2. Occupational and recreational therapy;

3. Psychotherapy; or

4. Medication assisted therapy.

(2) Staff who provide outpatient treatment services:

(a) Shall be able to obtain and interpret information regarding the client's biopsychosocial needs;

(b) Shall be knowledgeable about the biopsychosocial dimensions of alcohol, tobacco, and other substance use disorders, including assessment of the client's stage of readiness to change;

(c) Shall be capable of monitoring stabilized mental health problems and recognizing any instability in a client with co-occurring disorders; and

(d) May include physicians and other licensed health care practitioners acting within their scope of practice on staff if medication assisted therapy is provided.

(3) Progress notes shall:

(a) Be maintained in the client record in accordance with 908 KAR 1:370, Section 17(4)(h);

(b) Reflect implementation of the treatment plan;

(c) Document the client's response to therapeutic interventions for all disorders treated; and

(d) Include each amendment of the treatment plan.

(4) The client's discharge summary shall be completed within thirty (30) calendar days of discharge.

Section 4. Intensive Outpatient Program.

(1) In addition to the licensing requirements of 908 KAR 1:370 and Section 3 of this administrative regulation, an outpatient AODE that offers intensive outpatient services shall ensure that the program provides a multi-modal, multi-disciplinary structured approach to services that are:

(a) More intensive than outpatient treatment services; and

(b) Provided a minimum of:

1.For adults:

a. Nine (9) hours per week; and

b. Given on no less than three (3) days; or

2. For adolescents:

a. Six (6) hours per week; and

b. Given on no less than two (2) days.

(2) Services shall include:

(a) Individual outpatient therapy;

(b) Group outpatient therapy;

(c) Family outpatient therapy, unless contraindicated;

(d) Crisis intervention; and

(e) Psycho-education during which the client or client's family member shall be provided with information regarding:

1.The client's diagnosis;

2. Reasons why a particular treatment might be effective for reducing symptoms; and

3. How to cope with the client's diagnosis or condition in a successful manner.

(3) A program shall:

(a) Maintain a client-to-staff ratio of no more than ten (10) clients to one (1) clinician;

(b) Establish an individualized treatment plan for each client in accordance with 908 KAR 1:370, Section 19 that focuses on stabilization and transition to a lower level of care;

(c) Provide access to a:

1. Board-certified or board-eligible psychiatrist for consultation, which may be delivered through the use of telehealth technology; and

2. Psychiatrist, other physician, or advanced practice registered nurse for medication prescribing and monitoring; and

(d) Provide each client with a schedule of all planned therapeutic activities or otherwise ensure that the schedule is conspicuously posted in a public area of the facility.

(4) If the program prepares meals on-site for a client who receives services for up to five (5) or more consecutive hours, the program shall be subject to inspection in accordance with 902 KAR 45:005.

Section 5. Partial Hospitalization.

(1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that offers partial hospitalization services shall be fully accredited by at least one (1) of the following:

(a) Joint Commission;

(b) Commission on Accreditation of Rehabilitation Facilities;

(c) Council on Accreditation; or

(d) Other nationally recognized accrediting organization with comparable standards.

(2) Partial hospitalization services shall:

(a) Be short-term, four (4) to six (6) weeks on average;

(b) Meet the same standards required for intensive outpatient services, except for Section 4(1)(b);

(c) Be provided at least five (5) hours a day and at least four (4) days per week; and

(d) Provide access to educational services for adolescent clients.

Section 6. Office-based Opiate Treatment Services.

(1) Excluding methadone-based treatment, a facility shall be licensed as an outpatient AODE that provides office-based opiate treatment (OBOT) services if:

(a) Any individual with ownership interest in the facility is not a Kentucky-licensed physician; and

(b) The facility employs or has an affiliation with a physician or advanced practice registered nurse who prescribes products containing buprenorphine or other FDA-approved drugs for the treatment of opioid use disorder to fifty (50) percent or more of the facility's patients.

(2) In addition to the licensing requirements of 908 KAR 1:370, an OBOT shall:

(a) Designate a medical director who shall:

1. Be responsible for the supervision of all medical staff and the administration of all medical services at the facility, including compliance with all federal, state, and local laws and administrative regulations regarding the medical treatment of opioid use disorder;

2. Be physically present at the facility at least twenty-five (25) percent of the time the facility is open to the public each week;

3. Conduct a monthly review of ten (10) percent of the medical charts for patients currently admitted at the facility and document each chart review; and

4. Not serve as medical director of more than three (3) OBOT facilities;

(b) Have sufficient medical staff on-site to provide the medical treatment and oversight necessary to serve patient needs, including a practitioner authorized to prescribe products containing buprenorphine or other FDA-approved drugs for the treatment of opioid use disorder on-site during all hours of operation;

(c) Ensure that each physician or advanced practice registered nurse complies with the prescribing and dispensing standards in accordance with 201 KAR 9:270 or 201 KAR 20:065 respectively for FDA-approved drugs used for the treatment of opioid addiction;

(d) Ensure that each physician or advanced practice registered nurse documents in the patient's record whether the patient is compliant with prescribed dosing as evidenced by the results of:

1. A KASPER report released in accordance with KRS 218A.202(7)(e); and

2. Drug testing;

(e) Offer individual and group outpatient therapy;

(f) Monitor compliance with recommended non-medication therapies;

(g) Provide case management or care coordination services; and

(h) Implement pre-employment and ongoing random drug screening of all facility employees.

(3) Admission and discharge.

(a) Prior to admission to the OBOT facility, each prospective patient shall be evaluated to determine and document whether the patient meets the diagnostic criteria for an opioid use disorder as defined in the most recent version of the DSM. A prospective patient shall not be admitted unless he or she meets those criteria.

(b) The OBOT facility shall use evidence-based assessment and evaluation tools that have been peer reviewed and validated, including the most recent edition of:

1. ASAM placement criteria;

2. Addiction Severity Index;

3. Substance Abuse and Mental Health Services Administration (SAMHSA) Treatment Improvement Protocol (TIP) 40; or

4. Any other equivalent assessment and evaluation tool.

(c) Prior to receiving treatment at the facility, the patient shall acknowledge in writing having received education on:

1. Treatment options, including withdrawal management, and the benefits and risks associated with each treatment option;

2. The risk of neonatal abstinence syndrome and use of voluntary long-acting reversible contraception for all female patients of child-bearing age and potential;

3. Prevention and treatment of chronic viral illnesses, e.g. HIV and hepatitis;

4. Expected therapeutic benefits and adverse effects of treatment medication;

5. Risks for overdose, including drug interactions with central nervous system depressants, and relapse after a period of abstinence from opioids; and

6. Overdose prevention and reversal agents.

(d) An OBOT facility shall not provide any type of reward to a third party for referral of potential patients to the clinic.

(4) Comprehensive assessment. The facility shall complete a comprehensive assessment in accordance with 908 KAR 1:370, Section 18 and in accordance with peer reviewed medication assisted treatment guidelines developed by nationally recognized organizations, for example, SAMHSA and the American Society of Addiction Medicine.

(5) Treatment planning. An OBOT facility shall complete an individualized treatment plan for each patient in accordance with 908 KAR 1:370, Section 19, featuring a plan for aftercare that includes the development of a menu of appropriate treatment resources available to the patient in his or her community.

(6) Discharge.

(a) A discharge plan shall be completed at the time of the patient's discharge by the staff person who has primary responsibility for coordinating or providing for the care of the patient, including a final assessment of the patient's status at the time of discharge.

(b) If applicable, a parent or guardian, or responsible person may participate in aftercare and discharge planning.

(c) The reason for any patient not participating in aftercare and discharge planning shall be documented in the patient's record.

(d) The OBOT facility shall document if a patient discontinues services.

(e) Determination of the events that constitute a patient's discontinuation of services at an OBOT shall be at the discretion of the facility.

Section 7. Narcotic Treatment Programs. (1) In addition to the licensing requirements of 908 KAR 1:370, an outpatient AODE that operates a narcotic treatment program (NTP) using methadone to

treat individuals with substance use disorder shall comply with:

(a) 42 C.F.R. Part 8; and

(b) The requirements of this section.

(2) An NTP requesting a change of location shall:

(a) Comply with 908 KAR 1:370, Section 4; and

(b) Provide the following information:

1. Any dosing procedural changes; and

2. Any drug distribution problems that may occur due to the relocation.

(3) Organization and operation.

(a) In addition to meeting the requirements of 908 KAR 1:370, Section 9, an NTP shall develop and comply with policies and procedures that include:

1. Waiting list criteria;

2. Data collection for participation in the program in accordance with 908 KAR 1:300;

3. A protocol that ensures the integrity of the chain of custody for all drug tests;

4. A protocol for voluntary and involuntary termination of a client's participation in the program, including reasons for termination for cause;

5. Requirements for the preparation and labeling of client doses in accordance with the requirements of subsection (10);

6. Quality assurance and utilization review;

7. A client identification system;

8. A system to prevent multiple program registrations;

9. Inventory maintenance;

10. A protocol for daily dosing schedules; and

11. Drug testing procedures that utilize random selection or unannounced collection.

(b) An NTP shall order approved controlled substances from the manufacturer or approved wholesalers in accordance with 42 C.F.R. Part 8.

(c) Policies for voluntary withdrawal management and involuntary termination from NTP treatment shall be in accordance with 42 C.F.R. Part 8.12.

(d) An NTP shall have and follow policies that prohibit recruitment of new clients into the program by offering:

1. A bounty;

2. Monetary, equipment, or merchandise rewards; or

3. Free services for individuals.

(e) An NTP shall implement the system of treatment phases outlined in subsection (12) of this administrative regulation.

(f) An NTP shall be open for dosing services seven (7) days a week with the optional exception of the following holidays:

1. New Year's Day, January 1;

2. Presidents Day;

3. Martin Luther King Day;

4. Easter Sunday;

5. Memorial Day, last Monday in May;

6. Independence Day, July 4;

7. Labor Day, first Monday in September;

8. Thanksgiving Day, fourth Thursday in November; and

9. Christmas Day, December 25.

(g) An NTP shall have dosing times sufficient to meet the needs of its clients.

(h) An NTP shall have a written emergency plan that complies with 908 KAR 1:370, Section 9 outlining the course of action in the event of a natural or manmade disaster or any sudden closing. The plan shall also include:

1. Alternate providers for each payment type; and

2. A communication plan to reach each client and provide information and instructions.

(i) The initial drug tests and confirmatory tests for drugs tested on behalf of the NTP shall meet the following standards:

1. Marijuana metabolites:

a. Initial screen 50ng/ml; and

b. Confirmation test 15ng/ml;

2. Cocaine metabolites:

a. Initial screen 300ng/ml; and

b. Confirmation test 150ng/ml;

3. Opiates metabolites:

a. Initial screen 300ng/ml; and

b. Confirmation test 300ng/ml;

4. Amphetamines:

a. Initial screen 1000ng/ml; and

b. Confirmation test of amphetamine 500ng/ml and methamphetamine confirmation test 500ng/ml;

5. Barbiturates:

a. Initial screen 300ng/ml; and

b. Confirmation test 300ng/ml; and

6. Benzodiazepines:

a. Initial screen 300ng/ml; and

b. Confirmation test 300ng/ml.

(4) Medication stations.

(a) Medication stations shall not require a separate license.

(b) To establish a medication station, the NTP shall submit to the SNA, an Application for License to Operate a Nonhospital-based Alcohol and Other Drug Treatment Entity (AODE) form incorporated by reference in 908 KAR 1:370.

(c) A medication station shall be located between forty-five (45) miles and ninety (90) miles from the main NTP.

(d) The medication station shall obtain its supply of approved controlled substance from the stocks of the main NTP.

(e) The medication station shall provide the following services:

1. Dosing; and

2. Drug screen collection.

(f) The program director shall develop a system to prevent clients from dosing at both the main NTP and the medication station.

(g) Other services shall not be provided at the medication station without prior approval of the CSAT and SNA.

(5) Personnel.

(a) An NTP shall have a program director who shall:

1. Have two years of experience in the treatment of addiction; and

2.a. Be certified by the Board of Certification of Alcohol and Drug Counselors;

b. Hold at least a master's degree in the field of addiction or a related field; or

c. Be a physician, nurse, physician's assistant, pharmacist, or nurse practitioner certified by the licensing subspecialty.

(b) The program director may be the program sponsor as required by 42 C.F.R., Part 8.

(c) The program director shall:

1. Be responsible for ensuring compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility;

2. Provide onsite supervision of employees;

3. Ensure the laboratory performing the testing required under this administrative regulation is approved by the SNA and is certified by the Centers for Medicare and Medicaid Services as a Clinical Laboratory Improvement Amendments (CLIA) certified laboratory; and

4. Ensure that initial drug tests and confirmatory tests for drugs tested on behalf of the program meet the standards in subsection (3)(i).

(d) An NTP shall have a medical director who shall be:

1. Licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth; and

2.a. A board eligible psychiatrist with three (3) years of experience in the provision of services to persons who have a substance use disorder; or

b. Board-certified as an addiction medicine specialist.

(e) The medical director shall function autonomously within an NTP free from any protocol imposed by an NTP, director, or any other entity except under the guidelines imposed by 42 C.F.R. Part 8 and this administrative regulation.

(f) The medical director shall be responsible for the NTP's adherence to federal, state, and local laws and administrative regulations pertaining to the operation of the facility.

(g) An NTP may have a program physician who shall be:

1. Licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth; and

2.a. A board eligible psychiatrist with three (3) years of experience in the provision of services to persons who have a

substance use disorder;

b. Board-certified as an addiction medicine specialist; or

c. Have three (3) years of experience in providing service to individuals with a substance use disorder, including one (1) year of experience in the treatment of opioid addiction.

(h) A program physician shall be under the supervision of the medical director
and shall function autonomously within the NTP free from any protocol imposed by any NTP, director, or any other entity except under the guidelines imposed by 42 C.F.R. Part 8 and this administrative regulation.

(i) A program physician shall be responsible for the NTP's compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the facility.

(j) The medical director may be the program physician.

(k) There shall be a minimum of one (1) medical director or program physician on staff for every 300 clients, or fraction thereof, enrolled in an NTP.

(l) The medical director or program physician shall:

1. Ensure there is evidence of physiologic dependence on narcotics for all clients admitted to the NTP;

2. Ensure there is a history of addiction, or that any exceptions to admissions criteria are approved by the SNA and documented in the client's record before the first dose is administered;

3. Ensure that appropriate medical histories and physical examinations have been performed before the first dose shall be administered;

4. Ensure that appropriate laboratory studies have been performed;

5. Review all laboratory testing results and documents;

6. Document, sign, or cosign all medical orders, within forty-eight (48) hours, including the first dose of narcotic drug or other approved medications;

7. Document, sign, or cosign all subsequent medication orders within forty-eight (48) hours, including dose increases and decreases, changes in frequency of take-home doses, emergency situations, or special circumstances; and

8. Ensure that a review and cosignature of all telephone or other verbal orders are documented within forty-eight (48) hours of the order.

9. Supervise clinical staff responsible for preparation and administration of the approved controlled substances;

10. Ensure compliance with program procedures and administrative regulations; and

11. Order through the licensed NTP all:

a. Initial doses; and

b. Increases or decreases.

(m) An NTP shall hire dosing personnel who shall:

1. Hold a license as a registered nurse, licensed practical nurse, or pharmacist; and

2. Not be dually assigned as clinicians.

(n) An NTP shall provide dosing personnel in sufficient numbers to meet the needs of the clients during dosing hours.

(o) Dosing physicians and pharmacists shall comply with KRS 218A.180 related to labeling if preparing doses to be taken outside the program site.

(p) An NTP shall hire clinicians who meet the requirements of 908 KAR 1:370, Section 11.

(q) There shall be at least one (1) clinician for every forty (40) clients in the program.

(6) Security and control.

(a) The program director and dosing nurse supervisor or pharmacist shall conduct quarterly reviews to ensure compliance with this subsection and 42 C.F.R. Part 8.12.

(b) Security of the narcotic safe and the building perimeter shall be checked quarterly with the contracted security company.

(c) The safe shall be locked at all times while staff are not obtaining or restocking controlled substances.

(d)1. Inventory reconciliation shall be conducted at least quarterly;

2. All reconciliation documents shall be retained by the program for five (5) years; and

3. Five (5) percent or more of any inventory discrepancies shall be reported to the SNA and the DEA offices within forty-eight (48) hours of reconciliation.

(e) Dosing personnel shall count all new bottles of narcotic tablets before removing any for client doses.

(f) Any discrepancies in narcotic tablet count shall be reported to the SNA, DEA, CSAT, and the Office of the Inspector General within forty-eight (48) hours of the event.

(g) A system shall be in place to assure the NTP completes the DEA biennial inventory of narcotic drugs on hand.

(h) Order forms for controlled substances, the dosing records, and inventory reconciliation records shall conform with 42 C.F.R. Part 8.12 and shall be maintained in a locked, secured area separate from the storage site of the controlled substances.

(i) Quarterly, the program director or designee shall review a ten (10) percent random sample of client records for the following:

1. A consent to treatment form signed by the client; and

2. A release of information form signed by the client that includes:

a. A description of the specific type of confidential information to be obtained or released; and

b. The specific dates that the release is to cover.

(j) If the program director serves as a clinician, the medical director shall review a ten (10) percent random sample of the program director's client records for inclusion of the documents listed in subsection 6(i).

(k) An NTP shall retain on file documentation that quarterly reviews were conducted, which shall be available for review by regulatory agencies for five (5) years.

(7) Admission policies.

(a) The admitting physician for the NTP shall comply with the admission requirements of 42 C.F.R. Part 8.12.

(b) When a client applies for admission to an NTP the client shall be required to sign a release of information that authorizes a program to release or solicit information regarding the client's status in any other substance abuse program.

(c) In addition to complying with the requirements of 908 KAR 1:370, Section 16, an NTP shall:

1. Provide each client written information describing all facets of the program in a manner that the client understands; and

2. Explain the contents of all required federal forms to the client before he or she is asked to sign;

(d) At admission, readmission, and at six (6) month intervals for the first two (2) years of treatment, and as indicated clinically after two (2) years, an NTP shall give the client information on communicable diseases including:

1. Tuberculosis;

2. Hepatitis;

3. Sexually transmitted diseases; and

4. HIV/AIDS.

(e) A client shall have access to voluntary HIV testing at admission and when clinically indicated thereafter and shall receive HIV/AIDS pre-test and post-test counseling if the client elects to be tested.

(f) In order for an NTP to admit or continue to treat a client who is pregnant, the medical director or program physician shall determine and document in the client's record that the client is medically able to participate in the program.

(g) Pregnant individuals with an opiate use disorder shall be given priority for admission and services if the NTP has a waiting list.

(8) Client transfers.

(a) An NTP may accept clients transferring from another NTP if the client meets the criteria for admission in subsection (7) and in accordance with this subsection.

(b) The program physician or medical director at the receiving NTP shall review the client's records on an individual basis to determine the client's placement on the receiving program's client listing. Reviews for proposed transfers shall determine the client's:

1. Need;

2. Program placement availability; and

3. Circumstances for the transfer request.

(c) If a client from an out-of-state medication-assisted treatment program transfers to an NTP located in Kentucky, the

NTP shall designate the client as a new admission or "entry phase" as described in subsection (12) of this administrative regulation unless other phase levels are approved by the SNA.

(d) The sending NTP shall:

1. Forward all relevant client records to the receiving NTP within seventy-two (72) hours of receipt of a request to transfer; and

2. Continue dosing until the client is enrolled at the receiving NTP.

(e) The receiving NTP shall:

1. Contact the sending NTP to confirm the client's enrollment at least twenty-four (24) hours prior to administering the client's initial dose at the receiving NTP; and

2. Include documentation in the client's medical record of the following:

a. Date of receipt of the client's records from the sending NTP, including reason for transfer; and

b. Verification that the client meets the admission criteria in subsection (7) of this section.

(9) Drug screens.

(a) Drug screen sample collection policies intended to prevent falsification shall be developed and followed.

(b) Drug screens shall be analyzed for the following drugs:

1. Approved controlled substance;
2. Cocaine;
3. Opiates;
4. Amphetamines;
5. Barbiturates;
6. Tetrahydrocannabinol;
7. Benzodiazepines;
8. Any other drug(s) that has been determined by the NTP or the SNA to be abused in that program's locality; and
9. Any other drugs that may have been abused by the client.

(c) Drug screens shall be reviewed by the treatment team monthly to determine the client's reduction in the use of unauthorized medications.

(d) Controlled substance medications shall be considered unapproved usage if they are being used by the client without a valid prescription.

(e) A drug screen that is negative for the approved controlled substances allowed to be used in the NTP shall be considered positive for unauthorized drug use.

(f) An NTP shall not use drug screens as the sole criteria for involuntarily terminating a client's participation in the program.

(g) When drug testing results are used, presumptive laboratory results shall be distinguished in the client record from results that are definitive.

(h) Samples used for drug screening purposes shall be handled in a manner that ensures client confidentiality.

(10) Dosing requirements.

(a) The dose prepared for a client shall be the quantity of approved controlled substances that is indicated on the client's narcotic sheet within the medical record.

(b) The dose shall be labeled with the exact quantity of narcotic drug ordered.

(c) Take-home doses shall be formulated in a manner that reduces the likelihood of injecting the dose.

(d) Take-home doses of the approved controlled substances shall be packaged in containers in accordance with 15 U.S.C. 1471.

(e) The label of take-home doses shall include the:

1. Name of the program;
2. Address and telephone number of the program;
3. Name of the controlled substance;
4. Name of the client;
5. Name of the physician ordering the substance;
6. Quantity of the controlled substance, unless the client has requested in writing that the quantity of the substance not be revealed to him or her;
7. Date of filling order; and
8. Instructions for medicating, including dosage amount and dates medication is to be taken.

(f) Dosing personnel shall not alter client doses without the medical director or program physician's order.

(g) Verbal dosing orders shall be reduced to writing and signed by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(h) The medical record shall indicate any reason for dose changes and shall be signed by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(11) Clients who are pregnant.

(a) If the medical director or program physician does not accept the responsibility for providing prenatal care for the term of the client's pregnancy, then the medical director or program physician shall refer the client to:

1. A primary care physician who practices obstetrics; or
2. An obstetrician.

(b) The medical director or program physician shall inform the physician accepting the referral of the client's participation in the NTP.

(c) The medical director or program physician shall ensure that appropriate arrangements have been made for the medical care of both the client and the child following the birth of the child.

(d) The medical director or program physician shall notify the pregnant client's primary care physician of any changes in the client's treatment.

(e) The program shall ensure that the following services are available for pregnant individuals and are a part of the treatment plan:

1. Nutritional counseling; and
2. Parenting training that includes information about:
a. Newborn care;
b. Handling a newborn;
c. Newborn health; and
d. Newborn safety.

(12) Treatment protocol phases.

(a) NTPs shall comply with the treatment phase system in paragraphs (e) through (j) of this subsection to achieve the goals of:

1. Reduced health problems;
2. Reduced criminal activity;
3. Increased productivity;
4. Stabilization of family life; and
5. Eventual drug-free living.

(b) Program infractions shall include:

a. Failed drug screens;
b. Disruptive behavior at the clinic site;
c. Threats to staff or other clients; or
d. Failure to attend scheduled dosing or counseling appointments.

(c) Client treatment plans shall be established, reviewed, and updated in accordance with 908 KAR 1:370, Section 19.

(d) The medical director or program physician shall sign the treatment plan within thirty (30) days.

(e) Entry phase. During the first ninety (90) days of treatment, all clients shall:

1. Attend clinic seven (7) times each week for observed ingestion of methadone at the clinic site;
2. Be provided weekly counseling sessions to support the implementation of their treatment plan;
3. Be informed about appropriate support groups; and
4. Provide an observed drug screen sample one (1) time per week on a random basis.

(f) Phase one (1).

1. In order for a client to enter phase one (1), the client shall not have committed any program infractions for ninety (90) consecutive days.

2. Once the client enters phase one (1) the client shall:

a. Attend clinic six (6) times each week for observed ingestion of methadone;

b. Be eligible to receive a one (1) day take-home dose of methadone;

c. Be provided weekly counseling sessions to support the implementation of their treatment plan;

d. Provide an observed drug screen sample on a random basis at least every other week; and

e. Be encouraged to attend an appropriate support group.

(g) Phase two (2).

1. In order for a client to enter phase two (2), the client shall:

a. Have participated in phase one (1) for 180 consecutive days;

b. Not have committed any program infractions for 90 consecutive days;

c. Be:

(i) Pursuing or engaged in gainful employment;

(ii) Pursuing vocational training;

(iii) Attending school;

(iv) Engaged in volunteer work;

(v) Attending parenting classes if they are a parent at home with children; or

(vi) A client with disabilities or other circumstances which might prohibit this requirement and have submitted a written waiver request to the SNA justifying specific reasons for the request that was not denied; and

d. Have a treatment plan to meet any special needs, including disabilities.

2. Clients in phase two (2) shall:

a. Attend clinic five (5) times each week for observed ingestion of methadone;

b. Be eligible to receive up to two (2) days of take-home doses of methadone;

c. Provide an observed drug screen sample randomly on a monthly basis, or more frequently if their treatment plan requires;

d. Be provided monthly counseling sessions, or more frequently if their treatment plan requires; and

e. Be encouraged to attend appropriate support groups outside the clinic.

(h) Phase three (3).

1. In order for the client to enter phase three (3), the client shall:

a. Have participated in phase two (2) for 270 consecutive days:

b. Not have committed any program infractions for 180 consecutive days; and

c. Have met the same entry criteria requirements as noted in phase two (2).

2. Clients in phase three (3) shall:

a. Attend clinic three (3) times each week for observed ingestion of methadone;

b. Be eligible to receive up to two (2) days of take-home doses of methadone;

c. Provide an observed drug screen sample on a random basis, every other month, or more frequently if their treatment plan requires;

d. Be provided monthly counseling sessions, or more frequently if their treatment plan requires; and

e. Be encouraged to attend appropriate support groups outside clinic.

(i) Phase four (4).

1. In order for the client to enter phase four (4), the client shall have:

a. Successfully completed phase three (3); and

b. Adhered to the requirements of the maintenance treatment program for eighteen (18) consecutive months.

2. Clients in phase four (4) shall:

a. Be dosed at the clinic site two (2) days per week for observed ingestion of methadone;

b. Be eligible for up to three (3) days of take-home doses of methadone;

c. Be provided an appropriate number of counseling sessions, which shall be:

(i) Based on the clinical judgement of the program physician and program staff; and

(ii) No less than one (1) per month; and

d. Provide an observed drug screen sample on a random basis, quarterly, or more frequently if their treatment plan requires.

3. Prior to successful completion of phase four (4), a plan shall be developed which shall assist the client toward a drug free treatment regimen for continued support.

(j) Phase five (5).

1. In order for the client to enter phase five (5), the client shall have:

a. Successfully completed phase four (4); and

b. Adhered to the requirements of the maintenance treatment program for two (2) consecutive years.

2. Clients in phase five (5) shall:

a. Be dosed at the clinic site one (1) day per week for observed ingestion of methadone;

b. Be eligible for up to six (6) days of take-home doses of methadone;

c. Be provided an appropriate number of counseling sessions, which shall be:

(i) Based on the clinical judgement of the program physician and program staff; and

(ii) No less than one (1) per month; and

d. Provide an observed drug screen sample on a random basis, every 180 days, or more frequently if their treatment plan requires.

(13) Take home dose restrictions and terminations.

(a) In determining the client's take-home medications, the medical director or program physician shall act in accordance with 42 C.F.R. Part 8.12 and subsections (7) through (13) this section.

(b) An NTP shall restrict a client's take-home dosage privileges by moving the client back at least one (1) step level on the schedule for take-home dosages if the client's drug screening results disclose the unauthorized presence any substance described in subsection (9)(b) of this section.

(c) An NTP shall restrict a client's take-home dosage by moving the client back on the take-home dosage schedule if the medical director or program physician concludes that the client is no longer a suitable candidate for take-home privileges as presently scheduled.

(d) An NTP shall revoke a client's take-home privileges for not less than thirty (30) days and shall require the client to ingest each dosage at the facility for any of the following reasons:

1. The client's drug screening discloses an absence of the controlled substance prescribed by the program;

2. The client is discovered to be misusing medication, as defined in subparagraph 5. of this paragraph;

3. The client attempts to enroll in another NTP;

4. The client alters or attempts to alter a drug screen; or

5. The client is not satisfactorily adhering to the requirements of the NTP by the following:

a. The client has not complied with the rules of the NTP;

b. There is indication that the client has repeatedly used drugs improperly;

c. The client is sharing, giving away, selling, or trading his or her methadone dosage;

d. The client is not ingesting his or her methadone dose in accordance with treatment program rules;

e. There is indication that the client is selling, distributing, or otherwise involved with illicit drugs and their use; or

f. The client is not participating in an educational, vocational, or home-making activity.

(e) A client whose daily dosage is twenty-five (25) milligrams or less shall be exempt from subparagraph (c)1. of this subsection.

(f) A client whose take-home privileges were revoked or restricted may regain take-home privileges according to the following schedule:

1. Phase one (1) – satisfactory adherence for at least thirty (30) days;

2. Phase two (2) – satisfactory adherence for at least thirty (30) days after regaining phase one (1) privileges;

3. Phase three (3) – satisfactory adherence for at least thirty (30) days after regaining phase two (2) privileges;

4. Phase four (4) – satisfactory adherence for at least thirty (30) days after regaining phase three (3) privileges; and

5. Phase five (5) – satisfactory adherence for at least thirty (30) days after regaining phase four (4) privileges.

(g) This subsection shall not be used to circumvent the requirements of this administrative regulation. A client shall not be advanced to a phase level pursuant to this subsection unless he has previously been at that phase level after having satisfied the

requirements of each phase.

(h) Treatment shall be continued as long as it is medically necessary based upon the clinical judgment of the medical director or program physician and staff.

(i) Scheduled withdrawal shall be under the immediate direction of the medical director or program physician and shall be individualized.

(j) A client may voluntarily terminate participation in an NTP even though termination may be against the advice of the NTP.

(k) Except as noted in subsection (15)(e), either voluntary or involuntary termination shall take place over a period of time not less than fifteen (15) days, unless:

1. The medical director or program physician deems it clinically necessary to terminate participation sooner and documents the reason in the client's record; or

2. The client requests in writing a shorter termination period.

(14) Exceptions.

(a) The medical director or program physician may grant an exception to the criteria for take-home dosages for any of the following reasons:

1. The client has a serious physical disability which would prevent frequent visits to the program facility; or

2.a. The client is subject to an exceptional circumstance such as acute illness, family crisis, or necessary travel; and

b. Hardship would result from requiring exact compliance with the step level schedule set out in subsection (12) of this section of this administrative regulation.

(b) Exception to the criteria for take-home dosages shall

1. Be subject to the limitations in this administrative regulation; and

2. Have written approval from the SNA which shall be filed in the client record.

(c) If a client must travel out of the program area, the medical director or program physician shall attempt to arrange for the client's daily dosage to be received at another program in lieu of increasing take-home dosages.

(d) The medical director or program physician shall document in the client's record the granting of any exception and the facts justifying the exception.

(e) Each program shall maintain a separate record for all exceptions granted.

(f) The SNA shall not grant additional exceptions, except in cases of medical emergency or natural disaster, such as fire, flood, or earthquake.

(g) Patient take home exceptions shall be entered into the Substance Abuse and Mental Health Services Administration's system in accordance with its requirements.

(h) Emergency Dosing.

1. Under emergency conditions a program may issue take-home doses in accordance with this subsection.

2. Within forty-eight (48) hours after administration of the first emergency dose, an NTP shall:

a. Notify the SNA in writing;

b. Submit justification of the emergency dose or doses; and

c. Request permission for any subsequent dose after the first two doses.

3. Subsequent emergency doses shall not be given unless permission is received by the SNA.

4. This request shall include the:

a. Number of take-home doses requested;

b. Reason for the request;

c. Client's standing in program phases;

d. Client's adherence to program policies; and

e. Total length of time the client has been enrolled at the NTP.

(15) Client program compliance.

(a) If a client commits a program infraction, the counseling staff shall review and modify the treatment plan to assist the client in complying with program policies.

(b) If a client continues to commit infractions and the medical director or program physician determines additional intervention is warranted, the director or physician may:

1. Move the client back to an earlier treatment phase; or

2. Limit or revoke the client's take-home privileges.

(c) If the client continues to commit program infractions, the client may be involuntarily terminated from the program based on the recommendation of the medical director or program physician.

(d) A client's participation in an NTP may be involuntarily terminated for cause, which may include:

1. Polydrug abuse;

2. Diversion of methadone;

3. Violence or threat of violence to program staff or other clients in the program; or

4. Dual enrollment in another NTP.

(e) If the medical director or program physician determines that the client's continued participation in the program creates a physically threatening situation for the staff or other clients, the client's participation may be terminated immediately.

(f) A client shall be given written notice of a decision to terminate his or her participation in the program which shall include the reasons for the termination.

(16) Program monitoring. If an NTP fails to comply with the requirements in this administrative regulation, the SNA may take action in accordance with 908 KAR 1:370, Sections 5 and 20. In addition to the authority to deny, suspend, or revoke a license in accordance with 908 KAR 1:370, the SNA may:

(a) Order the NTP to discontinue all or part of the take-home doses of any approved controlled substance used in the NTP;

(b) Restrict the NTP's take-home procedures to the provision of emergency take-home doses in accordance with subsection (14); or

(c) Order the NTP to discontinue the utilization of any drug approved for use in narcotic treatment programs.

Section 8. Physical Environment.

` (1) Accessibility. An outpatient AODE shall meet requirements for making buildings and facilities accessible to and usable by individuals with physical disabilities in accordance with KRS 198B.260 and 815 KAR 7:120.

(2) Fire safety. An outpatient AODE shall be approved by the State Fire Marshal's office prior to initial licensure or if the AODE changes location.

(3) Physical location and overall environment.

(a) An outpatient AODE shall:

1. Comply with building codes, ordinances, and administrative regulations that are enforced by city, county, or state jurisdictions;

2. Display a sign that can be viewed by the public that contains the facility name, hours of operation, and a street address;

3. Have a publicly listed telephone number;

4. Have a dedicated phone number to send and receive faxes with a fax machine that shall be operational twenty-four (24) hours per day or use encrypted electronic messaging technology;

5. Have a reception and waiting area;

6. Provide a restroom for client use; and

7. Have an administrative area.

(b) The condition of the physical location and the overall environment shall be maintained in such a manner that the safety and well-being of clients, personnel, and visitors are assured.

(4) Additional requirements for NTPs.

(a) The building used for the NTP shall meet the requirements of 21 C.F.R. 1301.74(j).

(b) The waiting area shall be separated from the dosing area to permit each client privacy and confidentiality at the time of dosing.

(c) The dosing area shall be clean and sanitary and shall contain:

1. A sink;

2. Hot and cold running water; and

3. Pill-counting trays if tablets are being used.

(d) The security and floor plan of the dosing area shall be in accordance with 21 C.F.R. 1301.72.

(e) The facility shall have two (2) restrooms which shall be accessible to clients with disabilities.

(f) Restrooms available to clients to provide urine specimens shall be:

1. Secure;

2. Private;

3. Clean; and

4. Sanitary.

(g) The building shall be secured by a local security company approved by the DEA and the SNA.

(h) There shall be a minimum of two (2) panic buttons or similar devices for each NTP with:

1. One (1) in the reception area; and

2. One (1) in the dosing area.

(i) There shall be a telephone with an outside line accessible in the dosing area.

(j) Internal security shall meet the requirements of 21 C.F.R. 1301.74(b), (h), (i), (j), (k); 1301.91; 1301.92 and shall be installed only after consultation with the DEA and the SNA.

(k) Parking spaces at the clinic site shall be adequate to accommodate the maximum number of clients expected to be at the clinic site at one (1) time.

WENDY MORRIS, Commissioner
ADAM M. MEIER, Secretary

APPROVED BY AGENCY: January 14, 2019

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 25, 2019, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by February 18, 2019, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until February 28, 2019. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Justin Dearinger, email: Justin.Dearinger@ky.gov, Phone 502-782-7212; and Chase Coffey

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the licensure requirements for nonhospital-based outpatient alcohol and other drug treatment entities (AODE).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 222.231(2) and (12), which requires the cabinet to promulgate administrative regulations to establish health, safety, and patient care standards for AODE programs according to type and range of services, including facilities that operate narcotic treatment programs. Moreover, this amendment is necessary to comply with HB 124 passed during the 2018 legislative session, a measure that required the cabinet to conduct a comprehensive review of all current state licensure and quality standards applicable to substance use disorder treatment programs and develop enhanced standards for treatment and recovery services, including outpatient and medication-assisted treatment services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 222.231(2) by establishing licensure requirements for AODE programs that provide outpatient services, including ambulatory withdrawal management, general outpatient treatment, intensive outpatient services, or partial hospitalization. This administrative regulation also conforms to the content of KRS 222.231 and 222.462 by establishing licensure requirements for programs that operate non-physician owned facilities that provide office-based opiate treatment services to fifty (50) percent or more of the facility's patients or operates as a narcotic treatment program utilizing methadone or buprenorphine formulations.

(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 licensure requirements for outpatient AODE programs.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation that prescribes and amends requirements that are currently set out in 908 KAR 1:340 and 1:370. However, notable changes include the following: 908 KAR 1:370 currently in effect addresses "detoxification programs" that operate on a twenty-four (24) hour basis. Therefore, the Cabinet added a new section to this administrative regulation to establish standards for programs that provide ambulatory withdrawal management services in outpatient AODE settings; and The Cabinet clarified in this administrative regulation that a facility must be licensed as an outpatient AODE if any individual with ownership interest in the facility is not a Kentucky-licensed physician and the facility employs or has an affiliation with a physician or APRN who prescribes buprenorphine or other FDA approved drugs to 50% or more of the facility's patients.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation that prescribes and amends requirements that are currently set out in 908 KAR 1:340 and 1:370. This regulation is necessary to comply with HB 124 passed during the 2018 legislative session, a measure that required the cabinet to conduct a comprehensive review of all current state licensure and quality standards applicable to substance use disorder treatment programs and develop enhanced standards for treatment and recovery services, including residential, outpatient, and medication-assisted treatment.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation that prescribes and amends requirements that are currently set out in 908 KAR 1:340 and 1:370. This regulation conforms to the content of KRS 222.462(2)(a) by establishing a set of comprehensive quality standards and criteria based on nationally recognized and evidence-based standards for substance use disorder treatment and recovery programs.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation that prescribes and amends requirements that are currently set out in 908 KAR 1:340 and 1:370. This regulation will assist in the effective administration of the statutes by establishing licensure and quality standards for outpatient AODE programs. In addition, this amendment is being filed concurrently with 908 KAR 1:370, Licensing procedures, fees, and general requirements for nonhospital-based alcohol and other drug treatment entities, and 908 KAR 1:372, Licensure of residential alcohol and other drug treatment entities, each of which establishes additional standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts the approximately 210 licensed outpatient AODE programs. In an effort to engage external stakeholders, the Cabinet hosted a webinar with AODE licensees and other interested groups on October 11, 2018. A preliminary draft of this administrative regulation, 908 KAR 1:370, and 908 KAR 1:372 was distributed to stakeholders during that webinar and drafts of these regulations were sent via email and posted online. Subsequent feedback from stakeholders was taken into consideration by the Cabinet and used to make changes to the drafts during the development of these administrative regulations.

(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 that operate outpatient AODE programs must adhere to the following requirements, which are changes from the previous administrative regulations: For narcotic treatment programs licensed as an outpatient AODE, the process to apply for a license, apply for a medication station, and notify the Cabinet of changes in ownership has been clarified and is now the same as for all other AODEs; If a client is transferring from one narcotic treatment program to another, the programs will be required to communicate about the client and coordinate the transfer to avoid missed or duplicate doses; Outpatient AODE programs must ensure that the client's level of care determination is based on the most recent version of the ASAM Criteria and that diagnosis must be made by appropriately licensed treatment staff in accordance with the most recent version of the DSM; Outpatient AODE programs must screen for co-occurring disorders and treat or refer clients in need of co-occurring services; A language access plan to address accommodation for communication access services if required; and A process for creating a trauma-informed environment to avoid practices that might retraumatize a client if required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The licensure fees for outpatient AODE programs are established in 908 KAR 1:370. No other costs are anticipated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that demonstrate compliance with this administrative regulation and 908 KAR 1:370 will accrue the following benefits from this administrative regulation change versus the previous administrate regulations: Standards are more closely aligned with ASAM criteria to ease certification and standardize care; Withdrawal management is incorporated throughout the regulation similar to its use in care to allow easier understanding of requirements; A new Phase 5 for NTPs was created for clients and providers to decrease the number of required visits at a later stage of treatment; Drug screenings were broadened to include all types of drug screenings so that providers would not be restricted to certain methods, and screening frequency was reduced in later stages of treatment; The requirement that AODEs obtain MOAs with other community agencies before opening has been revised to require only that the AODE communicate with those agencies. The requirement that AODEs allow clients to appeal the provider's termination of services has been deleted. NTPs will no longer need an AODE license and an NTP certification, only an AODE license; Many requirements were adjusted to be consistent with ASAM and with the requirements of other states; A fully accredited outpatient AODE program with a license in good standing will now be eligible to participate in Kentucky's Medicaid program without having to obtain a separate BHSO license; and In response to requests from providers, partial hospitalization has been added as a service that may be provided in the outpatient AODE setting and AODE programs that offer partial hospitalization must be fully accredited by the Joint Commission, Commission on Accreditation of Rehabilitation Facilities, Council on Accreditation, or an equivalent accrediting organization.

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

(a) Initially: There is no anticipated initial cost to the administrative body to implement this regulation. The program was already in place and administered under 908 KAR 1:340 and 1:370. The regulatory changes are not expected to result in any change in cost to the Cabinet.

(b) On a continuing basis: The program was already in place and administered under 908 KAR 1:340 and 1:370. The regulatory changes are not expected to result in any change in cost to the Cabinet.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies will be used to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not increase any fees, although the AODE application fee is increased in 908 KAR 1:370. No additional funding will be 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 any fees, although the AODE application fee is increased in 908 KAR 1:370.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the approximately 210 licensed outpatient AODE programs and the Department for Behavioral Health, Developmental and Intellectual Disabilities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 222.231 and 222.462

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

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

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

(c) How much will it cost to administer this program for the first year? The program is already in place and is currently administered under 908 KAR 1:340 and 1:370. There will be no new cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? The program is already in place and is currently administered under 908 KAR 1:340 and 1:370. There will be no new 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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 C.F.R. Part 8

2. State compliance standards. KRS 222.231 and 222.462

3. Minimum or uniform standards contained in the federal mandate. 42 C.F.R. Part 8 establishes the Federal guidelines for opioid treatment programs.

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 impose stricter, additional, or different requirements than those required by federal mandate. 908 KAR 1:340 is being repealed and the requirements added to this administrative regulation. All of the stricter requirements are currently in place in 908 KAR 1:340. Some requirements remain the same and some requirements will be less stringent that what is currently in place. The following requirements are different than the federal requirements: Interim maintenance is not permitted; This

regulation requires prospective NTPs to attempt to communicate with local agencies. This requirement, while stricter than federal law, is actually less stringent than the current requirement for MOAs with local agencies; treatment phases are set; drug screening policies; credentials for program sponsor and medical director; security and inventory audits; take home procedures; and monitoring and violations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Due to Kentucky's continuing opioid epidemic, the Cabinet has imposed these requirements since the state began regulating NTPs in 1996. These stricter and additional requirements are to: Improve the quality of care for clients; Improve the health, safety, and welfare of clients and staff; and Improve the success rate of treatment and reduce the opioid epidemic. Research of other states in Kentucky's region have shown using the minimum federal standards do not have the same effect as stricter standards in the areas of safety, recovery, controlled trafficking of prescribed drugs, and reduction in the number of individuals needing services.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of January 9, 2019

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, January 9, 2019 at 10:00 a.m... In Room 149 of the Capitol Annex. Representative Hale Co-Chair, called the meeting to order, the roll call was taken. The minutes of the December 2018 meeting were approved.

Present were:
Members: Senators Perry Clark, Alice Forgy Kerr, Julie Raque Adams, and Stephen West and Representatives David Hale, Jason Petrie, and Tommy Turner.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Betsy Cupp, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Klaber.

Guests: Kate Ware, Higher Education Assistance Authority; Cassie Trueblood, Education Professional Standards Board; Julie Campbell, Board of Cosmetology; Clint Quarles, Department of Agriculture; David Cook, Whitney Crowe, Deanna Durrett, Wayne Lewis, David Millanti, Tara Rodriguez, Department of Education; Steve Humphress, Lee Walters, Department of Alcoholic Beverages; Stephanie Brammer-Barnes, Steven Davis, Office of Inspector General; Julie Brooks, Pamela Hendren, Department for Public Health; Jonathan Scott, Department for Medicaid Services; Laura Begin, Christa Bell, Elizabeth Caywood; Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Wednesday, January 9, 2019, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Higher Education Assistance Authority: Division of Student and Administrative Services

11 KAR 4:080. Student aid applications. Kate Ware, Student Aid Branch Manager, represented the division.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Education Professional Standards Board: Teaching Certificates

16 KAR 2:100. Junior reserve officers training corps. Wayne Lewis, commissioner, and Cassie Trueblood, policy advisor and special counsel, represented the board.

In response to a question by Senator Clark, Ms. Trueblood stated that 16 KAR 2:100 and 16 KAR 9:040 removed requirements pertaining to background checks because they were redundant. The individual districts already required the background checks.

A motion was made and seconded to approve the following amendment: to amend Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

16 KAR 2:210. Provisional and professional certificate for orientation and mobility specialist.

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.

Advanced Certification and Rank

16 KAR 9:040. Part-time adjunct instructor certificate.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Cosmetology

201 KAR 12:030. Licensing, permits, and examinations. Julie Campbell, board administrator, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Section 11 to include upon renewal, payment of any outstanding fines associated with prior disciplinary action as established in KRS 317A.145; (2) to amend Section 12 to delete language regarding a change in ownership, management, or location of a licensed salon or facility; (3) to amend Section 13 to establish that a transfer of ownership of a salon shall not take effect while the salon is the subject of ongoing disciplinary action pursuant to KRS 317A.145; (4) to amend Section 9 for clarity by deleting language regarding failure to apply for a license within one (1) year of passing the examination because the examination score is valid for six (6) months; (5) to amend Section 10 to clarify that the eighty (80) hour supplemental course shall be required after the third failed examination attempt; (6) to amend Sections 4, 6, 12, and 14 through 19 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (7) to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:082. Education requirements and school administration.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8 to clarify that 325 hours of required theory instruction may be taken in person or online; (2) to amend Section 10 to clarify requirements for online theory instruction; (3) to amend Sections 4, 15, 16, 32, and 33 to comply with the drafting requirements of KRS Chapter 13A; and (4) to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 12:260. Fees.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

DEPARTMENT OF AGRICULTURE: Office of the Commissioner: Referendums

302 KAR 1:011. Repeal of 302 KAR 001:010, 302 KAR 001:020, 302 KAR 001:030, 302 KAR 001:035, 302 KAR 001:040, 302 KAR 001:050, 302 KAR 001:055, 302 KAR 001:070, and 302 KAR 001:080. Clint Quarles, attorney, represented the office.

Regulation and Inspection; General

302 KAR 77:011. Repeal of 302 KAR 077:010 and 302 KAR 077:030.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department of Education: Office of Chief State School Officer

701 KAR 5:150. Nontraditional Instruction Program. David Cook, Division of Innovation Director; Deanna Durrett, general counsel; and Wayne Lewis, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 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 Learning Programs Development: Office of Instruction

704 KAR 3:292. Education of migratory children.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

704 KAR 3:303. Required academic standards.

704 KAR 3:365. Complaint procedures for programs under the Elementary and Secondary Education act of 1965.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Chief State School Officer: Academic Standards

704 KAR 8:020. Kentucky Academic Standards for Reading and Writing.

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.

704 KAR 8:040. Kentucky Academic Standards for Mathematics.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to comply with the drafting requirements of KRS Chapter 13A; and (2) to update material incorporated by reference. Without objection and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Advertising Distilled Spirits and Wine

804 KAR 1:070. Product development and marketing samples. Steve Humphress, general counsel, and Lee Walters, counsel, represented the department.

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.

804 KAR 1:110. Consumer sampling events.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Malt Beverage, Equipment, Supplies, and Service

804 KAR 11:031. Repeal of 804 KAR 011:030.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Health Care: Long-term Care

900 KAR 2:021. Repeal of 900 KAR 002:020. Stephanie Brammer – Barnes, regulation coordinator, and Steven Davis, inspector general, represented the division.

900 KAR 2:040. Citations and violations; criteria and specific acts.

Department of Public Health: Food and Cosmetics

902 KAR 45:005. Kentucky food code. Julie Brooks, regulation coordinator, and Pamela Hendren, Food Safety Branch Manager, represented the department.

902 KAR 45:007. Repeal of 902 KAR 045:006 and 902 KAR 045:140.

In response to a question by Co-Chair Hale, Ms. Brooks stated that the bed and breakfast operator requirements in these administrative regulations were consolidated into 902 KAR 45:005.

902 KAR 45:090. Home-based processors and farmers market home-based microprocessors.

Department for Medicaid Services: Occupational, Physical, and Speech Therapy

907 KAR 8:040. Coverage of occupational therapy, physical therapy, and speech-language pathology services provided by various entities. Jonathan Scott, regulation coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 2 to: (1) delete speech-language pathology clinical fellows from the list of approved providers; and (2) establish that an annual limit shall be twenty (20) rehabilitative visits and twenty (20) habilitative visits per recipient per calendar year per type of therapy. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: Supplemental Nutrition Assistance Program

921 KAR 3:050. Claims and additional administrative provisions. Christa Bell, director; Laura Begin, regulation coordinator; and Elizabeth Caywood, deputy commissioner, represented the division.

In response to a question by Co-Chair West, Ms. Caywood stated that the previous look-back period for SNAP overpayments was one (1) year.

Division of Protection and Permanency: Child Welfare

922 KAR 1:010. Independent non-relative adoptions.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Child Welfare

922 KAR 1:100 & E. Public agency adoptions.

A motion was made and seconded to approve the following amendments: to amend Sections 4 and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Other Business: Co Chair Hale introduced Senator Stephen West, who was appointed to the subcommittee to fill the Senate vacancy. Senator Clark made a motion, seconded by Senator Kerr, that Senator West be nominated for Senate Co-Chair. Senator West accepted the nomination. Senator Clark made a motion, seconded by Senator Raque Adams, to end Senate Co-Chair nominations. Senator West was unanimously endorsed as Senate Co-Chair of the Subcommittee. Co-Chair West stated that he looked forward to working with everyone involved with the subcommittee.

The following administrative regulations were deferred or removed from the January 9, 2019, subcommittee agenda:

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Income Tax; Corporations

103 KAR 16:151. Repeal of 103 KAR 016:100, 103 KAR 016:110, 103 KAR 016:120, 103 KAR 016:130, 103 KAR 016:145, and 103 KAR 016:150.

103 KAR 16:270. Apportionment; receipts factor.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:370. Pharmacy services in long-term care facility (LTCF).

Board of Nursing

201 KAR 20:056. Advanced practice registered nurse licensure and certification requirements.

201 KAR 20:062. Standards for advanced practice registered nurse (APRN) programs of nursing.

201 KAR 20:161. Investigation and disposition of complaints.

201 KAR 20:162. Disciplinary proceedings.

201 KAR 20:215. Continuing competency requirements.

201 KAR 20:220. Nursing continuing education provider approval.

201 KAR 20:226. Repeal of 201 KAR 020:235, 201 KAR 020:420, 201 KAR 020:430, 201 KAR 020:440, and 201 KAR 020:460.

201 KAR 20:240. Fees for applications and for services.

201 KAR 20:260. Organization and administration standards for prelicensure registered nurse or practical nurse programs of nursing.

201 KAR 20:280. Standards for developmental status, initial status, and approval of prelicensure registered nurse and practical nurse programs.

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

201 KAR 20:340. Students in prelicensure registered nurse and practical nurse programs.

201 KAR 20:350. Educational facilities and resources for pre-licensure registered nurse and practical nurse programs.

201 KAR 20:360. Continuing approval and periodic evaluation.

201 KAR 20:362. Fines for programs of nursing.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

Board of Social Work

201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.

Board of Licensure for Marriage and Family Therapists

201 KAR 32:110. Telehealth.

ENERGY AND ENVIRONMENT CABINET: Office of Kentucky Nature Preserves

400 KAR 2:060. Definitions.

400 KAR 2:070. The Office of Kentucky Nature Preserves.

400 KAR 2:080. Dedication of nature preserves and registration of natural areas.

400 KAR 2:090. Management, use, and protection of nature preserves and natural areas.

400 KAR 2:100. Hearings and appeals.

Rare Plant Recognition

400 KAR 3:010. Definitions for 400 KAR Chapter 3.

400 KAR 3:020. Criteria for identifying and designating endangered or threatened species of plants.

400 KAR 3:030. Procedures for inclusion, removal or change of status of plant species on the state endangered or threatened list.

400 KAR 3:040. Endangered or threatened plant list.

Wild Rivers

400 KAR 4:110. Definitions for 400 KAR Chapter 4.

400 KAR 4:125. Wild rivers administration.

400 KAR 4:130. Wild rivers change of use permit procedures.

400 KAR 4:140. Wild rivers change of use permit standards.

Department for Environmental Protection: Division of Waste Management: Hazardous Waste

401 KAR 39:060. General requirements.

401 KAR 39:080. Hazardous waste handlers.

401 KAR 39:090. Hazardous waste permit program.

Enforcement and Compliance Monitoring

401 KAR 40:051. Repeal of 401 KAR 040:050.

Underground Storage Tanks

401 KAR 42:005. Definitions for 401 KAR Chapter 042.

401 KAR 42:020. UST system requirements, notification, registration, and annual fees.

401 KAR 42:060. UST system release and corrective action requirements.

401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund reimbursement.

401 KAR 42:330. Small Owners Tank Removal Account.

401 KAR 42:341. Repeal of 401 KAR 042:011, 042:030, 042:040, 042:045, 042:050, 042:070, 042:080, 042:090, 042:095, 042:200, 042:290, 042:300, 042:316, 042:320, 042:335, and 042:340.

Office of Kentucky Nature Preserves: General Administrative Procedures

418 KAR 1:010. Definitions for 418 KAR Chapter 1.

418 KAR 1:020. Administrative procedures of the board.

418 KAR 1:040. Grant applications.

418 KAR 1:050. Procedures for acquisition of land.

418 KAR 1:060. Management.

418 KAR 1:070. Remedies.

JUSTICE AND PUBLIC SAFETY CABINET: Special Law Enforcement Officers

500 KAR 2:020. Filing and processing SLEO commissions.

500 KAR 2:030. Special law enforcement officers: evaluation examination.

Department of Juvenile Justice: Child Welfare

505 KAR 1:110. Department of Juvenile Justice Policy and Procedures Manual: program services.

505 KAR 1:180. Department of Juvenile Justice Policy and Procedures Manual: day treatment services.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Office of Learning Programs Development: Office of Instruction

704 KAR 3:305. Minimum requirements for high school graduation. David Cook, Division of Innovation Director; Deanna Durrett, general counsel; and Wayne Lewis, commissioner, represented the department.

In response to a question by Co-Chair West, Mr. Lewis stated that the Kentucky Board of Education decided to revise the minimum requirements for high school graduation based on Kentucky-specific data correlating education with life outcomes, including postsecondary matriculation rates, employment outcomes, and earning rates. An examination of the data indicated that the current minimum requirements for high school graduation were not meeting the needs of the Commonwealth. Proposed revisions to the minimum requirements for high school graduation included increased flexibility pertaining to course selection by students, with the condition that courses still comply with Kentucky's academic standards and with a student's individualized learning program; a demonstration of basic competence in mathematics and reading, demonstrated through existing assessments in eighth or tenth grade or through a student-compiled portfolio approved by the local superintendent; and graduation qualifiers, consisting of a list of eight (8) criteria of which a student must meet at least one (1). Graduation qualifiers were not synonymous with transition readiness qualifiers in the accountability system, but were a step toward transition readiness.

In response to questions by Co-Chair West, Mr. Lewis stated that, regardless of whether or not the department revised the minimum requirements for high school graduation, students would be taking the same assessments. The proposed revisions to the minimum requirements for high school graduation included the additional option of a student-compiled portfolio to demonstrate competency in lieu of deriving the demonstration of competency from the existing assessments. State law already required assessments, usually done through end-of-course examinations. Kentucky was moving toward replacing end-of-course examinations with end-of-span examinations. It was reasonable to expect a Kentucky student to demonstrate at least basic competence with mathematics and reading prior to high school graduation.

In response to a question by Co-Chair Hale, Mr. Lewis stated that the department agreed to defer consideration of this administrative regulation. Without objection, and with agreement of the agency, this administrative regulation was deferred to the February 11 meeting of the subcommittee.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5, 7, 8, and 10 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: Administration

806 KAR 2:092. Disclosure of local government taxes and collection fee.

806 KAR 2:100. Disclosure of insurance premium surcharge.

806 KAR 2:121. Repeal of 806 KAR 002:120 and 806 KAR 002:150.

Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 5:011. Repeal of 806 KAR 005:010 and 806 KAR 005:020.

Surplus Lines

806 KAR 10:030. Surplus lines reporting and tax payment structure.

Horse Racing Commission: Thoroughbred Racing

810 KAR 1:301. Repeal of 810 KAR 001:004, 810 KAR 001:005, 810 KAR 001:007, 810 KAR 001:008, 810 KAR 001:009, 810 KAR 001:010, 810 KAR 001:012, 810 KAR 001:014, 810 KAR 001:015, 810 KAR 001:016, 810 KAR 001:017, 810 KAR 001:018, 810 KAR 001:021, 810 KAR 001:024, 810 KAR 001:026, 810 KAR 001:027, 810 KAR 001:028, 810 KAR 001:029, 810 KAR 001:030, 810 KAR 001:037, 810 KAR 001:040, 810 KAR 001:050, 810 KAR 001:060, 810 KAR 001:070, 810 KAR 001:080, 810 KAR 001:090, 810 KAR 001:100, 810 KAR 001:110, 810 KAR 001:130, 810 KAR 001:140, 810 KAR 001:145, 810 KAR 001:150, and 810 KAR 001:300.

General

810 KAR 2:001. Definitions.

810 KAR 2:010. Racing commission and administrative staff.

810 KAR 2:020. Thoroughbred and flat racing officials.

810 KAR 2:030. Chemical dependency.

810 KAR 2:040. Stewards.

810 KAR 2:050. Judges and Standardbred racing officials.

810 KAR 2:060. Owners' authorized agents and jockey agents.

810 KAR 2:070. Thoroughbred and other flat racing associations.

810 KAR 2:080. Standardbred racing associations.

Licensing

810 KAR 3:001. Definitions.

810 KAR 3:010. Licensing of racing associations.

810 KAR 3:020. Licensing of racing participants.

810 KAR 3:030. Licensing totalizator companies.

810 KAR 3:040. Advance deposit account wagering.

810 KAR 3:050. Simulcast facilities.

Flat and Steeplechase Racing

810 KAR 4:001. Definitions.

810 KAR 4:010. Horses.

810 KAR 4:020. Weights.

810 KAR 4:030. Entries, subscriptions, and declarations.

810 KAR 4:040. Running of the race.

810 KAR 4:050. Claiming races.

810 KAR 4:060. Objections and complaints.

810 KAR 4:070. Jockeys and apprentices.

810 KAR 4:080. Steeplechase racing.

810 KAR 4:090. Owners.

810 KAR 4:100. Trainers.

Standardbred Racing

810 KAR 5:001. Definitions.

810 KAR 5:010. Registration and identification of horses.

810 KAR 5:020. Eligibility and classification.

810 KAR 5:030. Claiming races.

810 KAR 5:040. Farm, corporate, or stable name.

810 KAR 5:050. Stakes and futurities.

810 KAR 5:060. Entries and starters.

810 KAR 5:070. Running of the race.

810 KAR 5:080. Harness racing and county fairs.

Pari-Mutuel Wagering

810 KAR 6:020. Calculation of payouts and distribution of pools.

Incentive and Development Funds

810 KAR 7:010. Backside improvement fund.

810 KAR 7:020. Kentucky thoroughbred breeders' incentive fund.

810 KAR 7:030. Kentucky thoroughbred development fund.

810 KAR 7:040. Kentucky Standardbred development fund and Kentucky Standardbred breeders' incentive fund.

810 KAR 7:060. Kentucky Quarter Horse, Paint Horse, Appaloosa, and Arabian development fund.

810 KAR 7:070. Violations, discipline, disputes, and investigation.

Medication Guidelines

810 KAR 8:010. Medication; testing procedures; prohibited practices.

810 KAR 8:020. Drug, medication, and substance classification schedule and withdrawal guidelines.

810 KAR 8:030. Disciplinary measures and penalties.

810 KAR 8:040. Out-of-competition testing.

810 KAR 8:050. International medication protocol as condition of a race.

810 KAR 8:060. Post-race sampling and testing procedures.

Hearings and Appeals

810 KAR 9:010. Hearings, reviews and appeals.

Harness Racing

811 KAR 1:301. Repeal of 811 KAR 001:010, 811 KAR 001:015, 811 KAR 001:020, 811 KAR 001:025, 811 KAR 001:030, 811 KAR 001:035, 811 KAR 001:037, 811 KAR 001:040, 811 KAR 001:045, 811 KAR 001:050, 811 KAR 001:055, 811 KAR 001:060, 811 KAR 001:065, 811 KAR 001:070, 811 KAR 001:075, 811 KAR 001:080, 811 KAR 001:085, 811 KAR 001:90, 811 KAR 001:093, 811 KAR 001:095, 811 KAR 001:100, 811 KAR 001:105, 811 KAR 001:110, 811 KAR 001:115, 811 KAR 001:120, 811 KAR 001:130, 811 KAR 001:140, 811 KAR 001:150, 811 KAR 001:185, 811 KAR 001:215, 811 KAR 001:220, 811 KAR 001:225, 811 KAR 001:230, 811 KAR 001:260, 811 KAR 001:280, 811 KAR 001:285, 811 KAR 001:290, and 811 KAR 001:300.

Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing

811 KAR 2:301. Repeal of 811 KAR 002:015, 811 KAR 002:020, 811 KAR 002:030, 811 KAR 002:035, 811 KAR 002:040, 811 KAR 002:045, 811 KAR 002:050, 811 KAR 002:056, 811 KAR 002:065, 811 KAR 002:070, 811 KAR 002:075, 811 KAR 002:080, 811 KAR 002:085811 KAR 002:090, 811 KAR 002:093, 811 KAR 002:096, 811 KAR 002:100, 811 KAR 002:105, 811 KAR 002:110, 811 KAR 002:130, 811 KAR 002:140, 811 KAR 002:150, 811 KAR 002:170, 811 KAR 002:180, 811 KAR 002:185, 811 KAR 002:190, 811 KAR 002:200, and 811 KAR 002:300.

Real Estate Authority: Board of Home Inspectors

815 KAR 6:001. Definitions for 815 KAR Chapter 6.

815 KAR 6:010. Licensing requirements.

815 KAR 6:030. Standards of conduct, complaints, and discipline.

815 KAR 6:040. Education requirements and providers.

815 KAR 6:101. Repeal of 815 KAR 006:020, 815 KAR 006:080, 815 KAR 006:090, and 815 KAR 006:100.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Certificate of Need: Certificate of Need

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

Department of Medicaid Services: Division of Policy and Operations: Medicaid Services

907 KAR 1:560 & E. Medicaid hearings and appeals regarding eligibility.

907 KAR 1:563 & E. Medicaid covered services appeals and hearings unrelated to managed care.

Department for Community Based Services: Division of Family Support: K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 2:055 & E. Hearings and appeals.

Supplemental Nutrition Assistance Program

921 KAR 3:060 & E. Administrative disqualification hearings and penalties.

921 KAR 3:070 & E. Fair hearings.

Child Welfare

922 KAR 1:050. State funded adoption assistance.

Child Welfare

922 KAR 1:530. Post-adoption placement stabilization services.

The subcommittee adjourned at 11:50 a.m. The next meeting of the subcommittee is tentatively scheduled for February 11, 2019, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

NONE

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates **H - 2**

The Locator Index lists all administrative regulations published in VOLUME 45 of the *Administrative Register of Kentucky* from July 2018 through June 2019. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action that may affect the administrative regulation. NOTE: 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.

KRS Index **H - 17**

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 45 of the *Administrative Register of Kentucky*.

Certifications Index **H - 34**

The Certification Index lists of administrative regulations that have had certification letters filed during this VOLUME year. The certification process is established in KRS 13A.3104. If the certification letter states the administrative 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.

Technical Amendment Index **H - 46**

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered since being published in the 2018 *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). Because these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*.

Subject Index **H - 47**

The Subject Index is a general index of administrative regulations published in VOLUME 45 of the *Administrative Register of Kentucky*, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	44 Ky.R. Page No.	Effective Date

VOLUME 44

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.)

201 KAR 12:082E	2303	4-13-2018
Replaced	2364	8-6-2018
201 KAR 22:020E	2180	3-14-2018
Replaced	2486	6-20-2018
201 KAR 22:040E	2182	3-14-2018
Replaced	2487	6-20-2018
201 KAR 22:070E	2184	3-14-2018
Replaced	2487	6-20-2018
921 KAR 2:015E	1799	12-28-2017
Replaced	1899	6-20-2018
922 KAR 2:090E	1916	2-14-2018
Replaced	2513	7-18-2018
922 KAR 2:100E	1925	2-14-2018
Replaced	2522	7-18-2018
922 KAR 2:111E	1936	2-14-2018
Expires		8-13-2018
922 KAR 2:120E	1937	2-14-2018
Replaced	2533	7-18-2018
922 KAR 2:171E*(r)*	2306	4-13-2018
Expires	2308	10-10-2018
922 KAR 2:180E	1946	2-14-2018
Replaced	2138	7-18-2018
922 KAR 2:190E	1952	2-14-2018
Replaced	2144	7-18-2018
922 KAR 2:270E	2308	4-13-2018
Replaced	2459	7-18-2018

ORDINARY ADMINISTRATIVE REGULATIONS:

13 KAR 3:060	2702	8-31-2018
16 KAR 2:010		
Amended	1584	
Am Comments	2033	See 44 Ky.R.
16 KAR 5:030		
Amended	1589	
Am Comments	2039	See 44 Ky.R.
101 KAR 1:325		
Amended	2542	8-31-2018
103 KAR 16:360		
Amended	1094	
Withdrawn by agency		12-8-2017
103 KAR 26:120		
As Amended	1494	2-2-2018
103 KAR 41:120		
Amended	1112	
Withdrawn by agency		12-8-2017
201 KAR 3:005		
Repealed	2703	8-31-2018
201 KAR 3:006(r)	2703	8-31-2018
201 KAR 3:025		
Repealed	2703	8-31-2018
201 KAR 3:035		
Repealed	2703	8-31-2018
201 KAR 3:045		
Amended	2544	See 45 Ky.R.
201 KAR 3:055		
Repealed	2703	8-31-2018
201 KAR 3:065		
Repealed	2703	8-31-2018
201 KAR 3:090		
Amended	2546	8-24-2018
201 KAR 3:100	2705	8-31-2018
201 KAR 5:090		
Amended	2548	See 45 Ky.R.
201 KAR 5:130		
Amended	2549	8-31-2018
201 KAR 6:020		
Amended	2552	8-31-2018
201 KAR 6:050		
Amended	2554	See 45 Ky.R.
201 KAR 9:021		
Amended	2361	7-18-2018
201 KAR 9:031		
Amended	2363	
As Amended		See 45 Ky.R.
201 KAR 9:310		
Amended	1871	5-4-2018
201 KAR 9:480	1725	
As Amended	1970	3-15-2018
201 KAR 12:010		
Amended	2556	See 45 Ky.R.
201 KAR 12:030		
Amended	2557	See 45 Ky.R.
201 KAR 12:082		
Amended	2364	
As Amended		See 45 Ky.R.
201 KAR 12:140		
Amended	2561	See 44 Ky.R.
201 KAR 12:190		
Amended	2563	See 44 Ky.R.
201 KAR 12:230		
Amended	2565	See 44 Ky.R.
201 KAR 12:260		
Amended	2368	
As Amended		See 45 Ky.R.
201 KAR 14:180		
Amended	2566	8-24-2018
201 KAR 20:056		
Amended	2237	
As Amended	2473	6-20-2018
201 KAR 20:070		
Amended	2239	
As Amended	2475	6-20-2018
201 KAR 20:110		
Amended	2241	
As Amended	2476	6-20-2018
201 KAR 20:225		
Amended	2244	
As Amended	2477	6-20-2018
201 KAR 20:370		
Amended	2246	
As Amended	2478	6-20-2018
201 KAR 20:411		

Regulation Number	44 Ky.R. Page No.	Effective Date
Amended	2247	
As Amended	2479	6-20-2018
201 KAR 20:470		
Amended	2250	
As Amended	2481	6-20-2018
201 KAR 22:020		
Amended	2255	
As Amended	2486	6-20-2018
201 KAR 22:040		
Amended	2257	
As Amended	2487	6-20-2018
201 KAR 22:070		
Amended	2259	
As Amended	2487	6-20-2018
201 KAR 25:090		
Amended	1623	
Withdrawn by agency		10-26-2018
201 KAR 34:060		
Amended	2568	See 44 Ky.R.
201 KAR 41:100		
Amended	2572	See 44 Ky.R.
301 KAR 1:130		
Amended	2574	8-6-2018
301 KAR 2:049		
Amended	2260	
As Amended	2488	6-7-2018
301 KAR 2:172		
Amended	2370	
As Amended		See 45 Ky.R.
301 KAR 2:176		
Amended	2576	10-5-2018
301 KAR 2:221		
Amended	2374	
As Amended		See 45 Ky.R.
301 KAR 2:222		
Amended	2376	
As Amended		See 45 Ky.R.
301 KAR 2:228		
Amended	2380	See 44 Ky.R.
302 KAR 16:020		
Amended	2265	
As Amended	2492	7-6-2018
302 KAR 16:081*(r)*	2283	7-6-2018
302 KAR 16:091		
Amended	2267	
As Amended	2493	7-6-2018
302 KAR 50:050	1768	
Amended	2383	7-24-2018
401 KAR 5:002		
Amended	2578	See 45 Ky.R.
401 KAR 5:005		
Amended	2585	See 45 Ky.R.
401 KAR 5:006		
Amended	2598	See 45 Ky.R.
401 KAR 5:015		
Amended	2602	See 45 Ky.R.
401 KAR 5:039		
Repealed	2707	11-1-2018
401 KAR 5:035		
Amended	2604	See 45 Ky.R.
401 KAR 5:039(r)	2707	11-1-2018
401 KAR 5:045		
Amended	2610	See 45 Ky.R.
401 KAR 5:050		
Amended	2612	11-1-2018
401 KAR 5:052		
Amended	2615	11-1-2018
401 KAR 5:055		
Amended	2616	See 45 Ky.R.
401 KAR 5:057		
Repealed	2707	11-1-2018
401 KAR 5:060		
Amended	2620	11-1-2018
401 KAR 5:065		
Amended	2623	11-1-2018
401 KAR 5:070		
Repealed	2707	11-1-2018
401 KAR 5:075		
Amended	2625	See 45 Ky.R.
401 KAR 5:080		
Amended	2628	11-1-2018
401 KAR 5:300		
Repealed	2707	11-1-2018
401 KAR 5:320		
Amended	2631	See 45 Ky.R.
401 KAR 51:240	2284	
AmComments	2505	
401 KAR 51:250	2286	
AmComments	2507	
401 KAR 51:260	2288	
AmComments	2509	
405 KAR 1:005		
Repealed	2708	10-5-2018
405 KAR 1:007		
Repealed	2708	10-5-2018
405 KAR 1:010		
Repealed	2708	10-5-2018
405 KAR 1:011(r)	2708	10-5-2018
405 KAR 1:015		
Repealed	2708	10-5-2018
405 KAR 1:020		
Repealed	2708	10-5-2018
405 KAR 1:030		
Repealed	2708	10-5-2018
405 KAR 1:040		
Repealed	2708	10-5-2018
405 KAR 1:050		
Repealed	2708	10-5-2018
405 KAR 1:051		
Repealed	2708	10-5-2018
405 KAR 1:060		
Repealed	2708	10-5-2018
405 KAR 1:070		
Repealed	2708	10-5-2018
405 KAR 1:080		
Repealed	2708	10-5-2018
405 KAR 1:090		
Repealed	2708	10-5-2018
405 KAR 1:100		
Repealed	2708	10-5-2018
405 KAR 1:110		
Repealed	2708	10-5-2018
405 KAR 1:120		
Repealed	2708	10-5-2018
405 KAR 1:130		
Repealed	2708	10-5-2018
405 KAR 1:130		
Repealed	2708	10-5-2018
405 KAR 1:141		
Repealed	2708	10-5-2018
405 KAR 1:150		
Repealed	2708	10-5-2018
405 KAR 1:160		
Repealed	2708	10-5-2018
405 KAR 1:170		
Repealed	2708	10-5-2018
405 KAR 1:180		
Repealed	2708	10-5-2018
405 KAR 1:190		
Repealed	2708	10-5-2018
405 KAR 1:200		
Repealed	2708	10-5-2018

Regulation Number	44 Ky.R. Page No.	Effective Date
405 KAR 1:210		
Repealed	2708	10-5-2018
405 KAR 1:220		
Repealed	2708	10-5-2018
405 KAR 1:230		
Repealed	2708	10-5-2018
405 KAR 1:240		
Repealed	2708	10-5-2018
405 KAR 1:250		
Repealed	2708	10-5-2018
405 KAR 1:260		
Repealed	2708	10-5-2018
405 KAR 3:005		
Repealed	2709	10-5-2018
405 KAR 3:007		
Repealed	2709	10-5-2018
405 KAR 3:010		
Repealed	2709	10-5-2018
405 KAR 3:011(r)	2709	10-5-2018
405 KAR 3:015		
Repealed	2709	10-5-2018
405 KAR 3:020		
Repealed	2709	10-5-2018
405 KAR 3:030		
Repealed	2709	10-5-2018
405 KAR 3:040		
Repealed	2709	10-5-2018
405 KAR 3:050		
Repealed	2709	10-5-2018
405 KAR 3:060		
Repealed	2709	10-5-2018
405 KAR 3:070		
Repealed	2709	10-5-2018
405 KAR 3:080		
Repealed	2709	10-5-2018
405 KAR 3:090		
Repealed	2709	10-5-2018
405 KAR 3:100		
Repealed	2709	10-5-2018
405 KAR 3:111		
Repealed	2709	10-5-2018
405 KAR 3:120		
Repealed	2709	10-5-2018
405 KAR 3:130		
Repealed	2709	10-5-2018
405 KAR 3:140		
Repealed	2709	10-5-2018
405 KAR 3:150		
Repealed	2709	10-5-2018
405 KAR 3:160		
Repealed	2709	10-5-2018
405 KAR 3:170		
Repealed	2709	10-5-2018
405 KAR 3:180		
Repealed	2709	10-5-2018
405 KAR 3:190		
Repealed	2709	10-5-2018
501 KAR 6:030		
Amended	2269	
AmComments	2511	8-6-2018
501 KAR 6:070		
Amended	2635	See 44 Ky.R.
501 KAR 6:170		
Amended	2270	7-6-2018
501 KAR 6:270		
Amended	2097	
As Amended	2494	7-6-2018
501 KAR 16:290		
Amended	1884	
Am Comments	2337	
As Amended	2494	7-6-2018
501 KAR 16:300		
Amended	1887	
Am Comments	2339	
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501 KAR 16:310		
Amended	1891	
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501 KAR 16:330		
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501 KAR 16:340		
Amended	1897	
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503 KAR 5:090		
Amended	2637	10-5-2018
505 KAR 1:120		
Amended	2384	
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505 KAR 1:140		
Amended	2386	See 45 Ky.R.
600 KAR 4:010		
Amended	2272	
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601 KAR 2:030		
Amended	1651	
Withdrawn by agency		6-13-2018
603 KAR 2:015		
Amended	2640	
Withdrawn by agency		7-24-2018
703 KAR 5:190		
Repealed	2157	8-6-2018
703 KAR 5:191*(r)*	2157	8-6-2018
703 KAR 5:225		
Amended	2101	
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703 KAR 5:260		
Repealed	2157	6-17-2018
703 KAR 5:280	2158	
Am Comments	2351	
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704 KAR 7:090		
Amended	1658	
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735 KAR 1:010		
Amended	2388	
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735 KAR 1:020		
Amended	2391	
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735 KAR 2:010		
Amended	2394	
As Amended		See 45 Ky.R.
735 KAR 2:020		
Amended	2396	
As Amended		See 45 Ky.R.
735 KAR 2:030		
Amended	2398	
As Amended		See 45 Ky.R.
735 KAR 2:040		
Amended	2399	
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735 KAR 2:050		
Amended	2401	
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735 KAR 2:060		
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804 KAR 9:010		
Repealed	1774	7-6-2018

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804 KAR 9:050		
Repealed	1774	7-6-2018
804 KAR 9:051*(r)*	1774	7-6-2018
807 KAR 5:022		
Amended	2405	See 45 Ky.R.
807 KAR 5:026		
Amended	2436	See 45 Ky.R.
810 KAR 1:111(r)	2711	
Withdrawn		7-18-2018
810 KAR 8:040	2712	
Withdrawn		7-18-2018
811 KAR 1:241*(r)*	2717	
Withdrawn		7-18-2018
811 KAR 2:151*(r)*	2718	
Withdrawn		7-18-2018
815 KAR 7:110		
Amended	2439	See 44 Ky.R.
815 KAR 7:120		
Amended	2442	8-22-2018
815 KAR 7:125		
Amended	2445	8-22-2018
815 KAR 8:007		
Repealed	2458	8-22-2018
815 KAR 8:011*(r)*	2458	8-22-2018
815 KAR 8:045		
Repealed	2458	8-22-2018
815 KAR 8:070		
Amended	2446	See 45 Ky.R.
815 KAR 8:080		
Amended	2449	See 45 Ky.R.
815 KAR 8:100		
Amended	2451	See 45 Ky.R.
820 KAR 1:001		
Amended	2646	See 45 Ky.R.
820 KAR 1:005		
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820 KAR 1:011(r)	2720	1-4-2019
820 KAR 1:015		
Repealed	2720	1-4-2019
820 KAR 1:016		
Repealed	2720	1-4-2019
820 KAR 1:025		
Amended	2654	See 45 Ky.R.
820 KAR 1:026		
Repealed	2720	1-4-2019
820 KAR 1:028		
Repealed	2720	1-4-2019
820 KAR 1:029		
Repealed	2720	1-4-2019
820 KAR 1:032		
Amended	2656	See 45 Ky.R.
820 KAR 1:033		
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820 KAR 1:034		
Repealed	2720	1-4-2019
820 KAR 1:036		
Repealed	2720	1-4-2019
820 KAR 1:042		
Amended	2670	See 45 Ky.R.
820 KAR 1:044		
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820 KAR 1:046		
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820 KAR 1:050		
Amended	2678	See 45 Ky.R.
820 KAR 1:055		
Amended	2681	See 45 Ky.R.
820 KAR 1:056		
Repealed	2720	1-4-2019
820 KAR 1:057		
Amended	2683	See 45 Ky.R.
820 KAR 1:058		
Repealed	2720	1-4-2019
820 KAR 1:060		
Amended	2690	See 45 Ky.R.
820 KAR 1:100		
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820 KAR 1:110		
Repealed	2720	1-4-2019
820 KAR 1:120		
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820 KAR 1:125		
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902 KAR 2:055		
Amended	2695	See 45 Ky.R.
902 KAR 10:040		
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902 KAR 20:016		
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902 KAR 20:058		
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906 KAR 1:200		
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910 KAR 2:030		
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910 KAR 2:050	2723	9-19-2018
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921 KAR 2:015		
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922 KAR 2:090		
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922 KAR 2:100		
Amended	2118	
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922 KAR 2:110		
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922 KAR 2:120		
Amended	2129	
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922 KAR 2:170		
Repealed	2308	7-18-2018
922 KAR 2:180		
Amended	2138	
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922 KAR 2:190		
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922 KAR 2:210		
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922 KAR 2:270	2459	
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SYMBOL KEY:

* Statement of Consideration not filed by deadline
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
*** Withdrawn before being printed in Register
IJC Interim Joint Committee
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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 1:015E	234	7-11-2018
Replaced	933	10-24-2018
9 KAR 1:030E	235	7-11-2018
Replaced	933	10-24-2018
31 KAR 3:010E	7	5-22-2018
Replaced	638	10-5-2018
31 KAR 4:100E	236	6-21-2018
Replaced	1512	1-4-2019
31 KAR 4:120E	239	6-21-2018
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32 KAR 1:030E	906	8-31-2018
32 KAR 1:050E	2301	1-14-2019
32 KAR 1:070E	2302	1-14-2019
40 KAR 2:345E	241	7-2-2018
Replaced	946	11-2-2018
101 KAR 2:210E	908	9-14-2018
Replaced	1055	1-4-2019
103 KAR 18:050E	910	9-10-2018
Replaced	1518	1-4-2019
105 KAR 1:147E	1174	10-5-2018
200 KAR 3:020E	2304	1-4-2019
301 KAR 1:152E	2039	11-19-2018
301 KAR 2:095E	2308	12-17-2018
301 KAR 2:169E	912	8-24-2018
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301 KAR 2:225E	614	7-20-2018
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400 KAR 1:001E	243	7-13-2018
Replaced	431	10-5-2018
400 KAR 1:040E	245	7-13-2018
Replaced	958	10-5-2018
400 KAR 1:090E	251	7-13-2018
Replaced	963	10-5-2018
400 KAR 1:100E	260	7-13-2018
Replaced	970	10-5-2018
400 KAR 1:110E	265	7-13-2018
Replaced	974	10-5-2018
501 KAR 5:020E	617	7-19-2018
Replaced	1524	1-4-2019
503 KAR 1:110E	274	6-27-2018
Replaced	1047	12-7-2018
601 KAR 2:030E	9	6-13-2018
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787 KAR 1:010E	915	9-13-2018
Replaced	1528	1-4-2019
803 KAR 25:089E	15	6-11-2018
Replaced	1193	12-7-2018
803 KAR 25:270E	2316	12-27-2018
805 KAR 1:210E	277	7-13-2018
Replaced	560	10-5-2018
895 KAR 1:001E	279	6-29-2018
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895 KAR 1:010E	282	6-29-2018
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895 KAR 1:015E	285	6-29-2018
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895 KAR 1:020E	288	6-29-2018
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895 KAR 1:030E	292	6-29-2018
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895 KAR 1:035E	295	6-29-2018
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895 KAR 1:040E	297	6-29-2018
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895 KAR 1:050E	301	6-29-2018
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895 KAR 1:055E	303	6-29-2018
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900 KAR 11:010E	917	9-13-2018
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900 KAR 5:020E	305	7-13-2018
Replaced	1622	12-12-2018
900 KAR 6:075E	1176	9-25-2018
902 KAR 20:008E	307	7-13-2018
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902 KAR 20:401E(r)	312	7-13-2018
Expired		1-9-2019
902 KAR 55:011E(r)	313	7-13-2018
Expired		1-9-2019
906 KAR 1:071E(r)	315	7-13-2018
Expired		1-9-2019
907 KAR 1:025E	922	9-13-2018
Replaced	1673	1-4-2019
907 KAR 1:560E	1493	11-1-2018
907 KAR 1:563E	1497	11-1-2018
907 KAR 1:604E	2319	12-28-2018
907 KAR 1:642E	316	7-2-2018
Withdrawn by agency		7-27-2018
907 KAR 10:820E	2041	11-30-2018
921 KAR 2:015E	2322	12-28-2018
921 KAR 2:055E	1501	11-1-2018
921 KAR 3:060E	1505	11-1-2018
921 KAR 3:070E	1507	11-1-2018
922 KAR 1:100E	928	9-13-2018
922 KAR 1:360E	619	8-1-2018
922 KAR 1:560E	318	7-13-2018
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922 KAR 2:160E	2045	11-30-2018

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11 KAR 4:080		
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11 KAR 5:145		
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12 KAR 2:011		
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12 KAR 2:018		
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12 KAR 2:021		
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12 KAR 2:046		
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31 KAR 4:100		
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31 KAR 4:120		
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32 KAR 1:030		
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40 KAR 2:345	557	
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45 KAR 1:050		
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103 KAR 15:060		
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103 KAR 015:090		
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103 KAR 15:110		
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103 KAR 15:120		
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103 KAR 15:140		
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103 KAR 15:180		
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103 KAR 15:195		
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103 KAR 016:010		
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103 KAR 16:060		
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103 KAR 16:090		
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103 KAR 16:240		
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103 KAR 16:250		
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103 KAR 16:270		
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103 KAR 16:290		
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103 KAR 16:330		
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103 KAR 016:360		
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103 KAR 16:380		
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103 KAR 16:381*(r)*	1152	1-4-2019
103 KAR 17:010		
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103 KAR 17:020		
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103 KAR 017:041		
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103 KAR 17:100		
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103 KAR 17:130		
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103 KAR 17:140		
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103 KAR 18:050		
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103 KAR 18:080		
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103 KAR 18:081*(r)*	1153	1-4-2019
103 KAR 18:160		
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103 KAR 18:110		
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103 KAR 18:120		
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103 KAR 18:150		
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103 KAR 18:180		
Amended	738	12-7-2018
103 KAR 018:190		
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103 KAR 018:200		
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103 KAR 018:210		
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103 KAR 19:010		
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SYMBOL KEY:

* Statement of Consideration not filed by deadline

** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))

*** Withdrawn before being printed in Register

IJC Interim Joint Committee

(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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146.990	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
	400 KAR 004:130
	400 KAR 004:140
147A.310	103 KAR 015:195
149.344	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:100
149.346	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:100
149.348	400 KAR 001:001
	400 KAR 001:090
	400 KAR 001:100
150.010	301 KAR 001:152
	301 KAR 001:155
	301 KAR 001:201
	301 KAR 001:410
	301 KAR 002:132
	301 KAR 002:172
	301 KAR 004:090
150.120	301 KAR 001:155
150.025	301 KAR 003:022
150.090	301 KAR 001:015
150.170	301 KAR 001:152
	301 KAR 001:155
	301 KAR 001:201
	301 KAR 001:410
	301 KAR 002:132
	301 KAR 003:100
150.175	301 KAR 001:132
	301 KAR 001:152
	301 KAR 001:201
	301 KAR 001:410
	301 KAR 003:100
	301 KAR 004:090
150.177	301 KAR 002:172
150.180	301 KAR 001:132
	301 KAR 002:095
	301 KAR 002:132
	301 KAR 002:172
	301 KAR 003:022
	301 KAR 004:090
150.183	301 KAR 003:022
	301 KAR 004:090
150.235	301 KAR 001:410
150.240	301 KAR 003:022
150.275	301 KAR 003:022
150.280	301 KAR 001:132
	301 KAR 002:095
	301 KAR 003:022
150.290	301 KAR 001:115
	301 KAR 002:095
	301 KAR 003:022
150.305	301 KAR 004:090
150.330	301 KAR 002:225
	301 KAR 004:090
150.340	301 KAR 001:201
	301 KAR 002:225

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150.370	301 KAR 004:090
150.411	301 KAR 002:172
	301 KAR 004:090
150.445	301 KAR 001:152
	301 KAR 001:155
	301 KAR 001:410
150.450	301 KAR 001:132
	301 KAR 001:152
	301 KAR 001:155
	301 KAR 003:022
150.485	301 KAR 001:115
	301 KAR 001:132
	301 KAR 003:022
150.520	301 KAR 003:022
150.525	301 KAR 003:022
150.600	301 KAR 003:022
150.603	301 KAR 002:225
	301 KAR 003:022
150.620	301 KAR 001:201
	301 KAR 001:410
150.625	301 KAR 001:015
150.660	301 KAR 003:022
150.720	301 KAR 003:022
150.990	301 KAR 001:015
	301 KAR 001:152
	301 KAR 001:155
	301 KAR 001:201
	301 KAR 001:410
	301 KAR 002:132
	301 KAR 002:172
	301 KAR 004:090
151.125	400 KAR 001:001
	400 KAR 001:090
151.140	400 KAR 003:140
151.182	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
151.184	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
151.297	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
151.990	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:100
154.22-010	103 KAR 018:180
	103 KAR 018:191
154.22-070	103 KAR 018:180
	103 KAR 018:191
154.23-010	103 KAR 018:180
	103 KAR 018:191
154.23-055	103 KAR 018:180
	103 KAR 018:191
154.24-010	103 KAR 018:180
	103 KAR 018:191
154.24-110	103 KAR 018:180
	103 KAR 018:191
154.25-010	103 KAR 018:180
154.25-040	103 KAR 018:180
154.26-010	103 KAR 018:180
154.26-100	103 KAR 018:180
154.28-010	103 KAR 018:180
	103 KAR 018:191
154.28-110	103 KAR 018:180
	103 KAR 018:191
154.32-010	103 KAR 018:180
154.32-090	103 KAR 018:180
156.010	704 KAR 003:292
	704 KAR 003:365
156.035	704 KAR 003:292
	704 KAR 003:365
156.070	701 KAR 005:150
	702 KAR 007:065
	704 KAR 003:292
	704 KAR 003:303
	704 KAR 003:306
	704 KAR 008:010
	704 KAR 008:020
	704 KAR 008:030
	704 KAR 008:040
	704 KAR 008:050
156.108	701 KAR 005:140
156.160	013 KAR 002:020
	701 KAR 005:140
	704 KAR 003:303
	704 KAR 003:305
	704 KAR 003:306
	704 KAR 008:010
	704 KAR 008:020
	704 KAR 008:030
	704 KAR 008:040
	704 KAR 008:050
156.162	704 KAR 003:306
156.496	922 KAR 001:565
156.850	704 KAR 008:010
157.3175	704 KAR 003:015
158.135	505 KAR 001:080
158.137	505 KAR 001:080
158.142	704 KAR 003:305
158.197	704 KAR 003:306
158.645	703 KAR 005:270
	704 KAR 003:305
	704 KAR 008:010
158.6451	013 KAR 002:020
	703 KAR 005:270
	704 KAR 003:303
	704 KAR 003:305
	704 KAR 003:306
	704 KAR 008:010
	704 KAR 008:020
	704 KAR 008:030
	704 KAR 008:040
	704 KAR 008:050
158.6453	013 KAR 002:020
	703 KAR 005:270
	704 KAR 003:303
	704 KAR 008:020
	704 KAR 008:030
	704 KAR 008:040
	704 KAR 008:050
158.6455	703 KAR 005:270
160.107	701 KAR 005:140
160.290	704 KAR 003:303
	704 KAR 003:306
	704 KAR 008:010
	704 KAR 008:020
	704 KAR 008:030
	704 KAR 008:040
	704 KAR 008:050
160.380	702 KAR 007:065
160.445	702 KAR 007:065
160.380	016 KAR 002:100
	016 KAR 009:040
161.010	016 KAR 002:100
161.020	016 KAR 002:100
	016 KAR 002:210
	016 KAR 003:090
	016 KAR 009:040
161.027	016 KAR 003:090
161.028	016 KAR 003:090
161.128	016 KAR 002:100
	016 KAR 002:210
	016 KAR 009:040

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161.030	016 KAR 002:100
	016 KAR 002:210
	016 KAR 003:090
	016 KAR 009:040
161.046	016 KAR 009:040
161.048	016 KAR 009:040
161.120	016 KAR 009:040
161.220	102 KAR 001:320
161.470	102 KAR 001:060
161.520	102 KAR 001:060
	102 KAR 001:168
161.655	102 KAR 001:163
161.700	102 KAR 001:060
	102 KAR 001:320
161.716	102 KAR 001:320
164.001	013 KAR 002:020
164.020	013 KAR 002:020
164.030	013 KAR 002:020
164.2847	922 KAR 001:500
164.518	011 KAR 004:080
164.744	011 KAR 004:080
	011 KAR 005:145
164.748	011 KAR 004:080
164.753	011 KAR 004:080
	011 KAR 005:145
164.769	011 KAR 004:080
164.772	201 KAR 022:020
	201 KAR 022:040
	815 KAR 035:060
164.780	011 KAR 004:080
164.785	011 KAR 004:080
164.6901 - 164.6935	200 KAR 030:011
	830 KAR 002:001
164.6907	830 KAR 002:010
164.6909	830 KAR 002:010
164.6911	830 KAR 002:010
164.6913 - 164.6933	830 KAR 002:020
164.6915	830 KAR 002:010
164.7535	011 KAR 004:080
	011 KAR 005:145
164.7871 - 164.7885	011 KAR 015:010
	011 KAR 015:110
164.7889	011 KAR 005:145
164.7890	011 KAR 004:080
164.7894	011 KAR 004:080
165A	815 KAR 006:040
176.090-176.110	603 KAR 002:015
176.130-176-220	603 KAR 002:015
186.010	601 KAR 002:030
186.440	601 KAR 002:030
186.442	601 KAR 002:030
186.480	601 KAR 002:030
186.531	601 KAR 002:030
186.560	601 KAR 002:030
186.570	601 KAR 002:030
186.655	603 KAR 005:070
189.222	603 KAR 005:070
189A.005	601 KAR 002:030
189A.010	601 KAR 002:030
189A.040	601 KAR 002:030
189A.070	601 KAR 002:030
189A.085	601 KAR 002:030
189A.090	601 KAR 002:030
189A.103	601 KAR 002:030
189A.105	601 KAR 002:030
189A.107	601 KAR 002:030
189A.200	601 KAR 002:030
189A.240	601 KAR 002:030
189A.250	601 KAR 002:030
189A.340	601 KAR 002:030
189A.345	601 KAR 002:030
189A.400	601 KAR 002:030
189A.410	601 KAR 002:030
189A.420	601 KAR 002:030
189A.440	601 KAR 002:030
189A.500	601 KAR 002:030
194A	921 KAR 002:015
194A.005	902 KAR 100:022
	902 KAR 100:070
	902 KAR 100:142
	922 KAR 001:140
	922 KAR 001:400
	922 KAR 001:565
194A.025	907 KAR 001:563
194A.030	900 KAR 009:010
194A.050	900 KAR 010:021
	922 KAR 001:400
	922 KAR 001:565
194A.060	907 KAR 003:170
	910 KAR 001:240
	922 KAR 001:100
	922 KAR 001:560
	922 KAR 002:160
194A.125	907 KAR 003:170
194A.700-729	501 KAR 006:020
	910 KAR 001:240
197	501 KAR 006:020
198B.010	815 KAR 007:070
198B.040	815 KAR 007:070
198B.050	815 KAR 007:070
	815 KAR 035:020
198B.060	815 KAR 007:070
	815 KAR 035:015
198B.090	815 KAR 002:010
	815 KAR 002:020
	815 KAR 007:070
	815 KAR 035:015
198B.095	815 KAR 002:010
	815 KAR 002:020
	815 KAR 007:070
198B.260	902 KAR 020:260
	908 KAR 001:374
198B.4003	815 KAR 004:030
198B.4009	815 KAR 002:010
	815 KAR 002:020
	815 KAR 004:030
	815 KAR 004:071
198B.4011	815 KAR 002:010
	815 KAR 004:030
198B.4013	815 KAR 002:010
	815 KAR 004:030
198B.4023	815 KAR 002:010
	815 KAR 002:020
	815 KAR 004:030
198B.4025	815 KAR 002:010
	815 KAR 002:020
	815 KAR 004:030
198B.4027	815 KAR 004:030
198B.4033	815 KAR 004:030
198B.4037	815 KAR 002:040
198B.615	815 KAR 002:040
198B.6405	815 KAR 002:010
198B.6409	815 KAR 002:010
	815 KAR 002:020
	815 KAR 022:011
	815 KAR 025:081
198B.645	815 KAR 002:010
198B.650	815 KAR 008:010
198B.654	815 KAR 002:010
	815 KAR 002:020
	815 KAR 008:010
	815 KAR 008:091
198B.656	815 KAR 002:010
	815 KAR 008:030
198B.658	815 KAR 002:010
	815 KAR 008:010
	815 KAR 008:030
	815 KAR 008:091

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198B.659	815 KAR 008:010
198B.6504	815 KAR 002:020
198B.660	815 KAR 002:010
	815 KAR 008:010
	815 KAR 008:030
198B.662	815 KAR 008:030
198B.664	815 KAR 002:010
	815 KAR 002:020
	815 KAR 008:010
	815 KAR 008:030
198B.668	815 KAR 008:010
198B.670	815 KAR 002:030
198B.672	815 KAR 002:010
	815 KAR 008:010
198B.676	815 KAR 002:040
	815 KAR 008:010
198B.684	815 KAR 002:020
198B.700	815 KAR 006:001
	815 KAR 006:010
198B.706	815 KAR 006:001
	815 KAR 006:010
	815 KAR 006:030
	815 KAR 006:040
	815 KAR 006:101
198B.712	815 KAR 006:010
	815 KAR 006:030
	815 KAR 006:040
198B.714	815 KAR 006:010
198B.716	815 KAR 006:010
198B.722	815 KAR 006:010
	815 KAR 006:030
	815 KAR 006:040
198B.724	815 KAR 006:010
	815 KAR 006:040
198B.728	815 KAR 006:030
198B.730	815 KAR 006:030
198B.738	815 KAR 006:010
199.011	922 KAR 001:010
	922 KAR 001:100
	922 KAR 001:140
	922 KAR 001:305
	922 KAR 001:360
	922 KAR 001:400
	922 KAR 001:530
	922 KAR 001:560
	922 KAR 001:565
199.430	922 KAR 001:100
199.462	922 KAR 001:140
	922 KAR 001:565
199.467	922 KAR 001:140
199.470	922 KAR 001:010
199.470-199.590	922 KAR 001:565
199.473	922 KAR 001:010
199.474	922 KAR 001:010
199.480	922 KAR 001:010
	922 KAR 001:560
199.490	922 KAR 001:010
199.492	922 KAR 001:010
199.493	922 KAR 001:010
199.500	922 KAR 001:010
	922 KAR 001:060
199.502	922 KAR 001:060
199.505	922 KAR 001:560
199.510	922 KAR 001:010
199.520	922 KAR 001:010
	922 KAR 001:100
199.525	922 KAR 001:100
199.540	922 KAR 001:010
199.555	101 KAR 003:045
	922 KAR 001:050
	922 KAR 001:060
	922 KAR 001:140
199.557	922 KAR 001:060
	922 KAR 001:140
199.570	922 KAR 001:010
	922 KAR 001:100
199.572	922 KAR 001:010
	922 KAR 001:100
199.575	922 KAR 001:100
199.590	922 KAR 001:010
199.640	922 KAR 001:305
199.670	922 KAR 001:305
199.640 - 199.680	922 KAR 001:360
199.801	922 KAR 001:360
	922 KAR 001:140
199.892	921 KAR 002:055
	922 KAR 002:160
199.894	922 KAR 002:160
199.8943	704 KAR 003:015
199.896	922 KAR 002:160
199.898	922 KAR 002:160
199.8982	922 KAR 002:160
199.899	922 KAR 002:160
199.8994	922 KAR 002:160
199.990	922 KAR 001:010
199.640	922 KAR 001:305
	922 KAR 001:560
200.080 - 200.120	505 KAR 001:100
	505 KAR 001:110
	505 KAR 001:180
	505 KAR 001:190
200.575	922 KAR 001:411
202A.011	921 KAR 002:015
202B.010	922 KAR 001:100
205.175	907 KAR 001:075
205.200	922 KAR 001:400
205.211	921 KAR 002:055
	922 KAR 001:565
205.231	907 KAR 001:075
	907 KAR 001:560
	907 KAR 001:563
	921 KAR 002:055
	921 KAR 003:060
	921 KAR 003:070
205.237	907 KAR 001:075
	907 KAR 001:560
	907 KAR 001:563
	921 KAR 002:055
205.245	921 KAR 002:015
205.455	910 KAR 001:090
205.510	907 KAR 003:170
205.520	895 KAR 001:001
	895 KAR 001:010
	895 KAR 001:015
	895 KAR 001:020
	895 KAR 001:025
	895 KAR 001:030
	895 KAR 001:035
	895 KAR 001:040
	895 KAR 001:045
	895 KAR 001:050
	895 KAR 001:055
	907 KAR 001:005
	907 KAR 001:121
	907 KAR 001:270
	907 KAR 001:280
	907 KAR 001:360
	907 KAR 001:560
	907 KAR 001:563
	907 KAR 008:040
205.531	907 KAR 001:560
205.559	907 KAR 003:170
205.560	907 KAR 001:121
	907 KAR 001:270
	907 KAR 001:280
	907 KAR 001:360
	907 KAR 001:604
	907 KAR 003:170

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205.565	907 KAR 010:820
205.622	895 KAR 001:035
	907 KAR 008:040
205.637	907 KAR 010:820
205.639	907 KAR 010:820
	922 KAR 001:050
205.640	907 KAR 010:820
205.641	907 KAR 010:820
205.703	922 KAR 001:400
205.705	921 KAR 001:380
205.712	601 KAR 002:030
205.710 - 205.800	921 KAR 001:380
205.900 - 205.925	910 KAR 001:090
205.992	921 KAR 001:380
205.2005	921 KAR 003:025
205.6312	907 KAR 001:604
205.6328	900 KAR 001:091
205.6485	907 KAR 001:604
205.8451	895 KAR 001:001
	907 KAR 001:563
	907 KAR 001:604
209A.020	922 KAR 001:400
209.020	921 KAR 002:015
	922 KAR 001:400
209.030	902 KAR 020:300
	908 KAR 001:370
	910 KAR 001:240
209.032	902 KAR 020:300
209.130	922 KAR 001:400
210.270	907 KAR 001:075
	907 KAR 001:563
210.366	201 KAR 026:175
211.025	902 KAR 010:051
211.090	902 KAR 010:051
	902 KAR 047:071
211.180	902 KAR 008:165
	902 KAR 008:170
	902 KAR 010:051
	902 KAR 047:071
	902 KAR 100:022
	902 KAR 100:070
	902 KAR 100:100
	902 KAR 100:142
211.350	815 KAR 035:015
	815 KAR 035:020
211.461	907 KAR 001:560
211.466	907 KAR 001:560
211.842 - 211.852	902 KAR 020:275
	902 KAR 100:018
	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
211.990	902 KAR 100:018
	902 KAR 100:022
	902 KAR 100:052
	902 KAR 100:070
	902 KAR 100:072
	902 KAR 100:100
	902 KAR 100:142
212.025	902 KAR 008:170
212.120	902 KAR 008:170
212.230	902 KAR 008:165
212.240	902 KAR 008:165
212.245	902 KAR 008:165
	902 KAR 008:170
212.890	902 KAR 008:165
	902 KAR 008:170
213.046	921 KAR 001:380
214.036	922 KAR 002:160
214.181	908 KAR 001:370
214.625	908 KAR 001:370

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216.300	910 KAR 001:240
216.380	907 KAR 010:820
216.510 - 216.525	900 KAR 002:040
	902 KAR 020:300
216.530	902 KAR 020:008
	921 KAR 002:015
216.532	902 KAR 020:300
216.535	902 KAR 020:300
216.537 - 216.590	900 KAR 002:021
216.540	902 KAR 020:300
216.543	902 KAR 020:300
216.545	902 KAR 020:300
216.547	902 KAR 020:300
216.555 - 216.567	900 KAR 002:040
216.557	921 KAR 002:015
216.577	900 KAR 002:040
216.595	910 KAR 001:240
216.750	921 KAR 002:015
216.765	921 KAR 002:015
216.785 - 216.793	902 KAR 020:300
216.789	910 KAR 001:240
216.793	910 KAR 001:240
216.860	906 KAR 001:071
216.865	906 KAR 001:071
216.900 - 216.915	906 KAR 001:071
216.930	906 KAR 001:071
216.2920	900 KAR 007:030
216.2925	900 KAR 007:030
	902 KAR 020:008
216.2927	900 KAR 007:030
216A.010	900 KAR 002:040
216B	921 KAR 002:015
216B.010	900 KAR 006:075
	902 KAR 020:008
216B.010 - 216B.130	900 KAR 005:020
216B.010 - 216B.131	902 KAR 020:260
216B.010 - 216B.170	902 KAR 020:275
216B.015	900 KAR 006:075
	902 KAR 020:008
216B.020	902 KAR 020:008
	902 KAR 020:251
	908 KAR 001:370
216B.040	900 KAR 006:020
	902 KAR 020:008
216B.042	902 KAR 020:008
216B.045 - 216B.055	902 KAR 020:008
216B.075	902 KAR 020:008
216B.090	900 KAR 006:075
216B.105 - 216B.131	902 KAR 020:008
216B.176	902 KAR 020:401
216B.177	902 KAR 020:401
216B.185	902 KAR 020:008
216B.400	201 KAR 020:411
216B.450	922 KAR 001:050
216B.455	900 KAR 006:075
216B.990	900 KAR 006:075
	902 KAR 020:008
	902 KAR 020:260
	902 KAR 020:275
216C.010	900 KAR 011:010
216C.030	900 KAR 011:010
216C.040	900 KAR 011:010
216C.050	900 KAR 011:010
216C.060	900 KAR 011:010
216C.070	900 KAR 011:010
216C.080	900 KAR 011:010
216C.090	900 KAR 011:010
216C.100	900 KAR 011:010
216C.110	900 KAR 011:010
216C.120	900 KAR 011:010
216C.160	900 KAR 011:010
216C.170	900 KAR 011:010
216C.180	900 KAR 011:010
216C.200	900 KAR 011:010

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216C.210	900 KAR 011:010
216C.220	900 KAR 011:010
216C.230	900 KAR 011:010
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224.20-110	401 KAR 052:050
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224.60-130	401 KAR 042:250
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227.590	815 KAR 002:010
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227.600	815 KAR 025:050
	815 KAR 025:060
227.610	815 KAR 025:060
227.620	815 KAR 025:060
227.630	815 KAR 025:060
227.640	815 KAR 025:100
227.660	815 KAR 025:090
227.990	815 KAR 025:050
	815 KAR 025:060
	815 KAR 025:090
227.992	815 KAR 025:050
227A.010	815 KAR 035:060
227A.020	815 KAR 002:030
227A.040	815 KAR 002:010
	815 KAR 002:020
	815 KAR 035:080
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227A.060	815 KAR 035:060
	815 KAR 035:080
	815 KAR 035:090
227A.100	815 KAR 002:010
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229.171	201 KAR 027:005
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230.225	810 KAR 001:301
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230.240	810 KAR 002:010
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	810 KAR 008:010
	810 KAR 008:020
	810 KAR 008:040
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230.445	810 KAR 007:060
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230.260	810 KAR 002:001
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	810 KAR 002:030
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	810 KAR 008:020
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	810 KAR 008:050
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230.265	810 KAR 008:010
	810 KAR 008:020
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	810 KAR 008:060
230.280	810 KAR 003:010
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230.290	810 KAR 002:030
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	810 KAR 003:010
	810 KAR 003:020
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	810 KAR 003:040
	810 KAR 004:030
	810 KAR 004:090
	810 KAR 004:100
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230.300	810 KAR 003:010
	810 KAR 003:020
	810 KAR 003:030
	810 KAR 005:070
	810 KAR 008:030
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230.310	810 KAR 002:030
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	810 KAR 003:020
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230.361	810 KAR 003:030
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230.380	810 KAR 003:030
	810 KAR 003:050
230.400	810 KAR 007:030
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230.443	810 KAR 007:060
230.770	810 KAR 007:040
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230.800	810 KAR 007:020
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230.802	810 KAR 007:040
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236.097	815 KAR 015:080
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243.020	804 KAR 008:050
243.0307	804 KAR 001:110
243.036	804 KAR 001:110
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243.180	804 KAR 001:070
243.232	804 KAR 005:080
243.260	804 KAR 001:110
243.340	804 KAR 001:070
243.390	804 KAR 004:011
243.630	804 KAR 004:011
244.090	804 KAR 005:021
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311.990	201 KAR 009:260
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312.021	201 KAR 021:045
314	902 KAR 020:260
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314.031	201 KAR 020:161
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314.041	201 KAR 020:240
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314.042	201 KAR 020:056
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314.051	201 KAR 020:240
314.071	201 KAR 020:161
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314.073	201 KAR 020:215
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314.470	201 KAR 020:161
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315.030	201 KAR 002:370
315.036	902 KAR 055:011
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315.120	201 KAR 002:015
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317A.050	201 KAR 012:030
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317A.060	201 KAR 012:030
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317A.062	201 KAR 012:260
317A.090	317 KAR 012:082
317A.130	201 KAR 012:280
318.010	815 KAR 020:030
318.020	815 KAR 020:030
318.030	815 KAR 020:030
318.040	815 KAR 020:030
318.050	815 KAR 002:040
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318.054	815 KAR 002:010
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318.060	815 KAR 020:030
318.080	815 KAR 020:030
318.100	815 KAR 002:030
318.130	815 KAR 002:010
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318.134	815 KAR 002:040
318.170	815 KAR 002:030
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319.005	201 KAR 026:130
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319.032	201 KAR 026:130
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319.050	201 KAR 026:171
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319.053	201 KAR 026:175
319.056	201 KAR 026:171
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319.118	201 KAR 026:130
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319.990	201 KAR 026:130
319A.010	201 KAR 028:170
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319A.070	201 KAR 028:021
319A.080	201 KAR 028:060
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319A.100	201 KAR 028:060
319A.110	201 KAR 028:060
319A.120	201 KAR 028:060
319A.140	201 KAR 028:060
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319A.170	201 KAR 028:060
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327.010	201 KAR 022:020
	907 KAR 001:604
327.050	201 KAR 022:020
	201 KAR 022:040
	201 KAR 022:070
327.060	201 KAR 022:020
	201 KAR 022:070
327.070	201 KAR 022:040
327.075	201 KAR 022:020
327.080	201 KAR 022:020
327.300	201 KAR 022:170
327.310	201 KAR 022:020
334A.020	907 KAR 001:604
335.030	201 KAR 023:150
335.070	201 KAR 023:150
335.080	908 KAR 001:370
335.100	908 KAR 001:370
335.150	201 KAR 023:150
335.155	201 KAR 023:150
335.300	908 KAR 001:370
335.305	201 KAR 032:110
335.310	201 KAR 032:110
335.320	201 KAR 032:110
335.325	201 KAR 032:110
335.380	201 KAR 032:110
335.399	201 KAR 032:110
335.500	908 KAR 001:370
337.275	922 KAR 002:160
338	803 KAR 050:010
338.015	803 KAR 002:320
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338.031	803 KAR 002:320
339.230	815 KAR 035:060
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342.0011	803 KAR 025:089
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342.019	803 KAR 025:089
342.020	803 KAR 025:089
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342.035	803 KAR 025:089
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342.122	803 KAR 030:010
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342.1221	803 KAR 030:010
342.1222	803 KAR 030:010
342.1223	803 KAR 030:010
342.1231	803 KAR 030:010
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342.340	803 KAR 030:010
342.650	803 KAR 030:010
350.010	400 KAR 001:110
350.028	400 KAR 001:001
	400 KAR 001:040
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350.029	400 KAR 001:090
350.032	400 KAR 001:001
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350.060	400 KAR 001:090
350.070	400 KAR 001:001
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	400 KAR 001:090
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350.085	400 KAR 001:001
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	400 KAR 001:090
350.090	400 KAR 001:001
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350.093	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	400 KAR 001:110
350.130	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
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350.240	400 KAR 001:090
350.255	400 KAR 001:001
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350.300	400 KAR 001:090
350.305	400 KAR 001:090
350.465	400 KAR 001:001
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350.610	400 KAR 001:001
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350.990	400 KAR 001:001
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350.0301	400 KAR 001:001
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350.0305	400 KAR 001:001
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351.010	805 KAR 007:080
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351.127	805 KAR 007:080
351.182	805 KAR 007:080
351.315	400 KAR 001:001
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351.345	400 KAR 001:001
	400 KAR 001:040
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351.350	400 KAR 001:001
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353.060	400 KAR 001:001
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353.510	805 KAR 001:210
353.590	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.620	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.630	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
	805 KAR 001:210
353.640	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
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353.700	400 KAR 001:001
	400 KAR 001:040
	400 KAR 001:090
353.5901	400 KAR 001:001
	400 KAR 001:040
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363.590	302 KAR 085:010
363.610	302 KAR 085:010
367.680	040 KAR 002:345
367.686	040 KAR 002:345
367.688	040 KAR 002:345
367.689	040 KAR 002:345
367.690	040 KAR 002:345
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352.390	805 KAR 007:080
387	922 KAR 001:565
387.025	922 KAR 001:140
403.190	102 KAR 001:320
403.211	921 KAR 001:380
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405.430	921 KAR 001:380
405.467	921 KAR 001:380
405.520	921 KAR 001:380
406.021	921 KAR 001:380
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434.840 - 434.860	907 KAR 003:170
439	501 KAR 006:020
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514	921 KAR 002:015
527.100	922 KAR 001:140
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600.020	922 KAR 001:050
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	922 KAR 001:565
605.090	922 KAR 001:100
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	922 KAR 001:360
605.100	922 KAR 001:530
605.110	505 KAR 001:080
605.120	922 KAR 002:160
	922 KAR 001:565
605.130	922 KAR 001:530
	922 KAR 001:400
	922 KAR 001:565
605.150	922 KAR 001:400
	922 KAR 001:565
610.110	922 KAR 001:360
	922 KAR 001:140
	922 KAR 001:305
	922 KAR 001:565
610.125	922 KAR 001:140
610.127	922 KAR 001:140
610.170	921 KAR 001:380
	922 KAR 001:530
610.110	922 KAR 001:305
	922 KAR 001:400
	922 KAR 001:500
615.030	922 KAR 001:010
	922 KAR 001:100
620.020	922 KAR 001:140
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620.030	908 KAR 001:370
620.050	922 KAR 001:100
620.060	922 KAR 001:140
620.090	922 KAR 001:140
620.140	922 KAR 001:140
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620.180	922 KAR 001:140
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625.040	922 KAR 001:140
625.045	922 KAR 001:100
625.065	922 KAR 001:560
625.090	922 KAR 001:140
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10 C.F.R.	401 KAR 042:020
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40 C.F.R.	401 KAR 005:002
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45 C.F.R.	806 KAR 009:360
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	921 KAR 003:025
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20 U.S.C.	011 KAR 004:080
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21 U.S.C.	012 KAR 002:041
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23 U.S.C.	603 KAR 005:070
25 U.S.C.	922 KAR 001:100
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26 U.S.C.	101 KAR 002:095
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29 U.S.C.	806 KAR 017:091
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30 U.S.C.	400 KAR 001:001
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	921 KAR 002:055
31 U.S.C.	045 KAR 001:050
33 U.S.C.	401 KAR 005:002
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34 U.S.C.	922 KAR 002:160
38 U.S.C.	921 KAR 002:055
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	806 KAR 017:570		
	815 KAR 025:050		
	895 KAR 001:001		
	895 KAR 001:010		
	895 KAR 001:015		
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	895 KAR 001:025		
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	902 KAR 020:260		
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	906 KAR 001:190		
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	907 KAR 005:005		
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	921 KAR 003:030		
	921 KAR 003:035		
	922 KAR 001:060		
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	922 KAR 001:400		
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49 U.S.C.	302 KAR 029:020		
	603 KAR 005:070		
50 U.S.C.	103 KAR 017:130		
52 U.S.C.	921 KAR 003:030		
2012 Ky Acts ch. 144, Part XII	806 KAR 017:091		
2016 Ky Acts ch. 149, Part 1	922 KAR 002:160		
Pres. EO 13166	921 KAR 003:030		
Pub. L 108-173	806 KAR 017:570		
Pub. L 114-94	603 KAR 005:070		
Pub L 14-198	201 KAR 020:065		

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	First Effective Date	Previous Last Effective Date*	Letter Filed Date	Action
011 KAR 003:001	03-04-1993	01-10-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:005	12-09-1992	09-12-1994	09-28-2018	Remain in Effect without Amendment
011 KAR 003:045	03-04-1993	*03-04-1993*	09-28-2018	Remain in Effect without Amendment
011 KAR 003:055	03-04-1993	*03-04-1993*	09-28-2018	Remain in Effect without Amendment
011 KAR 003:100	08-20-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 004:020	02-04-1976	09-13-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 004:030	11-01-1978	04-14-1997	09-28-2018	Remain in Effect without Amendment
011 KAR 004:040	10-09-1984	11-08-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 004:050	05-14-1985	10-01-1998	09-28-2018	Remain in Effect without Amendment
011 KAR 004:060	10-01-1992	*10-01-1992*	09-28-2018	Remain in Effect without Amendment
011 KAR 005:001	08-01-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:033	08-01-1992	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:110	11-04-1988	08-01-1992	09-28-2018	Remain in Effect without Amendment
011 KAR 005:130	03-23-1989	10-06-2006	09-28-2018	Remain in Effect without Amendment
011 KAR 005:140	02-03-1989	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 005:145	08-01-1992	07-01-2016	09-28-2018	Remain in Effect without Amendment
011 KAR 005:150	02-03-1989	09-09-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 005:160	02-03-1989	03-11-2005	09-28-2018	Remain in Effect without Amendment
011 KAR 005:170	02-03-1989	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 005:180	02-03-1989	06-03-2003	09-28-2018	Remain in Effect without Amendment
011 KAR 005:200	04-06-2007	07-13-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 007:010	03-04-1986	02-07-1991	09-28-2018	Remain in Effect without Amendment
011 KAR 007:020	08-12-1986	02-07-1991	09-28-2018	Remain in Effect without Amendment
011 KAR 008:010	08-12-1986	08-09-1990	09-28-2018	Remain in Effect without Amendment
011 KAR 008:020	08-12-1986	08-09-1990	09-28-2018	Remain in Effect without Amendment
011 KAR 008:030	08-09-1990	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 008:040	08-09-1990	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 010:010	04-14-1987	10-07-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 010:020	04-14-1987	10-07-1993	09-28-2018	Remain in Effect without Amendment
011 KAR 012:010	08-02-1991	12-18-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:020	08-02-1991	10-11-1999	09-28-2018	Remain in Effect without Amendment
011 KAR 012:030	08-02-1991	12-18-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:040	08-02-1991	02-11-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:050	08-02-1991	02-11-2002	09-28-2018	Remain in Effect without Amendment
011 KAR 012:060	08-02-1991	07-12-2010	09-28-2018	Remain in Effect without Amendment
011 KAR 012:070	08-02-1991	08-14-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 012:090	08-02-1991	10-01-1992	09-28-2018	Remain in Effect without Amendment
011 KAR 013:010	03-06-1997	*03-06-1997*	09-28-2018	Remain in Effect without Amendment
011 KAR 014:010	10-01-1998	11-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:020	10-01-1998	*10-01-1998*	09-28-2018	Remain in Effect without Amendment
011 KAR 014:030	10-01-1998	03-10-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 014:040	10-01-1998	08-15-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:050	10-01-1998	*10-01-1998*	09-28-2018	Remain in Effect without Amendment
011 KAR 014:060	10-01-1998	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 014:070	10-01-1998	11-05-2001	09-28-2018	Remain in Effect without Amendment
011 KAR 014:080	10-01-1998	01-05-2009	09-28-2018	Remain in Effect without Amendment
011 KAR 015:010	10-01-1998	07-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 015:020	10-01-1998	01-28-2014	09-28-2018	Remain in Effect without Amendment
011 KAR 015:030	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:040	10-01-1998	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 015:050	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:060	10-01-1998	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 015:070	10-01-1998	12-21-2000	09-28-2018	Remain in Effect without Amendment
011 KAR 015:080	09-09-2002	*09-09-2002*	09-28-2018	Remain in Effect without Amendment
011 KAR 015:090	03-01-1999	03-09-2018	09-28-2018	Remain in Effect without Amendment
011 KAR 015:100	10-12-2015	*10-12-2015*	09-28-2018	Remain in Effect without Amendment
011 KAR 016:001	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:010	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:020	02-05-2001	*02-05-2001*	09-28-2018	Remain in Effect without Amendment
011 KAR 016:030	02-05-2001	*02-05-2001*	09-28-2018	Remain in Effect without Amendment

011 KAR 016:040	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:050	02-05-2001	09-09-2013	09-28-2018	Remain in Effect without Amendment
011 KAR 016:060	02-05-2001	10-12-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 016:070	07-06-2007	*07-06-2007*	09-28-2018	Remain in Effect without Amendment
011 KAR 017:010	12-01-2003	11-05-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 017:040	12-01-2003	01-04-2005	09-28-2018	Remain in Effect without Amendment
011 KAR 017:050	12-01-2003	*12-01-2003*	09-28-2018	Remain in Effect without Amendment
011 KAR 017:060	12-01-2003	*12-01-2003*	09-28-2018	Remain in Effect without Amendment
011 KAR 017:070	12-01-2003	*12-01-2003*	09-28-2018	Remain in Effect without Amendment
011 KAR 017:080	12-01-2003	*12-01-2003*	09-28-2018	Remain in Effect without Amendment
011 KAR 017:090	12-01-2003	*12-01-2003*	09-28-2018	Remain in Effect without Amendment
011 KAR 017:100	12-01-2003	11-05-2004	09-28-2018	Remain in Effect without Amendment
011 KAR 017:110	12-01-2003	*12-01-2003*	09-28-2018	Remain in Effect without Amendment
011 KAR 019:010	04-01-2011	02-06-2015	09-28-2018	Remain in Effect without Amendment
011 KAR 019:020	04-01-2011	*04-01-2011*	09-28-2018	Remain in Effect without Amendment
011 KAR 019:030	04-01-2011	*04-01-2011*	09-28-2018	Remain in Effect without Amendment
011 KAR 020:001	02-06-2015	*02-06-2015*	09-28-2018	Remain in Effect without Amendment
011 KAR 020:010	02-06-2015	*02-06-2015*	09-28-2018	Remain in Effect without Amendment
011 KAR 020:020	02-06-2015	*02-06-2015*	09-28-2018	Remain in Effect without Amendment
011 KAR 020:030	02-06-2015	*02-06-2015*	09-28-2018	Remain in Effect without Amendment
011 KAR 020:040	02-06-2015	*02-06-2015*	09-28-2018	Remain in Effect without Amendment
011 KAR 020:050	02-06-2015	*02-06-2015*	09-28-2018	Remain in Effect without Amendment
011 KAR 020:060	02-06-2015	*02-06-2015*	09-28-2018	Remain in Effect without Amendment
011 KAR 020:070	02-06-2015	*02-06-2015*	09-28-2018	Remain in Effect without Amendment
103 KAR 017:120	01-05-2007	*01-05-2007*	11-06-2018	Remain in Effect without Amendment
103 KAR 018:010	02-05-1975	*02-05-1975*	11-06-2018	Remain in Effect without Amendment
103 KAR 018:060	02-05-1975	*02-05-1975*	11-06-2018	Remain in Effect without Amendment
103 KAR 018:172	01-05-2007	*01-05-2007*	11-06-2018	Remain in Effect without Amendment
201 KAR 009:021	10-09-1984	05-05-2006	03-29-2018	To Be Amended. Amendment filed 4-12-2018, effective 7-18-2018.
201 KAR 009:031	10-09-1984	05-05-2006	03-29-2018	To Be Amended. Amendment filed 4-12-2018, effective 7-18-2018.
201 KAR 009:041	10-09-1984	11-15-2006	09-28-2018	Remain in Effect without Amendment
201 KAR 009:051	10-09-1984	03-14-1994	07-06-2018	Remain in Effect without Amendment
201 KAR 009:061	10-09-1984	03-14-1994	07-06-2018	Remain in Effect without Amendment
201 KAR 009:071	10-09-1984	*10-09-1984*	07-07-2018	Remain in Effect without Amendment
201 KAR 009:082	10-09-1984	*10-09-1984*	12-20-2018	Remain in Effect without Amendment
201 KAR 009:084	11-11-1986	02-02-2007	09-28-2018	Remain in Effect without Amendment
201 KAR 009:350	11-19-2003	*11-19-2003*	12-20-2018	Remain in Effect without Amendment
201 KAR 009:400	02-02-2007	*02-02-2007*	09-28-2018	Remain in Effect without Amendment
201 KAR 022:001	09-10-1975	06-06-2014	06-04-2018	Remain in Effect without Amendment
201 KAR 022:010	09-11-1975	12-02-1986	06-04-2018	Remain in Effect without Amendment
201 KAR 022:035	11-06-1980	05-31-2013	06-04-2018	Remain in Effect without Amendment
201 KAR 022:045	01-04-2005	10-19-2016	06-04-2018	Remain in Effect without Amendment
201 KAR 022:052	06-03-1981	01-04-2005	06-04-2018	Remain in Effect without Amendment
201 KAR 022:053	08-17-1990	06-02-2017	06-04-2018	Remain in Effect without Amendment
201 KAR 022:130	01-06-1983	09-18-2013	06-04-2018	Remain in Effect without Amendment
201 KAR 022:135	07-02-1987	07-21-2010	06-04-2018	Remain in Effect without Amendment
201 KAR 022:140	07-03-1987	11-15-2006	06-04-2018	Remain in Effect without Amendment
201 KAR 022:150	12-19-2001	01-04-2005	06-04-2018	Remain in Effect without Amendment
201 KAR 022:160	08-01-2014	*08-01-2014*	06-04-2018	Remain in Effect without Amendment
302 KAR 029:070	12-19-2001	*12-19-2001*	12-05-2018	Remain in Effect without Amendment
302 KAR 100:030	08-28-2009	*08-28-2009*	12-10-2018	Remain in Effect without Amendment
400 KAR 001:060	05-14-1987	*05-14-1987*	08-06-2018	Remain in Effect without Amendment
400 KAR 001:120	02-22-1995	08-04-2017	08-06-2018	Remain in Effect without Amendment
400 KAR 004:100	01-05-1977	10-26-1988	11-06-2018	Remain in Effect without Amendment
401 KAR 004:010	02-05-1975	08-25-2005	07-30-2018	Remain in Effect without Amendment
401 KAR 004:020	07-06-1977	*07-06-1977*	07-30-2018	Remain in Effect without Amendment
401 KAR 004:030	06-11-1975	*06-11-1975*	07-30-2018	Remain in Effect without Amendment
401 KAR 004:040	06-11-1975	*06-11-1975*	07-30-2018	Remain in Effect without Amendment
401 KAR 004:050	11-06-1980	*11-06-1980*	07-30-2018	Remain in Effect without Amendment
401 KAR 004:060	10-02-1987	03-09-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 004:070	05-05-2017	*05-05-2017*	07-30-2018	Remain in Effect without Amendment
401 KAR 004:200	08-07-1984	*08-07-1984*	07-30-2018	Remain in Effect without Amendment
401 KAR 004:220	06-26-1991	*06-26-1991*	07-30-2018	Remain in Effect without Amendment
401 KAR 004:300	04-28-1993	*04-28-1993*	07-30-2018	Remain in Effect without Amendment
401 KAR 006:001	10-08-2008	*10-08-2008*	09-05-2018	Remain in Effect without Amendment
401 KAR 006:200	08-07-1984	*08-07-1984*	09-05-2018	Remain in Effect without Amendment
401 KAR 006:310	08-13-1985	10-08-2008	09-05-2018	Remain in Effect without Amendment
401 KAR 006:320	11-15-1990	10-08-2008	09-05-2018	Remain in Effect without Amendment

401 KAR 006:350	10-08-2008	*10-08-2008*	09-05-2018	Remain in Effect without Amendment
401 KAR 008:010	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:020	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:022	03-18-2002	09-25-2009	10-03-2018	Remain in Effect without Amendment
401 KAR 008:030	11-15-1990	02-05-2010	10-03-2018	Remain in Effect without Amendment
401 KAR 008:040	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:050	11-15-1990	07-06-2009	10-03-2018	Remain in Effect without Amendment
401 KAR 008:075	04-09-2001	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:100	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:150	11-15-1990	08-05-2010	10-03-2018	Remain in Effect without Amendment
401 KAR 008:200	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 008:250	11-15-1990	09-08-2017	10-03-2018	Remain in Effect without Amendment
401 KAR 008:300	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 008:700	11-15-1990	12-05-2014	10-03-2018	Remain in Effect without Amendment
401 KAR 009:010	08-21-2008	*08-21-2008*	09-05-2018	Remain in Effect without Amendment
401 KAR 009:020	10-08-2008	*10-08-2008*	09-05-2018	Remain in Effect without Amendment
401 KAR 011:001	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:010	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:020	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:030	03-06-2009	08-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:040	02-05-2010	*02-05-2010*	11-01-2018	Remain in Effect without Amendment
401 KAR 011:050	03-06-2009	02-05-2010	11-01-2018	Remain in Effect without Amendment
401 KAR 011:060	03-06-2009	*03-06-2009*	11-01-2018	Remain in Effect without Amendment
401 KAR 030:005	03-12-1997	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 030:020	06-04-1980	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 030:031	06-24-1992	03-12-1997	09-05-2018	Remain in Effect without Amendment
401 KAR 030:040	06-04-1980	06-13-2007	09-05-2018	Remain in Effect without Amendment
401 KAR 039:005	03-12-1997	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:060	12-02-1983	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:080	02-04-1986	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:090	03-10-1988	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 039:120	10-26-1988	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 040:001	03-12-1997	*03-12-1997*	10-09-2018	Remain in Effect without Amendment
401 KAR 040:010	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:020	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:040	06-04-1980	12-02-1983	10-09-2018	Remain in Effect without Amendment
401 KAR 040:060	05-08-1990	*05-08-1990*	10-09-2018	Remain in Effect without Amendment
401 KAR 042:005	11-14-1995	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:011	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:020	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:030	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:040	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:045	12-19-1990	02-05-2016	10-09-2018	Remain in Effect without Amendment
401 KAR 042:050	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:060	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:070	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:080	11-14-1995	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:090	12-19-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:095	10-06-2011	*10-06-2011*	10-09-2018	Remain in Effect without Amendment
401 KAR 042:200	09-25-1990	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:250	09-13-2006	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:290	03-12-1993	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:300	03-12-1993	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:316	05-19-1999	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:320	03-12-1993	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:330	07-09-1997	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:335	06-09-1999	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 042:340	06-09-1999	10-06-2011	10-09-2018	Remain in Effect without Amendment
401 KAR 045:010	06-24-1992	05-05-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 045:020	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:025	04-28-1993	*04-28-1993*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:030	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:040	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:050	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:060	06-24-1992	12-07-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 045:070	06-24-1992	05-05-2006	09-05-2018	Remain in Effect without Amendment
401 KAR 045:080	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:090	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:100	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment

401 KAR 045:110	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:130	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:135	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:140	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:160	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:210	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 045:250	06-24-1992	*06-24-1992*	09-05-2018	Remain in Effect without Amendment
401 KAR 046:101	05-05-2017	*05-05-2017*	09-05-2018	Remain in Effect without Amendment
401 KAR 046:110	05-05-2017	*05-05-2017*	09-05-2018	Remain in Effect without Amendment
401 KAR 046:120	05-05-2017	*05-05-2017*	09-05-2018	Remain in Effect without Amendment
401 KAR 047:005	03-12-1997	*03-12-1997*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:025	04-28-1993	*04-28-1993*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:030	05-08-1990	03-18-2004	10-09-2018	Remain in Effect without Amendment
401 KAR 047:070	02-01-1982	05-08-1990	10-09-2018	Remain in Effect without Amendment
401 KAR 047:080	05-08-1990	*05-08-1990*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:090	05-08-1990	08-05-2010	10-09-2018	Remain in Effect without Amendment
401 KAR 047:095	03-19-2003	*03-19-2003*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:100	05-08-1990	*05-08-1990*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:110	09-08-1999	*09-08-1999*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:120	05-08-1990	*05-08-1990*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:130	05-08-1990	*05-08-1990*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:136	03-13-1991	*03-13-1991*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:140	05-08-1990	*05-08-1990*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:150	05-08-1990	*05-08-1990*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:160	05-08-1990	*05-08-1990*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:170	05-08-1990	*05-08-1990*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:180	05-08-1990	*05-08-1990*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:190	05-08-1990	*05-08-1990*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:205	10-06-2011	*10-06-2011*	10-09-2018	Remain in Effect without Amendment
401 KAR 047:207	10-06-2011	*10-06-2011*	10-09-2018	Remain in Effect without Amendment
401 KAR 048:005	11-07-1994	12-07-2017	08-13-2018	Remain in Effect without Amendment
401 KAR 048:050	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:060	05-08-1990	*05-08-1990*	08-13-2018	Remain in Effect without Amendment
401 KAR 048:070	05-08-1990	*05-08-1990*	08-13-2018	Remain in Effect without Amendment
401 KAR 048:080	05-08-1990	*05-08-1990*	08-13-2018	Remain in Effect without Amendment
401 KAR 048:090	05-08-1990	12-07-2017	08-13-2018	Remain in Effect without Amendment
401 KAR 048:170	05-08-1990	*05-08-1990*	08-13-2018	Remain in Effect without Amendment
401 KAR 048:200	05-08-1990	*05-08-1990*	08-13-2018	Remain in Effect without Amendment
401 KAR 048:205	10-06-2011	*10-06-2011*	08-13-2018	Remain in Effect without Amendment
401 KAR 048:206	10-06-2011	*10-06-2011*	08-13-2018	Remain in Effect without Amendment
401 KAR 048:207	10-06-2011	*10-06-2011*	08-13-2018	Remain in Effect without Amendment
401 KAR 048:208	10-06-2011	*10-06-2011*	08-13-2018	Remain in Effect without Amendment
401 KAR 048:300	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:310	05-08-1990	11-07-1994	08-13-2018	Remain in Effect without Amendment
401 KAR 048:320	09-08-1999	*09-08-1999*	08-13-2018	Remain in Effect without Amendment
401 KAR 049:005	03-12-1997	*03-12-1997*	09-05-2018	Remain in Effect without Amendment
401 KAR 049:011	09-23-1992	09-08-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 049:080	01-21-2005	09-08-2017	09-05-2018	Remain in Effect without Amendment
401 KAR 049:100	03-12-1993	*03-12-1993*	09-05-2018	Remain in Effect without Amendment
401 KAR 050:010	06-06-1979	11-08-2006	11-21-2018	Remain in Effect without Amendment
401 KAR 050:012	06-06-1979	11-12-1997	11-21-2018	Remain in Effect without Amendment
401 KAR 050:015	06-06-1979	10-26-1988	11-21-2018	Remain in Effect without Amendment
401 KAR 050:020	06-06-1979	*06-06-1979*	11-21-2018	Remain in Effect without Amendment
401 KAR 050:025	06-06-1979	06-01-1983	11-21-2018	Remain in Effect without Amendment
401 KAR 050:038	11-29-1993	04-12-1995	11-21-2018	Remain in Effect without Amendment
401 KAR 050:040	06-06-1979	03-01-1984	11-21-2018	Remain in Effect without Amendment
401 KAR 050:042	06-10-1986	*06-10-1986*	11-21-2018	Remain in Effect without Amendment
401 KAR 050:045	06-06-1979	07-13-2005	11-21-2018	Remain in Effect without Amendment
401 KAR 050:047	06-24-1992	*06-24-1992*	11-21-2018	Remain in Effect without Amendment
401 KAR 050:050	06-06-1979	*06-06-1979*	11-21-2018	Remain in Effect without Amendment
401 KAR 050:055	06-06-1979	09-22-1982	11-21-2018	Remain in Effect without Amendment
401 KAR 050:060	06-06-1979	*06-06-1979*	11-21-2018	Remain in Effect without Amendment
401 KAR 050:065	10-11-1995	*10-11-1995*	11-21-2018	Remain in Effect without Amendment
401 KAR 050:066	11-12-1997	11-12-2008	11-21-2018	Remain in Effect without Amendment
401 KAR 051:001	06-24-1992	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:005	06-06-1979	*06-06-1979*	07-30-2018	Remain in Effect without Amendment
401 KAR 051:017	09-22-1982	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:052	09-22-1982	12-07-2012	07-30-2018	Remain in Effect without Amendment
401 KAR 051:150	02-03-2006	*02-03-2006*	07-30-2018	Remain in Effect without Amendment

401 KAR 051:160	08-15-2001	02-03-2006	07-30-2018	Remain in Effect without Amendment
401 KAR 051:170	08-15-2001	*08-15-2001*	07-30-2018	Remain in Effect without Amendment
401 KAR 051:180	08-15-2001	*08-15-2001*	07-30-2018	Remain in Effect without Amendment
401 KAR 051:190	08-15-2001	*08-15-2001*	07-30-2018	Remain in Effect without Amendment
401 KAR 051:195	08-15-2001	*08-15-2001*	07-30-2018	Remain in Effect without Amendment
401 KAR 051:210	02-02-2007	*02-02-2007*	07-30-2018	Remain in Effect without Amendment
401 KAR 051:220	02-02-2007	06-13-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 051:230	02-02-2007	*02-02-2007*	07-30-2018	Remain in Effect without Amendment
401 KAR 052:001	01-15-2001	01-03-2011	09-12-2018	Remain in Effect without Amendment
401 KAR 052:020	01-15-2001	*01-15-2001*	09-12-2018	Remain in Effect without Amendment
401 KAR 052:030	01-15-2001	*01-15-2001*	09-12-2018	Remain in Effect without Amendment
401 KAR 052:040	01-15-2001	*01-15-2001*	09-12-2018	Remain in Effect without Amendment
401 KAR 052:060	01-15-2001	*01-15-2001*	09-12-2018	Remain in Effect without Amendment
401 KAR 052:090	01-15-2001	*01-15-2001*	09-12-2018	Remain in Effect without Amendment
401 KAR 052:100	01-15-2001	*01-15-2001*	09-12-2018	To be amended, filing deadline 03-12-20
401 KAR 053:005	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 053:010	06-06-1979	07-19-2016	09-12-2018	Remain in Effect without Amendment
401 KAR 055:005	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 055:010	06-06-1979	04-14-1988	09-12-2018	Remain in Effect without Amendment
401 KAR 055:015	06-06-1979	*06-06-1979*	09-12-2018	Remain in Effect without Amendment
401 KAR 055:020	06-06-1979	*06-06-1979*	09-12-2018	Remain in Effect without Amendment
401 KAR 057:002	07-14-1999	11-14-2007	09-12-2018	Remain in Effect without Amendment
401 KAR 058:005	01-25-1989	07-07-1998	07-30-2018	To be amended, filing deadline 01-03-20
401 KAR 058:010	01-25-1989	*01-25-1989*	07-30-2018	Remain in Effect without Amendment
401 KAR 058:025	01-07-1985	11-14-2007	07-30-2018	Remain in Effect without Amendment
401 KAR 058:040	11-06-1987	*11-06-1987*	07-30-2018	Remain in Effect without Amendment
401 KAR 059:001	06-24-1992	11-08-2006	11-21-2018	Remain in Effect without Amendment
401 KAR 059:005	06-06-1979	12-01-1982	11-21-2018	Remain in Effect without Amendment
401 KAR 059:010	06-06-1979	04-14-1988	11-21-2018	Remain in Effect without Amendment
401 KAR 059:020	06-06-1979	11-21-2018	11-21-2018	Remain in Effect without Amendment
401 KAR 059:021	11-15-1990	*11-15-1990*	11-21-2018	Remain in Effect without Amendment
401 KAR 059:023	11-15-1990	*11-15-1990*	11-21-2018	Remain in Effect without Amendment
401 KAR 059:046	06-29-1979	*06-29-1979*	11-21-2018	Remain in Effect without Amendment
401 KAR 059:050	06-29-1979	04-14-1988	11-21-2018	Remain in Effect without Amendment
401 KAR 059:080	06-06-1979	*06-06-1979*	11-21-2018	Remain in Effect without Amendment
401 KAR 059:085	06-06-1979	*06-06-1979*	11-21-2018	Remain in Effect without Amendment
401 KAR 059:090	06-06-1979	*06-06-1979*	11-21-2018	Remain in Effect without Amendment
401 KAR 059:095	06-29-1979	*06-29-1979*	11-21-2018	Remain in Effect without Amendment
401 KAR 059:101	06-29-1979	09-28-1994	11-21-2018	Remain in Effect without Amendment
401 KAR 059:105	06-06-1979	04-07-1982	11-21-2018	Remain in Effect without Amendment
401 KAR 059:174	01-12-1998	03-04-2016	11-21-2018	Remain in Effect without Amendment
401 KAR 059:175	06-06-1979	02-08-1993	11-21-2018	Remain in Effect without Amendment
401 KAR 059:185	06-29-1979	01-04-2005	11-21-2018	Remain in Effect without Amendment
401 KAR 059:190	06-29-1979	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:210	06-29-1979	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:212	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:214	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:225	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:230	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:240	02-04-1981	06-24-1992	11-21-2018	Remain in Effect without Amendment
401 KAR 059:260	03-02-1983	04-01-1984	11-21-2018	Remain in Effect without Amendment
401 KAR 059:315	06-24-1992	*06-24-1992*	11-21-2018	Remain in Effect without Amendment
401 KAR 059:760	03-11-2005	*03-11-2005*	11-21-2018	Remain in Effect without Amendment
401 KAR 063:001	06-24-1992	11-08-2006	09-12-2018	Remain in Effect without Amendment
401 KAR 063:005	06-06-1979	07-13-2005	09-12-2018	Remain in Effect without Amendment
401 KAR 063:010	06-29-1979	*06-29-1979*	09-12-2018	Remain in Effect without Amendment
401 KAR 063:015	06-06-1979	*06-06-1979*	09-12-2018	Remain in Effect without Amendment
401 KAR 063:020	06-06-1979	*06-06-1979*	09-12-2018	Remain in Effect without Amendment
401 KAR 063:021	11-11-1986	01-19-1999	09-12-2018	Remain in Effect without Amendment
401 KAR 063:025	06-06-1979	06-24-1992	09-12-2018	Remain in Effect without Amendment
401 KAR 063:031	08-24-1982	02-08-1993	09-12-2018	Remain in Effect without Amendment
401 KAR 063:060	11-29-1993	03-03-2017	09-12-2018	Remain in Effect without Amendment
401 KAR 065:001	11-29-1993	11-08-2006	09-12-2018	Remain in Effect without Amendment
401 KAR 065:005	06-06-1979	*06-06-1979*	09-12-2018	Remain in Effect without Amendment
401 KAR 068:010	10-13-1999	*10-13-1999*	09-12-2018	Remain in Effect without Amendment
401 KAR 068:020	10-13-1999	*10-13-1999*	09-12-2018	Remain in Effect without Amendment
401 KAR 068:048	10-13-1999	*10-13-1999*	09-12-2018	Remain in Effect without Amendment
401 KAR 068:065	10-13-1999	*10-13-1999*	09-12-2018	Remain in Effect without Amendment
401 KAR 068:090	10-13-1999	*10-13-1999*	09-12-2018	Remain in Effect without Amendment

401 KAR 068:100	10-13-1999	*10-13-1999*	09-12-2018	Remain in Effect without Amendment
401 KAR 068:150	10-13-1999	*10-13-1999*	09-12-2018	Remain in Effect without Amendment
401 KAR 068:200	10-13-1999	*10-13-1999*	09-12-2018	Remain in Effect without Amendment
401 KAR 100:030	03-18-2004	*03-18-2004*	08-13-2018	Remain in Effect without Amendment
401 KAR 101:001	07-06-2009	*07-06-2009*	08-13-2018	Remain in Effect without Amendment
401 KAR 101:010	07-06-2009	*07-06-2009*	08-13-2018	Remain in Effect without Amendment
401 KAR 101:020	07-06-2009	*07-06-2009*	08-13-2018	Remain in Effect without Amendment
401 KAR 101:030	07-06-2009	*07-06-2009*	08-13-2018	Remain in Effect without Amendment
401 KAR 101:040	07-06-2009	*07-06-2009*	08-13-2018	Remain in Effect without Amendment
401 KAR 102:005	02-03-2014	*02-03-2014*	08-13-2018	Remain in Effect without Amendment
401 KAR 102:010	01-14-2002	02-03-2014	08-13-2018	Remain in Effect without Amendment
401 KAR 102:020	02-03-2014	*02-03-2014*	08-13-2018	Remain in Effect without Amendment
402 KAR 003:010	11-13-1984	11-02-2017	07-03-2018	Remain in Effect without Amendment
402 KAR 003:020	05-19-1999	05-05-2006	07-03-2018	Remain in Effect without Amendment
402 KAR 003:030	05-19-1999	11-02-2017	07-03-2018	Remain in Effect without Amendment
402 KAR 003:040	05-05-2006	*05-05-2006*	07-03-2018	Remain in Effect without Amendment
402 KAR 003:050	09-03-2015	*09-03-2015*	07-03-2018	Remain in Effect without Amendment
405 KAR 002:010	08-11-1982	*08-11-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:002	08-26-2004	*08-26-2004*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:015	02-22-1995	*02-22-1995*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:021	02-22-1995	*02-22-1995*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:032	08-26-2004	03-08-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 005:036	08-26-2004	*08-26-2004*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:040	02-22-1995	*02-22-1995*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:042	08-26-2004	*08-26-2004*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:048	08-26-2004	*08-26-2004*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:050	02-22-1995	*02-22-1995*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:055	02-22-1995	*02-22-1995*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:062	08-26-2004	*08-26-2004*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:065	02-22-1995	*02-22-1995*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:070	02-22-1995	*02-22-1995*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:078	08-26-2004	*08-26-2004*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:082	08-26-2004	*08-26-2004*	07-03-2018	Remain in Effect without Amendment
405 KAR 005:085	02-22-1995	02-03-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 007:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 007:015	08-07-1984	12-12-1994	07-03-2018	Remain in Effect without Amendment
405 KAR 007:030	02-02-1983	11-09-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 007:035	11-26-1991	*11-26-1991*	07-03-2018	Remain in Effect without Amendment
405 KAR 007:040	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 007:050	05-04-1983	*05-04-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 007:060	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 007:070	05-14-1985	09-10-1987	07-03-2018	Remain in Effect without Amendment
405 KAR 007:080	01-06-1983	09-28-1994	07-03-2018	Remain in Effect without Amendment
405 KAR 007:095	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 007:097	06-09-1999	*06-09-1999*	07-03-2018	Remain in Effect without Amendment
405 KAR 007:100	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 007:110	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 008:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 008:010	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 008:020	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 008:030	01-06-1983	01-05-2015	07-03-2018	Remain in Effect without Amendment
405 KAR 008:040	01-06-1983	01-05-0215	07-03-2018	Remain in Effect without Amendment
405 KAR 008:050	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 010:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 010:015	09-06-2012	11-07-2013	07-03-2018	Remain in Effect without Amendment
405 KAR 010:025	12-05-2014	*12-05-2014*	07-03-2018	Remain in Effect without Amendment
405 KAR 010:030	01-06-1983	09-06-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 010:035	10-09-1984	*10-09-1984*	07-03-2018	Remain in Effect without Amendment
405 KAR 010:040	01-06-1983	04-24-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 010:050	01-06-1983	09-22-1993	07-03-2018	Remain in Effect without Amendment
405 KAR 010:070	11-07-2013	*11-07-2013*	07-03-2018	Remain in Effect without Amendment
405 KAR 010:080	11-07-2013	*11-07-2013*	07-03-2018	Remain in Effect without Amendment
405 KAR 010:090	11-07-2013	*11-07-2013*	07-03-2018	Remain in Effect without Amendment
405 KAR 012:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 012:010	01-06-1983	09-22-1993	07-03-2018	Remain in Effect without Amendment
405 KAR 012:020	01-06-1983	02-03-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 012:030	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 016:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 016:010	01-06-1983	12-12-1994	07-03-2018	Remain in Effect without Amendment

405 KAR 016:020	01-06-1983	09-06-2012	07-03-2018	Remain in Effect without Amendment
405 KAR 016:030	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 016:040	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 016:050	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 016:060	01-06-1983	07-07-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 016:070	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:080	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:090	01-06-1983	10-09-2002	07-03-2018	Remain in Effect without Amendment
405 KAR 016:100	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 016:110	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 016:120	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:130	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 016:140	01-06-1983	11-17-2009	07-03-2018	Remain in Effect without Amendment
405 KAR 016:150	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 016:160	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 016:170	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 016:180	01-06-1983	06-24-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 016:190	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 016:200	01-06-1983	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 016:210	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 016:220	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 016:250	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 018:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:010	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:020	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 018:030	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 018:040	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:050	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 018:060	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:070	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:080	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:090	01-06-1983	10-09-2002	07-03-2018	Remain in Effect without Amendment
405 KAR 018:100	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 018:110	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 018:120	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:130	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 018:140	01-06-1983	11-17-2009	07-03-2018	Remain in Effect without Amendment
405 KAR 018:150	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 018:160	01-06-1983	06-10-1998	07-03-2018	Remain in Effect without Amendment
405 KAR 018:170	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 018:180	01-06-1983	06-24-1992	07-03-2018	Remain in Effect without Amendment
405 KAR 018:190	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 018:200	01-06-1983	02-22-1995	07-03-2018	Remain in Effect without Amendment
405 KAR 018:210	01-06-1983	06-08-2001	07-03-2018	Remain in Effect without Amendment
405 KAR 018:220	01-06-1983	11-26-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 018:230	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 018:260	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:001	04-03-1992	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:010	01-06-1983	12-17-1991	07-03-2018	Remain in Effect without Amendment
405 KAR 020:030	01-06-1983	08-13-1985	07-03-2018	Remain in Effect without Amendment
405 KAR 020:040	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 020:050	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 020:060	01-06-1983	05-22-2000	07-03-2018	Remain in Effect without Amendment
405 KAR 020:070	01-06-1983	02-04-1986	07-03-2018	Remain in Effect without Amendment
405 KAR 020:080	01-06-1983	01-05-2018	07-03-2018	Remain in Effect without Amendment
405 KAR 020:090	01-05-2018	*01-05-2018*	07-03-2018	Remain in Effect without Amendment
405 KAR 024:001	04-03-1992	*04-03-1992*	07-03-2018	Remain in Effect without Amendment
405 KAR 024:020	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 024:030	01-06-1983	12-13-1988	07-03-2018	Remain in Effect without Amendment
405 KAR 024:040	01-06-1983	06-28-1989	07-03-2018	Remain in Effect without Amendment
405 KAR 026:001	01-06-1983	*01-06-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:010	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:015	08-07-1984	*08-07-1984*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:020	03-01-1982	11-02-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:025	06-25-1983	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:035	06-25-1982	*06-25-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:040	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:050	06-02-1982	*06-02-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:060	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment

405 KAR 030:070	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:080	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:090	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:100	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:110	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:121	06-02-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:125	06-02-1982	*06-02-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:130	08-02-1981	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:140	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:150	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:160	11-02-1983	*11-02-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:170	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:180	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:210	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:220	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:230	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:240	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:250	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:260	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:270	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:280	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:290	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:300	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:310	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:320	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:330	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:340	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:350	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:360	11-02-1983	*11-02-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:370	10-05-1983	*10-05-1983*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:390	03-01-1982	10-05-1983	07-03-2018	Remain in Effect without Amendment
405 KAR 030:400	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
405 KAR 030:410	03-01-1982	*03-01-1982*	07-03-2018	Remain in Effect without Amendment
416 KAR 001:010	08-24-1995	*08-24-1995*	06-27-2018	Remain in Effect without Amendment
500 KAR 008:010	02-07-1991	12-01-2017	12-17-2018	Remain in Effect without Amendment
500 KAR 008:020	11-08-1991	05-24-2004	12-17-2018	Remain in Effect without Amendment
500 KAR 008:030	11-08-1991	12-01-2017	12-17-2018	Remain in Effect without Amendment
600 KAR 006:080	04-05-1996	01-25-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 001:019	07-06-2012	*07-06-2012*	10-08-2018	Remain in Effect without Amendment
601 KAR 001:200	09-03-1996	08-06-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 001:201	03-02-1999	09-07-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 001:220	05-07-2010	*05-07-2010*	10-08-2018	Remain in Effect without Amendment
601 KAR 002:020	09-01-1998	08-10-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 009:015	05-14-1975	11-05-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 009:090	01-04-1984	11-02-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 009:160	05-23-1994	03-14-2012	10-08-2018	Remain in Effect without Amendment
601 KAR 009:205	01-03-2011	*01-03-2011*	10-08-2018	Remain in Effect without Amendment
601 KAR 009:210	12-19-2001	04-01-2011	10-08-2018	Remain in Effect without Amendment
601 KAR 011:035	10-04-2011	*10-04-2011*	10-08-2018	Remain in Effect without Amendment
601 KAR 012:060	10-01-1991	07-02-2010	10-08-2018	Remain in Effect without Amendment
601 KAR 014:030	11-05-2010	*11-05-2010*	10-08-2018	Remain in Effect without Amendment
601 KAR 023:010	02-05-2010	*02-05-2010*	10-08-2018	Remain in Effect without Amendment
603 KAR 004:035	11-03-1982	02-15-2012	10-08-2018	Remain in Effect without Amendment
603 KAR 007:080	01-25-2012	*01-25-2012*	10-08-2018	Remain in Effect without Amendment
701 KAR 005:055	08-04-1994	12-05-1996	11-16-2018	Remain in Effect without Amendment
701 KAR 005:080	03-13-1991	*03-13-1991*	11-16-2018	Remain in Effect without Amendment
701 KAR 005:090	09-06-1991	11-12-2002	11-16-2018	Remain in Effect without Amendment
701 KAR 005:100	09-06-1991	06-01-1995	11-16-2018	Remain in Effect without Amendment
701 KAR 005:120	01-19-1999	*01-19-1999*	11-16-2018	Remain in Effect without Amendment
701 KAR 005:130	03-07-2008	*03-07-2008*	11-16-2018	Remain in Effect without Amendment
702 KAR 001:035	03-02-1977	07-15-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 001:080	03-10-1976	12-05-1996	11-16-2018	Remain in Effect without Amendment
702 KAR 001:100	02-02-1977	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 001:140	07-06-1995	*07-06-1995*	11-16-2018	Remain in Effect without Amendment
702 KAR 001:150	01-15-2001	03-19-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 003:020	11-13-1974	01-14-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 003:030	11-13-1974	07-02-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 003:045	03-12-1975	08-01-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 003:050	03-12-1975	12-09-1990	11-16-2018	Remain in Effect without Amendment

702 KAR 003:060	11-03-1974	01-16-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 003:070	03-12-1975	01-14-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 003:075	11-13-1974	11-01-1999	11-16-2018	Remain in Effect without Amendment
702 KAR 003:080	11-13-1975	01-05-2009	11-16-2018	Remain in Effect without Amendment
702 KAR 003:090	11-13-1975	06-08-2009	11-16-2018	Remain in Effect without Amendment
702 KAR 003:135	10-01-1980	01-14-2002	11-16-2018	Remain in Effect without Amendment
702 KAR 003:150	11-13-1974	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 003:190	10-09-1984	09-02-1993	11-16-2018	Remain in Effect without Amendment
702 KAR 003:246	02-12-1996	01-03-2011	11-16-2018	Remain in Effect without Amendment
702 KAR 003:250	09-06-1991	10-01-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 003:270	12-01-1994	09-08-2008	11-16-2018	Remain in Effect without Amendment
702 KAR 003:275	02-02-1995	*02-02-1995*	11-16-2018	Remain in Effect without Amendment
702 KAR 003:285	01-09-1997	*01-09-1997*	11-16-2018	Remain in Effect without Amendment
702 KAR 003:310	02-03-2003	*02-03-2003*	11-16-2018	Remain in Effect without Amendment
702 KAR 004:005	06-11-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 004:050	10-08-1975	03-07-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 004:090	06-11-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 004:100	12-10-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 004:170	03-02-1995	*03-02-1995*	11-16-2018	Remain in Effect without Amendment
702 KAR 004:180	10-06-1991	07-07-2008	11-16-2018	Remain in Effect without Amendment
702 KAR 005:010	06-11-1975	12-01-2006	11-16-2018	Remain in Effect without Amendment
702 KAR 005:020	10-08-1975	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 005:060	06-11-1975	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 005:080	03-16-1998	01-04-2008	11-16-2018	Remain in Effect without Amendment
702 KAR 005:100	06-11-1975	10-14-1990	11-16-2018	Remain in Effect without Amendment
702 KAR 005:120	01-05-1977	10-01-1992	11-16-2018	Remain in Effect without Amendment
702 KAR 005:130	06-04-1985	01-16-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 005:150	12-07-1990	01-16-2003	11-16-2018	Remain in Effect without Amendment
702 KAR 006:010	10-02-1974	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:020	03-12-1975	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:040	03-12-1975	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:045	03-23-1989	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 006:050	10-02-1974	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 006:060	03-12-1975	02-07-1991	11-16-2018	Remain in Effect without Amendment
702 KAR 006:075	10-14-1990	01-04-2010	11-16-2018	Remain in Effect without Amendment
702 KAR 007:130	01-05-2009	10-06-2010	11-16-2018	Remain in Effect without Amendment
703 KAR 003:205	09-02-1993	12-05-1996	11-16-2018	Remain in Effect without Amendment
704 KAR 003:285	07-05-1978	09-01-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 003:307	04-01-1981	02-07-1991	11-16-2018	Remain in Effect without Amendment
704 KAR 003:325	10-09-1994	02-03-2006	11-16-2018	Remain in Effect without Amendment
704 KAR 003:406	08-04-1994	*08-04-1994*	11-16-2018	Remain in Effect without Amendment
704 KAR 003:410	12-09-1990	06-07-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 003:420	06-07-1999	*06-07-1999*	11-16-2018	Remain in Effect without Amendment
704 KAR 003:440	08-01-1992	*08-01-1992*	11-16-2018	Remain in Effect without Amendment
704 KAR 003:455	01-09-1995	03-19-2003	11-16-2018	Remain in Effect without Amendment
704 KAR 003:480	03-01-1999	*03-01-1999*	11-16-2018	Remain in Effect without Amendment
704 KAR 003:490	01-15-2001	08-07-2006	11-16-2018	Remain in Effect without Amendment
704 KAR 003:500	11-05-2001	*11-05-2001*	11-16-2018	Remain in Effect without Amendment
704 KAR 003:510	03-19-2003	03-19-2003	11-16-2018	Remain in Effect without Amendment
704 KAR 003:530	08-07-2006	08-07-2006	11-16-2018	Remain in Effect without Amendment
704 KAR 004:010	11-13-1974	02-07-1991	11-16-2018	Remain in Effect without Amendment
704 KAR 005:060	12-02-1988	02-07-1991	11-16-2018	Remain in Effect without Amendment
704 KAR 007:070	12-02-1986	01-19-1999	11-16-2018	Remain in Effect without Amendment
704 KAR 007:120	10-07-1993	04-22-2005	11-16-2018	Remain in Effect without Amendment
704 KAR 007:130	09-04-1997	06-08-2001	11-16-2018	Remain in Effect without Amendment
704 KAR 007:140	01-16-2003	11-08-2004	11-16-2018	Remain in Effect without Amendment
704 KAR 010:022	11-03-1976	10-08-1989	11-16-2018	Remain in Effect without Amendment
705 KAR 003:141	08-04-1994	*08-04-1994*	11-16-2018	Remain in Effect without Amendment
705 KAR 004:081	08-04-1994	*08-04-1994*	11-16-2018	Remain in Effect without Amendment
705 KAR 004:240	01-19-1999	*01-19-1999*	11-16-2018	Remain in Effect without Amendment
707 KAR 001:270	03-01-1999	*03-01-1999*	11-16-2018	Remain in Effect without Amendment
707 KAR 001:290	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:300	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:320	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:350	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:360	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:370	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
707 KAR 001:380	08-14-2000	11-05-2007	11-16-2018	Remain in Effect without Amendment
750 KAR 001:010	07-02-1986	04-02-2010	07-25-2018	Remain in Effect without Amendment

750 KAR 002:010	11-04-1993	02-04-1999	07-25-2018	Remain in Effect without Amendment
780 KAR 001:010	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 002:010	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 002:030	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 002:110	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:010	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:020	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:030	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:035	09-11-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:040	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:060	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:065	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:075	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:090	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:100	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:110	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:150	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 003:160	07-05-1991	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:005	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:010	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:020	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:030	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:040	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:050	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:062	07-17-2000	01-04-2010	11-16-2018	Remain in Effect without Amendment
780 KAR 006:065	07-17-2000	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:070	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:080	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:090	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 006:100	12-09-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 007:020	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
780 KAR 007:040	10-14-1990	05-01-2009	11-16-2018	Remain in Effect without Amendment
805 KAR 001:020	08-02-1978	09-25-1991	07-03-2018	Remain in Effect without Amendment
805 KAR 001:030	11-13-1975	10-23-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:040	04-09-1975	04-09-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:050	04-09-1975	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:060	06-11-1975	12-07-2017	06-27-2018	Remain in Effect without Amendment
805 KAR 001:080	06-11-1975	06-11-1975	06-27-2018	Remain in Effect without Amendment
805 KAR 001:100	08-13-1975	09-03-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:110	09-01-1984	04-04-2008	06-27-2018	Remain in Effect without Amendment
805 KAR 001:120	09-25-1991	09-25-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 001:130	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:140	09-25-1991	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:160	07-09-1997	*07-09-1997*	06-27-2018	Remain in Effect without Amendment
805 KAR 001:170	07-09-1997	09-04-2015	06-27-2018	Remain in Effect without Amendment
805 KAR 001:180	11-12-1997	*11-12-1997*	06-27-2018	Remain in Effect without Amendment
805 KAR 001:190	03-18-2004	11-17-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 001:200	10-23-2009	*10-23-2009*	06-27-2018	Remain in Effect without Amendment
805 KAR 002:010	12-11-1974	*12-11-1974*	06-27-2018	Remain in Effect without Amendment
805 KAR 003:010	05-14-1975	09-22-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 003:020	05-14-1975	07-09-1985	06-27-2018	Remain in Effect without Amendment
805 KAR 003:030	05-14-1975	*05-14-1975*	06-27-2018	Remain in Effect without Amendment
805 KAR 003:040	05-14-1975	*05-14-1975*	06-27-2018	Remain in Effect without Amendment
805 KAR 003:060	05-14-1975	*05-14-1975*	06-27-2018	Remain in Effect without Amendment
805 KAR 003:070	05-14-1975	*05-14-1975*	06-27-2018	Remain in Effect without Amendment
805 KAR 003:080	05-14-1975	*05-14-1975*	06-27-2018	Remain in Effect without Amendment
805 KAR 003:090	05-14-1975	*05-14-1975*	06-27-2018	Remain in Effect without Amendment
805 KAR 003:100	05-14-1975	02-05-2016	06-27-2018	Remain in Effect without Amendment
805 KAR 003:110	05-14-1975	*05-14-1975*	06-27-2018	Remain in Effect without Amendment
805 KAR 003:120	05-14-1975	*05-14-1975*	06-27-2018	Remain in Effect without Amendment
805 KAR 004:005	09-01-1976	06-07-1993	06-27-2018	Remain in Effect without Amendment
805 KAR 004:010	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:020	07-02-1975	*07-02-1975*	06-27-2018	Remain in Effect without Amendment
805 KAR 004:030	07-02-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:040	06-11-1975	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:050	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:060	06-11-1975	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:075	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:080	09-01-1976	*09-01-1976*	06-27-2018	Remain in Effect without Amendment

805 KAR 004:085	09-01-1976	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:087	03-02-1977	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:090	09-01-1976	09-07-1983	06-27-2018	Remain in Effect without Amendment
805 KAR 004:093	12-11-1996	*12-11-1996*	06-27-2018	Remain in Effect without Amendment
805 KAR 004:095	09-01-1976	05-03-1978	06-27-2018	Remain in Effect without Amendment
805 KAR 004:100	09-01-1976	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:105	09-01-1976	*09-01-1976*	06-27-2018	Remain in Effect without Amendment
805 KAR 004:110	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:115	09-01-1976	05-03-1978	06-27-2018	Remain in Effect without Amendment
805 KAR 004:120	09-01-1976	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:125	09-01-1976	09-16-2002	06-27-2018	Remain in Effect without Amendment
805 KAR 004:130	09-01-1976	*09-01-1976*	06-27-2018	Remain in Effect without Amendment
805 KAR 004:135	09-01-1976	*09-01-1976*	06-27-2018	Remain in Effect without Amendment
805 KAR 004:140	09-01-1976	12-11-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 004:145	09-01-1976	*09-01-1976*	06-27-2018	Remain in Effect without Amendment
805 KAR 004:150	09-01-1976	*09-01-1976*	06-27-2018	Remain in Effect without Amendment
805 KAR 004:155	06-26-1991	*06-26-1991*	06-27-2018	Remain in Effect without Amendment
805 KAR 004:160	06-27-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 004:165	06-28-1991	06-26-1991	06-27-2018	Remain in Effect without Amendment
805 KAR 005:010	09-01-1976	10-14-1996	06-27-2018	Remain in Effect without Amendment
805 KAR 005:030	11-09-1992	12-11-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 005:070	12-11-1996	*12-11-1996*	06-27-2018	Remain in Effect without Amendment
805 KAR 007:010	10-05-1977	08-06-2007	06-27-2018	Remain in Effect without Amendment
805 KAR 007:020	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:030	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:040	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:050	10-05-1977	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:060	07-05-1978	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 007:070	02-07-1979	10-13-1999	06-27-2018	Remain in Effect without Amendment
805 KAR 007:080	12-11-1996	03-06-2009	06-27-2018	Remain in Effect without Amendment
805 KAR 007:090	10-13-1999	*10-13-1999*	06-27-2018	Remain in Effect without Amendment
805 KAR 007:100	08-06-2007	*08-06-2007*	06-27-2018	Remain in Effect without Amendment
805 KAR 008:010	09-16-2002	*09-16-2002*	06-27-2018	Remain in Effect without Amendment
805 KAR 008:030	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:040	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:050	09-16-2002	02-02-2018	06-27-2018	Remain in Effect without Amendment
805 KAR 008:060	09-16-2002	09-02-2010	06-27-2018	Remain in Effect without Amendment
805 KAR 009:010	06-08-2005	*06-08-2005*	06-27-2018	Remain in Effect without Amendment
805 KAR 009:020	06-09-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:030	06-10-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:050	06-11-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:060	06-12-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:070	06-13-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:080	06-14-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:090	06-15-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
805 KAR 009:100	06-16-2005	06-08-2005	06-27-2018	Remain in Effect without Amendment
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805 KAR 011:010	08-23-2007	*08-23-2007*	06-27-2018	Remain in Effect without Amendment
805 KAR 011:020	08-23-2007	*08-23-2007*	06-27-2018	Remain in Effect without Amendment
825 KAR 001:020	06-14-2002	12-07-2006	08-06-2018	Remain in Effect without Amendment
825 KAR 001:030	11-12-2002	*11-12-2002*	08-06-2018	Remain in Effect without Amendment
900 KAR 006:040	12-18-1996	*12-18-1996*	07-30-2018	Remain in Effect without Amendment
902 KAR 020:009	04-13-1998	12-12-2007	01-11-2019	Remain in Effect without Amendment
902 KAR 020:012	08-05-1981	01-12-1990	01-11-2019	Remain in Effect without Amendment
902 KAR 020:018	11-05-1981	03-14-2002	01-11-2019	Remain in Effect without Amendment
902 KAR 020:410	03-04-2011	*03-04-2011*	01-11-2019	Remain in Effect without Amendment
902 KAR 048:020	02-07-2002	*02-07-2002*	01-11-2019	Remain in Effect without Amendment
902 KAR 048:030	02-07-2002	*02-07-2002*	01-11-2019	Remain in Effect without Amendment
902 KAR 048:040	02-07-2002	*02-07-2002*	01-11-2019	Remain in Effect without Amendment
902 KAR 055:060	06-03-1981	01-10-1994	01-11-2019	Remain in Effect without Amendment
902 KAR 055:065	03-15-1989	03-14-1994	01-11-2019	Remain in Effect without Amendment
902 KAR 055:080	07-17-1991	*07-17-1991*	01-11-2019	Remain in Effect without Amendment
902 KAR 055:105	12-16-1998	*12-16-1998*	01-11-2019	Remain in Effect without Amendment
902 KAR 055:115	12-16-1998	*12-16-1998*	01-11-2019	Remain in Effect without Amendment
906 KAR 001:100	03-07-1992	09-01-2006	01-11-2019	Remain in Effect without Amendment
906 KAR 001:110	08-28-1992	07-24-2006	01-11-2019	Remain in Effect without Amendment
906 KAR 001:120	02-17-1998	01-23-2004	01-11-2019	Remain in Effect without Amendment
906 KAR 001:140	10-15-2003	*10-15-2003*	01-11-2019	Remain in Effect without Amendment
906 KAR 001:160	02-01-2008	10-17-2012	01-11-2019	Remain in Effect without Amendment

906 KAR 001:170	01-05-2009	*01-05-2009*	01-11-2019	Remain in Effect without Amendment
906 KAR 001:180	06-04-2010	*06-04-2010*	01-11-2019	Remain in Effect without Amendment
907 KAR 001:260	06-28-1984	01-10-1992	07-23-2018	Remain in Effect without Amendment
907 KAR 001:680	07-26-1995	07-16-2003	07-23-2018	Remain in Effect without Amendment
907 KAR 001:720	11-14-1997	08-12-2002	07-23-2018	Remain in Effect without Amendment
907 KAR 001:755	04-21-1999	*04-21-1999*	07-23-2018	Remain in Effect without Amendment
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907 KAR 003:100	08-16-1999	12-02-2010	07-23-2018	Remain in Effect without Amendment
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907 KAR 003:225	11-01-2013	*11-01-2013*	07-23-2018	Remain in Effect without Amendment
907 KAR 003:230	11-01-2013	*11-01-2013*	07-23-2018	Remain in Effect without Amendment
907 KAR 005:005	11-05-2010	*11-05-2010*	07-23-2018	Remain in Effect without Amendment
907 KAR 006:005	05-06-2011	*05-06-2011*	07-23-2018	Remain in Effect without Amendment
907 KAR 010:815	06-06-2008	*06-06-2008*	07-23-2018	Remain in Effect without Amendment
907 KAR 014:005	10-21-2009	01-14-2013	07-23-2018	Remain in Effect without Amendment
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910 KAR 001:260	12-01-2006	12-11-2012	08-10-2018	Remain in Effect without Amendment
910 KAR 003:020	05-01-2009	*05-01-2009*	08-10-2018	Remain in Effect without Amendment
920 KAR 001:060	08-18-1999	03-01-2007	07-23-2018	Remain in Effect without Amendment

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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: Finalized copies of the technically amended administrative regulations are available for viewing on the Legislative Research Commission Web site at http:www.lrc.ky.gov-KAR-frntpage.htm.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
009 KAR 001:050	09-12-2018		
016 KAR 009:040	09-12-2018		
020 KAR 001:010	08-14-2018		
103 KAR 001:010	09-12-2018		
103 KAR 016:320	07-16-2018		
103 KAR 018:020	07-16-2018		
103 KAR 018:090	07-16-2018		
104 KAR 001:020	09-12-2018		
104 KAR 001:040	09-12-2018		
200 KAR 005:365	09-12-2018		
200 KAR 012:030	09-12-2018		
200 KAR 021:020	11-15-2018		
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200 KAR 021:050	11-15-2018		
201 KAR 046:081	09-28-2018		
301 KAR 002:132	09-12-2018		
401 KAR 039:005	07-09-2018		
401 KAR 045:020	10-15-2018		
401 KAR 045:025	10-15-2018		
401 KAR 045:030	10-15-2018		
401 KAR 045:090	10-15-2018		
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401 KAR 045:250	10-15-2018		
401 KAR 048:090	10-15-2018		
401 KAR 048:200	10-15-2018		
401 KAR 048:300	10-15-2018		
401 KAR 048:310	10-15-2018		
703 KAR 005:280	09-10-2018		
804 KAR 004:370	08-01-2018		
831 KAR 001:030	11-13-2018		
900 KAR 006:040	08-02-2018		
900 KAR 011:010	07-13-2018		
902 KAR 030:180	07-18-2018		
902 KAR 048:020	09-13-2018		
902 KAR 048:030	09-13-2018		
907 KAR 017:020	06-05-2018		
908 KAR 002:250	09-17-2018		
910 KAR 001:240	09-17-2018		
920 KAR 001:060	07-25-2018		
921 KAR 001:400	08-22-2018		
921 KAR 001:410	08-22-2018		

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